

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.6456 of 2018
Date of Decision:26.10.2018

Dr. Digvijay Singh

..... Appellant

Vs.

Mrs. Balvinder Kaur and another

..... Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN
HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: - Mr.Vijay Kumar Jindal, Sr. Advocate, with
Mr. Gopal Saini, Advocate,
for the appellant.

Mr.Vikas Bahl, Sr. Advocate, with
Mr.Nikhil Sabharwal, Advocate,
for the caveator/respondent No.2.

RAKESH KUMAR JAIN, J.

This appeal is directed against the order dated 27.9.2018 passed by the Family Court by which custody of the minor child (female), born on 10.5.2015, presently little above 3 years of age, has been given to the appellant and her visitation rights have been given to the respondents, who are her maternal grandparents.

In brief, the appellant got married to the daughter of the respondents on 10.10.2010. They were blessed with a girl child on 10.5.2015. The wife of the appellant died on 11.12.2016. The appellant is a Doctor so as respondent No.2. The respondents made a complaint against the appellant for investigation of the cause of death of their daughter. They have also filed criminal miscellaneous petition before this Court under Section 482 of the Cr.P.C. for seeking a direction. The respondents had filed an application before the Family Court under the Guardians and Wards Act,

1890 for appointing them as guardians of the person and property of their minor grand-daughter. The appellant has got remarried to another Doctor who is a divorcee but issueless. The application for guardianship was contested by the appellant basically alleging that the minor child is in his custody since her birth. The respondents have only two daughters. One of their daughters is living in USA and is issueless whereas the other one, married to the appellant, has died. Respondent No.2 is a child specialist having his own hospital in Nawanshahr whereas it is alleged that the appellant, who is also living in Nawanshahr, has his parents at Ambala.

On the pleadings of the parties, the Court framed as many as five issues on 26.9.2017. Although both the parties led their respective oral as well as documentary evidence to claim guardianship of the minor child but the Court appointed the appellant as the guardian of the person and property of the minor child and at the same time, granted the following rights to the respondents: -

“Therefore, even though the minor has been ordered to be left in the custody of her father, the maternal grandparents must be given a reasonable opportunity of meeting the child as it would be inappropriate and undesirable to keep the child away from her maternal grandparents. They must have adequate opportunity to see the minor child, spend time with her and to develop bonds of affection with her. Accordingly, respondent shall give petitioners a reasonable opportunity to meet minor child, spend time with her from morning of second Saturday of every month till the evening of Sunday and respondent shall permit

maternal grandparents to take away the minor child along with them during this period. Further, respondent shall give the petitioners half of the summer vacations and winter vacations to spend with the minor child. The petitioners after having spent the above said period with the child, shall leave the minor child to her father's house in time and ensure the safety and security of the child. ”

Admittedly, no appeal has been filed by the respondents/maternal grandparents against the order dated 27.9.2018, who are only defending the impugned order in this appeal to the extent of visitation rights.

Learned counsel for the appellant has submitted that the appellant has no objection insofar as the following order is concerned: -

“They must have adequate opportunity to see the minor child, spend time with her and to develop bonds of affection with her. Accordingly, respondent shall give petitioners a reasonable opportunity to meet minor child.”

However, the appellant has an objection about the rest of the order by which the Court has allowed the respondents to keep the custody of the minor child during the night time as it has held that the respondents would be entitled to spend time with her from morning of second Saturday of every month till the evening of Sunday. He has also objected to the order by which the respondents/grandparents have been allowed to take her care during this period and also to keep the custody of the minor child for half of the summer vacations and half of the winter vacations. It is submitted by

learned counsel for the appellant that the visitation rights granted by the learned Court below, granting inter-mediatory custody to the respondents, is illegal and is not in the welfare of the minor child. Counsel for the appellant has submitted that the respondents have already filed a petition under Section 482 of the Cr.P.C against the appellant in this Court for seeking a direction to look into their complaint made to the police authorities to enquire into the death of their daughter in which they have raised finger towards him and in that circumstance, there are all possibilities that the respondents would tutor the minor child against the appellant to whom her custody has been finally given by the learned Court below. It is also submitted that once he has got remarried and his wife is also a Doctor, who does not have any issue from the previous marriage and also there is no child out of the present wedlock, the appellant and his wife would take care of the minor child. In support of his submission, he has relied upon a decision rendered by the Supreme Court in ***Civil Appeal No.5099 of 2007*** titled as ***“Gaurav Nagpal Vs. Sumedha Nagpal”*** decided on 19.11.2008.

On the other hand, learned counsel for the respondents, who is on caveat, has submitted that although the respondents being the maternal grandparents of the minor child are entitled to her custody but they were satisfied with the visitation rights give to them by the learned Court below. It is submitted that they had only two daughters. One of their daughters, who is married and is living in US, has no issue and the other daughter married with the appellant is no more and has left behind her daughter. It is also submitted that respondent No.2 is a child specialist having good practice in Nawanshahr whereas his wife/respondent No.1 is a homemaker and has ample time to look after the minor child, who is just about three years of age. It is also submitted that the Court below has already granted

them visitation rights to meet the minor child but the appellant is unnecessarily raising an objection about taking the minor child on second Saturday of every month till the evening of Sunday. As a matter of fact, the minor child is not going to be taken out of city as both of them are locally placed/residents of Nawanshahr. Similarly, it is submitted that the learned Court below has rightly given them permission to spend half of the summer and winter vacations with the child which is also a process of development of a bond of affection with the minor child keeping in view the facts and circumstances of the case that the respondents have lost her daughter at the young age and has no other child with them.

Learned counsel for the respondents has also relied upon decisions of the Supreme Court in the cases of “**Smt. Anjali Kapoor Vs. Rajiv Baijal**” 2009(3) RCR (Civil) 903 and “**Shyamrao Maroti Korwate Vs. Deepak Kisanrao Tekam**” 2010(4) RCR (Civil) 647. It is also submitted that the respondents would withdraw their petition filed against the appellant under Section 482 of the Cr.P.C. if the impugned order is maintained by this Court so as to remove the doubt from the mind of the appellant that they would tutor their grand-daughter against the appellant.

We have heard learned counsel for the parties and perused the record.

There is no straight jacket formula for granting visitation rights to the maternal grandparents as against the custody of the minor child being retained by her further after the death of her mother. It all depends upon the facts and circumstances of each case.

In the present case, the respondents are the maternal grandparents of the minor child. Their daughter was married to the appellant on 10.10.2010 and after 5 years of their marriage the minor child was born

on 10.5.2015 but unfortunately the daughter of the respondents died on 11.12.2016 who herself was the child specialist. It is an altogether different matter that the appellant had solemnized the second marriage immediately thereafter because the learned Court below has already granted the custody of the person and property of the minor child to her father (appellant) by the impugned order but only visitation rights have been given to the grandparents/respondents. It is also a matter of fact that the respondents have another daughter who is living in US after her marriage but has no child. The Court has thus found that the appellant would be natural guardian of the minor child but at the same time it has also been found that the love of maternal grandparents towards their grand-daughter, especially after the demise of her daughter, cannot be ignored. It is an admitted fact that after the death of their daughter they had been looking after the minor child for some time. The respondents have also shown their magnanimity in making their statement before the Court that they would withdraw the petition filed under Section 482 of the Cr.P.C. before this Court for seeking a direction against the appellant in respect of the investigation in the death of their daughter as now they are more concerned about the welfare of their grand-daughter and are in need of her love and affection. The Court below has rightly observed that they need opportunity and time to develop bond of affection with the minor child for which the appellant has to provide them reasonable opportunity to meet the minor child, spend time with her and in that process allowed them to take away the minor child on second Saturday of every month till the evening of Sunday. Otherwise, if this mechanism is not adopted then simply by meeting the child for 2-3 hours on a particular day would not develop any kind of bond of the minor child with her maternal grandparents. Similarly, learned Court below has also rightly

granted the liberty to the respondents to spend half of the summer and half of the winter vacations with the minor child which is also a part of developing a bond. The judgment relied upon by learned counsel for the appellant in the case of ***Gaurav Nagpal (Supra)*** is rather in favour of the respondents because in that case, the custody was give to the wife but while modifying the order, the visitation rights were given to the husband to have the custody for 7 days of the child during the long holidays of vacation covering more than two weeks. In the judgment relied upon by the respondents in the case of ***Smt. Anjali Kapoor (Supra)***, it has been held that the maternal grandmother would be entitled to the custody of a child after remarriage of the father. Similarly in the case of ***Shyamrao Maroti Korwate (Supra)***, the similar view has been taken by the Hon'ble Supreme Court.

Thus keeping in view the facts and circumstances, we are of the considered opinion that there is no error in the order passed by the learned Court below and hence, the present appeal, found to be without any merit, is hereby dismissed.

(RAKESH KUMAR JAIN)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

26.10.2018

Vivek

Whether speaking /reasoned : *Yes/No*

Whether Reportable : *Yes/No*