

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 1023 of 2019

Date of Decision: 26.2.2019

Kulwinder Singh Kalra

.....Appellant

Versus

Lakhbir Kaur

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Harminder Singh, Advocate, for the appellant.

Harnaresh Singh Gill, J.

This appeal is directed against the order dated 27.11.2018 passed by the learned Additional Civil Judge (Sr. Division), Dera Bassi (Exercising the Powers of District Judge, under the Guardian and Wards Act, 1890), whereby the petition under Section 25 of the Guardian and Wards Act, 1890 (for short 'the Act'), filed by the respondent-wife for custody of minor daughter Gursirat Kaur aged about more than two years, has been allowed.

Shorn of all unnecessary details, the relevant facts necessary for the adjudication of the present petition are that the marriage between the appellant and respondent-wife was solemnized on 29.12.2013. Out of the said wedlock, a female child, namely, Gursirat Kaur was born on 12.5.2015. As per the version of the respondent-wife in her petition filed before the learned trial Court, she and the appellant-husband stayed in the joint family till 20.5.2016. However, on 20.4.2016 itself, the

appellant-husband suddenly started arguing with her and forcibly took their daughter and forced the respondent-wife to give in writing that she was leaving the matrimonial home of her own. But when the respondent-wife did not abide by the dictate of the appellant-husband, the husband at the instance of other family members gave severe beatings to the respondent-wife. They brought her to Kalka and left her there wherefrom she came to Patiala. However, while doing so, they illegally and forcibly took the custody of the minor child. The respondent-wife had, thus, filed a petition under Section 25 of the Act, for custody of the child, inter-alia, on the ground that she requires love and affection of the mother. Still further, it was averred in the petition that keeping in view the age of the minor child and her over all welfare and betterment, her custody is required to be given to the respondent-wife.

The appellant-husband filed his written statement, averring therein, being the legal guardian of the minor child, she is entitled to her custody. It was further pleaded that the respondent-wife had left the minor child in a very pity condition at Lalru and went to Patiala. After hearing the hue and cry of the child, the mother of the appellant went inside the room and found that the appellant was not at home and accordingly the appellant was informed about the said incident. When the appellant returned home, he found the respondent-wife had left the matrimonial home along with her articles and cash amount was also missing. It was further stated that since the said date,

the minor child had been in the custody of the respondent-husband.

On the pleadings, various issues were framed by the trial Court. In support of their case, the parties led evidence. Respondent-wife appeared as PW1, whereas appellant-husband appeared as RW1 and led documentary evidence in the form of Ex.R1 to R.5.

The learned trial Court while passing the impugned order has found that indisputably the respondent-wife is working as a teacher in the Spring Field School, Tafazzarpura, Patiala and is earning Rs.3000/- per month. Besides, she is also doing the stitching work at her home and earning therefrom also. Though on behalf of the appellant-husband, it was pleaded that he was working as a Conductor, yet no documentary proof in respect of his earning was placed on record. It was, thus, found that the appellant-husband had failed to prove his alleged defence that the respondent-wife had left the minor daughter in the custody of the appellant-husband of her own sweet will and that the respondent-wife was not capable of upbringing her minor daughter. Rather, on the basis of the evidence on record, it was found that the respondent-wife being an educated lady, can look after the minor daughter. It was thus found that the appellant-husband had forcibly taken the custody of the minor daughter.

While relying upon the judgment of the Hon'ble Supreme Court in Gayatri Bajaj Vs. Jiten Bhalla, 2013 AIR SC (Civil) 77, it was held by the learned trial Court that keeping in

view the tender age of the minor, she needs the warmth, love and affection of the lap of her mother and that keeping in view the paramount consideration in such matter, the appellant-husband is not entitled to the custody of the minor daughter. Accordingly, issue No.1 `whether the petitioner is entitled for the custody of minor baby girl under Section 25 of the Guardians and Wards Act, 1890?" was decided in favour of the respondent-wife.

In the ordinary course of nature, we would have summoned the record of the case, but keeping in view that the issue involved in the present appeal, which is purely legal in nature, the same can be decided on the basis of the facts and evidence, as noticed in the impugned judgment, and further taking into consideration that the issue relates to the custody of a minor female child aged around two years and two months, whose custody, as per the provisions of the Hindu Minority and Guardianship Act, 1956, should remain with the mother, we deem it appropriate to decide the case without summoning the record of the trial Court.

Learned counsel appearing for the appellant contends that while passing the impugned order, the learned trial Court has lost sight of the fact that the appellant is working as conductor and thus, is possessed of the resources to maintain the minor child. He has further argued that besides, the parents of the appellant are also alive and in this manner, while the appellant remains on his job, his parents would be there to take care and look after the child. It is further argued

that that custody of the child should remain with the appellant keeping in view the paramount welfare of the child.

After hearing the learned counsel for the appellant and having gone through the impugned judgment passed by the learned trial Court, we do not find any merit in the present appeal and the same is liable to be dismissed.

Admittedly, when the petition was instituted by the respondent-wife on 9.11.2016, the child was stated to be one year. Thus, by now, the child would be nearly two years and two months old. It is beyond common comprehension as to on what basis, this Court can agree with the argument raised by the learned counsel for the appellant, especially when the child is of a very tender age and she requires the love and care of her mother.

The present proceedings have been initiated under Section 25 of the Act. However, the same are to be read in consonance with the provisions of the Hindu Minority and Guardianship Act, 1956 (for short 'the 1956 Act'). Section 6 of the 1956 Act, would read as under:-

“6. Natural guardians of a Hindu minor.- The natural guardians of a Hindu, minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are-

(a) in the case of a boy or an unmarried girl-the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;.

(b)”

From a bare perusal of the aforesaid extracts, it is clear that Section 6(a) of the 1956 Act, stipulates that in the case of a boy or an unmarried girl, the father, and after him, the mother would be the guardian provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother. From the said provisions, it is apparent that the custody of a child, who is less than five years of age, shall ordinarily remain with the mother.

Still further, the provisions of Section 25 of the Act, provide that while passing the order(s) as regards the custody of the minor child, the Court has to take into consideration the welfare of the ward.

Keeping in view the aforesaid factual position, it is apparently clear that the child in the instant case is around two years and two months of age. Thus, in view of the aforesaid statutory provisions, her custody is to remain with the mother. Hence, the order passed by the trial Court cannot be found fault with.

In view of the above, we do not find any illegality or infirmity in the order passed by the learned trial Court, which may warrant interference by this Court in the present appeal.

Hence, the present appeal is dismissed.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

26.02.2019
ds

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No