

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

FAO 181 of 2017

Date of Decision: October 3, 2017

Preet Kaur @ Prabjot Kaur

.....Appellant

Vs.

Kuldeep Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH.

-. -

Present: Mr. G.S. Hayer, Advocate for the appellant.
Respondent ex-parte.

-. -

M.M.S. BEDI, J.

Aggrieved by dismissal of her petition under Sections 8 and 25 of the Guardian and Wards Act seeking direction to the respondent- husband for handing over the custody of the minor daughter of the petitioner Devjit Kaur vide order dated August 3, 2016 passed by Civil Judge (Junior Division), Muktsar Sahib, the mother has filed this appeal under Section 47 of the Guardian and Wards Act.

The appellant had claimed that she is the natural guardian of Devjit Kaur who was born out of the wedlock with respondent on August 28, 2009. The appellant was turned out of the matrimonial home while minor daughter Devjit Kaur was retained forcibly by respondent. The signatures of the appellant were taken on blank papers forcibly. An application was filed by the appellant before the local police but no action

was taken. The parties had filed a joint petition for divorce on mutual consent under Section 13 B of the Hindu Marriage Act by mutual consent. The appellant had imposed a condition to the effect that the husband-respondent shall be bound to produce the minor child Devjit Kaur for meeting with mother once in a month at a common place on 1st day of the month and he would allow free excess to the wife on that day to meet the minor daughter Devjit Kaur. The husband did not comply with the said condition till the recording of second statement as such the appellant was not ready to get the marriage dissolved by decree of mutual consent which was dismissed in default. Appellant filed the petition for custody of the minor child on the ground that Devjit Kaur was not well being maintained.

The respondent contested the application by raising the plea that on the basis of source of income, the appellant was not able to meet the basic needs of the minor and that she is barred by her act and conduct to seek the custody of the child.

The Guardian Court framed the following issues:-

- “1. Whether the petitioner is entitled to the custody of minor Devjeet Kaur? OPA
2. Whether the petition is not maintainable? OPR.
3. Relief.”

On appreciation of evidence and considering the statements of the appellant as PW1, Roop Singh as PW2, Shamsher Singh as PW3 and Vakil Singh PW4 and the statements of respondent as RW1, Harkaran Singh as RW2, Darshan Singh as RW3 and Bittu Singh as RW4, issue No.1 was decided against the appellant and in favour of the respondent- husband.

Issue no.2 was decided against the husband holding that the petition was maintainable. On the basis of the finding on issue No.1, petition filed by the appellant was dismissed.

Notice was issued to the respondent. The respondent refused to accept summons. Record had been called for. The respondent had intentionally evaded to appear before this Court as such he was proceeded against ex-parte on July 25, 2017. The matter was listed for arguments on October 3, 2017.

With the assistance of counsel for the appellant we have gone through the entire record. The appellant while appearing as a witness before the lower Court has admitted that she had agreed before the Panchayat when compromise was effected on March 3, 2014, Ex.P-4 that custody of the child will remain with the father and he would bear expenses for up-keep of the child.

Respondent Kuldeep Singh had brought it to the notice of the Guardian Court that the daughter was studying in Kalgidhar School, Malout where her monthly fee is Rs.300/- and admission fee is Rs.1500/-. It is apparent from the record that the marriage between the parties had not been dissolved by adopting legal procedure and they are living separately. The appellant herself is residing with her maternal uncle as admitted by her. Her concern as a mother of the child is undisputed. She has filed the present petition only on the apprehension that the daughter is not being looked after properly. She has waived of her right to take the custody from the very beginning.

We have taken into consideration all the circumstances and heard counsel for the appellant who has submitted that even if it is presumed that the appellant has waived of her right to take custody of the child but it will be in the welfare of the minor child to have excess to her mother. We agree with the said contention.

Counsel for the appellant has submitted that the appellant cannot be deprived of her right to have excess to the child by permitting her the visitation right.

We find force in the said contention and are of the considered opinion that it will be for the benefit of the welfare of the child in case the child is permitted to meet the appellant-mother.

The appeal is partly allowed ex-parte and the appellant is granted visitation rights once in a month on every third working Friday in the Court of Additional Civil Judge (SD), Gidderbaha between 2.00 p.m. to 4.00 p.m. It will be the responsibility of the respondent to produce the child to facilitate the visitation/ meeting. In case of violation of the direction, it will be open to the appellant to execute the order by filing execution application.

(M.M.S. BEDI)
JUDGE

October 3, 2017
sanjay

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether reportable:	Yes/No.