

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-1899-2018 (O&M)
Date of Decision:- 20.4.2018

Jasvir Kaur

... Appellant

Versus

Parminder Singh

... Respondent

**CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI
HON'BLE MR. JUSTICE GURVINDER SINGH GILL**

Present:- Mr. Manuj Nagrath, Advocate for the appellant.

M.M.S. BEDI, J.

This is an appeal against an order dated 5.3.2018 purported to be under Section 47 (i) of the Guardians and Wards Act, 1890 though the impugned order has not been passed specifically under Section 43 of the Guardians and Wards Act, 1890.

Perusal of the file indicates that the respondent-husband had filed an application under Section 25(9) of the Guardians and Wards Act, 1890 seeking visitation rights besides claiming custody of the minor child. The said matter was compromised before the Guardian Judge, Chandigarh. Vide order dated 15.12.2014, Annexure P-1, on the statements of the parties, the matter was amicable settled and the permanent custody of the minor child was handed over to the respondent-husband in the Court by the appellant-wife, however, reserving her right of visitation as per her

convenience, four times in a month with prior intimation to the respondent-husband telephonically.

Complaining that the respondent-husband was not adhering to the terms of the settlement, a miscellaneous application was filed by the appellant-wife for modification of order dated 15.12.2014. Copy of the application has been placed on record as Annexure P-3. Contents of the application are indicative of the fact that the appellant-wife had gone to meet the minor child on different occasions, when she was misbehaved by hurling filthy abuses as mentioned in her application. She claimed that she was not being allowed to meet the minor child intentionally by the respondent-husband. The learned Guardian Judge has dismissed the application vide impugned order dated 5.3.2018 on a technical ground that the application for seeking modification of the order dated 15.12.2014 was not maintainable in view of provisions of Section 152 of the Code of Civil Procedure.

We have considered the contents of the said application, which has been dismissed by the Guardian Judge, Chandigarh and also the contents of the application filed by the appellant-wife in the light of provisions of Section 43 of the Guardians and Wards Act, 1890, which empowers a Guardian Court to regulate the conduct as well as the proceedings of any guardian appointed or declared by the Court. In this case, the dispute is *inter se* the natural guardians of the minor child, which was determined on the basis of the terms settled between them. The application regarding guardianship and custody of the minor child had been decided as per the terms of settlement arrived at between the parties. On account of the terms being not implemented in letter and spirit, the appellant-wife had opted to file an application. It appears that the title and

prayer of the application were not happily worded though the contents of the application are indicative of the fact that the appellant-wife wanted regulation of the conduct of the respondent-husband as per the terms of the settlement arrived at between the parties.

The function of a Court, especially the Guardian Judge, does not cease to exist after passing an order but the objective of the Guardians and Wards Act, 1890 is to ensure the welfare of the minor child and to further supervise and regulate the conduct of the guardian and for enforcement of the order passed by the Guardian Judge. Section 43 of the Guardians and Wards Act, 1890 reads as follows:-

“43. Orders for regulating conduct or proceedings of guardians, and enforcement of those orders:-

1. The Court may, on the application of any person interested or of its own motion, make an order regulating the conduct or proceedings of any guardian appointed or declared by the Court.
2. Where there are more guardians than one of a ward and they are unable to agree upon a question affecting his welfare, any of them may apply to the Court for its direction, and the Court may make such order respecting the matter in difference as it thinks fit.
3. Except where it appears that the object of making an order under sub-section (1) or sub-section (2) would be defeated by the delay, the Court shall, before making the order, direct notice of the application therefor or of the intention of the Court to make it, as the case may be, to be given, in a case under sub-section (1), to the guardian or, in a case under sub-section (2), to the guardian who has not made the application.
4. In case of disobedience to an order made under sub-section (1) or sub-section (2), the order may be enforced

in the same manner as an injunction granted under section 492 or section 493 of the Code of Civil Procedure, 1882 (14 of 1882)¹, in a case under sub-section (1), as if the ward were the plaintiff and the guardian were the defendant or, in a case under sub-section (2), as if the guardian who made the application were the plaintiff and the other guardian were the defendant.

5. Except in a case under sub-section (2), nothing in this section shall apply to a Collector who is, as such, a guardian.”

The learned Guardian Judge appears to have adopted a casual approach to dispose of the application, which was actually meant for implementation of order dated 15.12.2014 in letter and spirit and for slight modification. The application could not have been dismissed in the garb of provisions of Section 152 of the Code of Civil Procedure. Even Section 36 of CPC provides for the execution of any order passed by a Court like a decree. Since the order dated 15.12.2014 had been passed with the consent of the natural guardians on the basis of certain agreed terms. In case of violation of any of the terms, the Court has power even under Section 144 of CPC to restore the parties to the original position and the Court has power even to place the parties, which they occupied before the settlement, in case they do not comply with the terms of the settlement. The learned Guardian Judge appears to have not fairly considered the contents of the application in the light of the powers vesting in the Court under Section 43 of the Guardians and Wards Act, 1890.

We are of the considered opinion that the provisions of Section 43 of the Guardians and Wards Act, 1890 imposed a statutory duty upon the Guardian Judge to continuously regulate the conduct and the proceedings of the guardian and to ensure the enforcement of the order passed by the

Guardian Judge, taking into consideration the welfare of the minor. It is always open to the Guardian Judge to issue directions on different occasions on being apprised of the situation pertaining to the conduct of the guardian.

As order dated 5.3.2018 is apparently a wrong order passed by the Guardian Judge in violation of statutory provisions, the instant appeal is allowed. The order dated 5.3.2018 is hereby set aside without expressions of any opinion on merits of the case. It is ordered that in case the appellant-wife appears before the Guardian Judge within a period of 15 days and moves an appropriate application in the light of provisions of Section 43 of the Guardians and Wards Act, 1890, the same would be decided on merits, in accordance with law, after giving fair opportunity to both the parties taking into consideration the welfare of the minor child.

It is made clear that anything said in this order will not in any manner prejudice the adjudication of the rights of the parties in accordance with law. Setting aside of order dated 5.3.2018 will also not be a bar for reconsideration of the pleas taken/raised in the application filed by the appellant-wife, withing a period of 15 days as aforementioned.

It is observed here that we have opted to dispose of this appeal in limine as the trial Court has not decided the application of the appellant-wife on merits but has knocked it off on technical ground regarding non-maintainability of the application in the garb of Section 152 CPC.

It is directed that in case fresh application is filed, the same will be decided expeditiously within a period of six months. It will be open to the Guardian Judge to pass any interim direction in the interest of the

welfare of the child taking into consideration the terms of the settlement arrived at between the parties.

(M.M.S. Bedi)
Judge

20.4.2018
pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No