

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

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CR No.7347 of 2016 (O&M)

Date of decision:3.5.2019

Rajwinder Kaur and others

... Petitioners

versus

Rajinder Kaur

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Kulbhushan Raheja, Advocate,
for the petitioners
Mr.S.P.Soi, Advocate,
for the respondent

...

AMOL RATTAN SINGH, J. (Oral)

1. In the order dated 26.4.2019, it had been recorded upon a statement made by the respondent who was appearing in person on that date, that petitioner no.1 having re-married, is living in Ferozepur whereas petitioners no.2 and 3 who are the maternal grandparents of the child, (i.e. the son of petitioner no.1), are living in Kapurthala, with the daughter of petitioner no.1, i.e. the sister of the minor child, living with the respondent; and therefore, with the mother in any case not keeping her son with her, it had been contended that the brother and sister be allowed to live together with the respondent.

However, obviously on that date with no counsel appearing, this Court had missed the basic fact that this petition challenges not the order passed by the Guardian Judge on the custody of the minor but the order passed by that Court and the appellate Court on an application filed by the petitioners under Order 9 Rule 13 of the Code of Civil Procedure.

Hence, it is only the merits of those orders that has to be considered by this Court in the present petition.

2. Mr.Raheja, learned counsel for the petitioners, points out that the petitioners in their application seeking the setting aside of the *ex parte* order passed by the learned Guardian Judge on 18.5.2015 (copy Annexure P-4), had specifically stated that their counsel had not informed them that they would appear before the Court after 18.12.2013, leading to eventually the order being passed on 18.5.2015, by which the respondent herein was appointed the guardian of the minor child, Gurpreet Singh (son of petitioner No.1, maternal grandson of petitioners 2 and 3 and parental grandson of the respondent).

He submits that upon the petitioners coming to know of the aforesaid order, they moved the application under Order 9 Rule 13 CPC.

3. Mr.Soi, learned counsel for the respondent, on the other hand submits that as has been held in the impugned orders, very obviously the petitioners were simply avoiding appearing before that Court for a period of almost 1-1/2 years from 18.12.2013 to 18.5.2015 and consequently, they deliberately having avoided the proceedings of the Court, the orders dismissing the application under Order 9 Rule 13 CPC, are not required to be interfered with.

4. Whereas I absolutely agree with learned counsel for the respondent on the sheer merits of the application under Order 9 Rule 13 CPC, because it is not possible to believe that for 1-1/2 years the petitioners, including petitioner no.1 who is the mother of the minor child, did not even bother to check up about the status of the case pending in the Court and

therefore the reasoning given that their counsel had misinformed them is only an excuse and nothing more than that, yet, what this Court cannot ignore is that eventually it is the welfare of the minor child that is the prime concern of any Court.

Consequently, without making any comment on the merits of what has been stated in the order by which the respondent has been appointed a guardian of the minor child (aged about 10-11 years), the impugned orders are set aside subject to the petitioners paying costs of Rs.25,000/- to the respondent for making her undergo another round of litigation, which of course is less than the appropriate cost, but considering the status of both sides and the fact that eventually it is the custody of the minor child that is in question, no higher cost is being imposed.

The order passed by the learned 'Guardian Judge' on 18.5.2015, granting custody of the minor child to the respondent is consequently also hereby set aside, with that Court to proceed from the stage the petition was at, immediately before 18.12.2013.

Considering the fact that the minor is obviously getting older each year, the trial Court shall dispose of the petition before it within a period of six months from today.

In the meanwhile, the respondent, her husband and the sister of the minor child, i.e. the daughter of petitioner no.1, would be within their rights to visit the minor child in the home of petitioners no.2 and 3 at Kapurthala during holidays in his school, and if there is any untoward incident, the respondent would approach the SSP, Kapurthala, who would go into the matter and ensure that the meeting between the respondent and

her family, including the sister of the minor child, is not hindered by the petitioners on the days that the child has holidays.

The parties would now appear before the learned designated court under the Guardian and Wards Act, 1890, on 13.5.2019.

The petition is disposed of accordingly.

3.5.2019
pk/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No