

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

CRWP-979-2018

Date of decision: 11.12.2018

Sunita

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Sanjay Nagpal, Advocate
for the petitioner.

Mr. Himmat Singh, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for issuance of a writ in the nature of Habeas Corpus directing respondent Nos. 1 to 3 to get released or produced the detinue, namely Sumit, aged about three years (minor son of the petitioner) from the illegal custody of respondent Nos. 4 to 6.

In pursuance to the notice of motion order, the petitioner and respondent No. 4 are present in Court along with minor son Sumit, who is produced by respondent No. 4.

The matter was referred to Mediation and Conciliation Centre of this Court for recording the statement of the parties. The Mediator, after recording the statement of the parties, has sent her report of the even date wherein a settlement/agreement has arrived at between the parties. The operative part of the aforesaid settlement/agreement reads as under:

**“6. The following settlement has been arrived at between
the Parties hereto:**

a) Both the parties have agreed that the custody of the

child namely-Sumit @ Heera will be a joint custody with the arrangement that on the weekdays the child will stay with mother and she will take care of his needs. However, the father- party no.2 has the right to take the child with him on weekends i.e. on Saturday and Sunday. Second party will hand over to the first party on or before 7:00 P.M. on every Sunday. It is pertinent to mention here that after the child attains the age of 5 years both the parties will be free to claim their right of custody of the child. But today the child is handed over to the first party and will go with the first party from the Court itself.

b) That both the parties have agreed that the expenses of the education of the child will be borne by the father and the rest of the expenses shall be borne by the mother.

c) That gold items i.e. two rings, one pair of earrings, one chain of child and silver jewellery, if any, of the first party is in the custody of the second party however, the stridhan which have been received by the first party is in her custody and shall remain with her. It is agreed that the second party will no claim for it.

d) That the dowry articles lying in the custody of second party will be returned to the first party as and when the first party desires.

e) Both the parties will file divorce by mutual consent under Section 13-B of HMA in Family Court at Panipat after the dispute regarding the permanent alimony is decided. The expenses of the case will be borne by the parties. At this stage, only the dispute remains regarding the permanent alimony which is to be paid to the first party. The first party undertakes to produce the bills of the expenses incurred upon by the first party on the wedding ceremonies.

f) All the complaints filed by the first party against the second party will be withdrawn by the first party after the case is filed for divorce under Section 13-B of HMA.

7. By signing this Agreement the parties hereto state that they have no further claims or demands against each other and all the disputes and differences in this regard have been amicably settled by the parties hereto through the process of Conciliation/Mediation and shall not institute any other case against each other.”

Learned counsel for the petitioner, however submit that the settlement is between the parents of the minor child and his right to maintenance is to be assessed independently by the Competent Court of law and the visiting right given to respondent No. 4-Father is subject to the final

outcome of decree of divorce filed under Section 13-B of the Hindu Marriage Act.

In view of the above, this petition is disposed of. The custody of minor son Sumit is ordered to be handed over to the petitioner, who is his mother. The parties will remain bound by the terms and conditions of the aforesaid settlement/agreement.

The petitioner as well as the minor will be at liberty to take their recourse for maintenance etc. before the competent Court in accordance with law.

December 11, 2018
Neeraj

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No