

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(121)

CR-6948-2018

Date of Decision: October 11, 2018.

Arun Kant

.... Petitioner

Versus

Rekha Tanwar

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Ankit Chowdhri, Advocate, for the petitioner.

SUDIP AHLUWALIA, J (ORAL)

1) This revision petition is directed against order dated 05.09.2018 passed by the Guardian Judge, Chandigarh vide which the application on behalf of the respondent for permission to place on record the consent and wish of the minor daughter of the parties in writing, was declined.

2) Undoubtedly, where custody of a minor child itself is the matter in dispute, the paramount consideration before Court ought to be actual welfare of the child and technicalities of the rules of evidence or procedure need not be allowed to come in the way. It is also undeniable that personal opinion and wish of the child regarding the place where her welfare can be best ensured itself is also a vital factor to be considered. But at all times, the Court has to be mindful of the fact and also needs to satisfy itself that any statement of the child is not given under undue pressure or influence particularly at the instance of that parent who happens to be holding her custody at any given time.

3) In the opinion of this Court, questioning and cross-examination of the minor child itself in the Court, was rather uncalled for. Both the contesting parties could have led their respective evidence and the Ld.

Judge concerned would have interacted with the minor in a more congenial environment to gather an idea about her real aspirations and statements, and the Ld. Judge at its own level could have also tried to elicit, whether her submissions and statements before him were made on her own volition, or were under any pressure or tutoring.

4) With the above observations, the present revision petition is disposed off with a direction that before hearing the final arguments, the Ld. Trial Judge will interact with the minor child confidentially in his Chamber to ascertain her true wishes/aspirations, and also satisfy himself about the genuineness of such statements as the child may make before him to ensure that the same are not tutored. If necessary, even after completion of arguments and before pronouncing the final decision, the Ld. Judge may again question/interact with the minor child to ensure that his considered decision ultimately goes in the direction of ensuring her actual substantial welfare.

(SUDIP AHLUWALIA)
JUDGE

October 11, 2018

harsha

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