

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No. 1566 of 2016 (O&M)
in Criminal Writ Petition No. 828 of 2016
Date of decision: 13.1.2017

Shivani Mahajan

.. Appellant

v.

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Arjun Sheoran, Advocate for the appellant.
Mr. Anand Chhibbar, Sr. Advocate with
Mr. Abhilaksh Grover, Advocate for respondents No. 4 and 5.

..

Rajesh Bindal, J.

Against the order passed by the learned Single Judge in a petition for habeas corpus, present intra-court appeal has been filed seeking custody of the child.

The appellant and respondent No. 4 married on 31.10.2008. A girl child, named Inayat, was born out of the wedlock on 2.7.2012. As the parties could not pull on together, a divorce petition was filed on 8.4.2014 before Central Family Court, High Holborn, London. On 4.9.2014, divorce was granted. Certain terms were settled between the parties. Custody of the child was given to the father with certain interim arrangement in terms of order dated 3.10.2014.

Learned counsel for the appellant submitted that as the appellant was not being allowed to see the child, habeas corpus petition was

required to be filed.

Learned counsel for respondents No. 4 and 5 submitted that all the terms as laid down by UK Court regarding visitation rights, communication and welfare of the child are being complied with. He further submitted that the appellant has filed a petition under the provisions of Guardians and Wards Act, 1890 seeking permanent custody of the child, which is pending in the court at Panchkula. Respondent No. 4 undertakes to comply whatever conditions were laid down by UK Court regarding custody and welfare of the child or visitation rights. He further submitted that in case the appellant withdraws the petition for custody, he can consent for giving more visitation rights in winter vacations.

Learned counsel for the appellant disputes the fact that the conditions, as laid down in the order passed by UK Court regarding communication or welfare of the child, are being communicated to the appellant.

After hearing learned counsel for the parties, we are of the opinion that the issue regarding permanent custody or any other interim arrangement, except what has already been decided by UK Court cannot be considered in the present proceedings, especially when petition for custody filed by the appellant is pending in the court at Panchkula, where even an application for interim custody has also been filed. In that petition, respondent No. 4 had filed an application under Order 7 Rule 11 CPC raising the issue of jurisdiction. The application having been dismissed by the trial court, the matter is pending before this court in Civil Revision No. 5170 of 2016, which is listed on 9.5.2017.

Considering the aforesaid factual matrix, the present appeal is disposed of with a direction that as an interim measure, the appellant shall be given custody of the child for 10 days during winter vacations including travelling, in addition what has been mentioned in the order passed by UK court.

It is made clear that the aforesaid order has been passed merely as an interim measure. The parties shall be at liberty to raise all arguments available to them in the pending application for interim custody before the court below. The court shall decide the same on its own merits. It is also made clear that for any period, if custody of the child is granted to the appellant, she will be required to deposit her passport and OCI card with Chief Judicial Magistrate, Gurgaon. Certified copies thereof shall be given to her. It is for the reason that learned counsel for the appellant submitted that being a UK citizen, she has to carry some documents for her identity while travelling. Once the custody of the child is returned back to respondent No. 4, the aforesaid documents deposited with Chief Judicial Magistrate, Gurgaon, shall be returned to her.

(Rajesh Bindal)
Judge

(Harinder Singh Sidhu)
Judge

13.1.2017
mk

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

