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

**Civil Revision No.8215 of 2018 (O&M)
Date of Decision: 05.04.2019**

Jasveen Kaur

.....Petitioner

Vs

Gagandeep Singh

....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Prateek Sodhi, Advocate
for the petitioner.

Mr. Eklavya K. Darshi, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the order dated 23.10.2018 passed by the Guardian Judge, Amritsar, vide which the application filed by the respondent for visitation rights was allowed and the petitioner was directed to bring the minor children in the Court twice in a month for meeting the respondents.

[2]. Perusal of the record would show that the petitioner is living separately along with children. According to the petitioner, she is living separately since 20.05.2011 which has been

refuted by learned counsel for the respondent. Daughter born to the parties is 12 years of age and the son is 8 years of age. Both are school going children and are studying in Amritsar.

[3]. Brief facts are that the petitioner/wife filed a petition for divorce on 29.05.2013 and the same was decreed *ex parte* on 23.12.2014. Respondent-wife also filed a petition under Section 125 Cr.P.C. on 29.05.2015 and the same has not been decided so far. Against the *ex parte* judgment and decree of divorce, the respondent filed an application under Order 9 Rule 13 CPC which was dismissed by the trial Court on 04.08.2018 against which Civil Revision is statedly pending in the High Court. In the proceedings under Order 9 Rule 13 CPC, maintenance to the tune of Rs.20,000/- per month was fixed. As per the stand taken by the respondent, the amount for the period during which application under Order 9 Rule 13 CPC remained pending has been paid. Admittedly after 04.08.2018, nothing has been paid by the respondent towards maintenance/upbringing of the children.

[4]. Perusal of the record would show that the petition under Section 25 of the Guardian and Wards Act, 1890 for the custody of minor children was filed by the respondent on 27.11.2017. According to learned counsel for the petitioner, the parties are living separately from 20.05.2011, but according to

learned counsel for the respondent, parties have lived together upto the year 2014. Still filing of petition under Section 25 of the Guardian and Wards Act, 1890 on 27.11.2017 is more than three years after separation of the petitioner and her children from the respondent. Till the award of maintenance under Order 9 Rule 13 CPC, there was no evidence of maintaining the petitioner and minor children by the respondent. Admittedly, the respondent has not contributed anything towards welfare of the children after 04.08.2018.

[5]. Children are minor. Daughter namely Davyagun Kaur is aged about 12 years and is studying in 8th class. Son namely Agamveer Singh is aged about 8 years and is studying in 4th class. Both are studying in Amritsar.

[6]. In compliance of the orders dated 11.01.2019 and 21.02.2019 passed by this Court, both the parties have come present along with children.

[7]. I have interacted with the children separately in my Chamber. The interaction did not yield any positive result in favour of the respondent as the children are opposed to their father. Possibility of tutoring at this stage cannot be ruled out, but still welfare of the children is to be considered as of paramount consideration. At this juncture, children may not be

in a position to think good or bad for their future, but still for their welfare proper arrangements are to be ensured to which both the parties are equally responsible.

[8]. The concept is based on dynamic nature of proceedings as the requirement of circumstances keeps on changing with the advancement of age of the children. The daughter has grown and needs constant company of her mother. From the arguments raised by the parties, it appears that the parties have gone beyond the stage of reconciliation at this stage. The exigency of maintaining the children is the primary responsibility of the Court. The welfare of the children is of paramount consideration in the custody issues between the parties. Petitioner is living in the company of her parents, who are doing some business.

[9]. The natural instinct of the mother in favour of the infant does not require any such evidence to show that the mother is not having any self-less interest in motherly care and affection towards the child, which is indispensable for the healthy growth of the minor. The self-less interest of the mother for the welfare of the infant is a natural instinct of the mother which is not confined to human being alone. None else can provide such love and affection to the minor except the mother, who is having God's own cradle.

[10]. From the interaction with the children, it was found that they are capable of understanding, but this Court is bound to take realistic approach as the tutoring of the children cannot be ruled out. Moreover at this stage, since the children have come from the custody of the mother, their conduct of retaliation against the father is bound to be there. Since the children are of tender age and they require motherly care and affection for ultimate growth of their personalities, therefore, at this stage any forced action may have adverse effect upon their growth or it may hamper their prospects of smooth sailing in terms of their psychology.

[11]. Since the issue in terms of Section 25 of the Guardian and Wards Act, 1890 is under consideration before the competent Court, therefore, this Court hesitates to observe anything on merits at this stage, except to consider welfare of the children in the context of meeting on every 1st and 3rd Saturday of the month in the Court premises. It is true that father is also equally responsible for betterment of the minor children and his association with the children may prove beneficial for the growth and upliftment of the personalities of the children. Father cannot be deprived of love and affection of the children. The Court has to maintain equilibrium and also to maintain balance between the rights of the parties in which

children cannot be made scapegoat on either side. At the same time, the children cannot be made victim of any such constraint between their parents.

[12]. For the welfare of the children, it has to be seen whether the father has contributed anything for their education, maintenance and upliftment in the past. The period of separation, even if not to be commented upon, in view of the stand taken by the parties, but the fact remains that till date the respondent has contributed in terms of the amount of maintenance which was fixed by the Court in the proceedings under Order 9 Rule 13 CPC. No amount was contributed prior or thereafter since 04.08.2018.

[13]. The Guardian Judge has granted visitation rights to the respondent by directing the petitioner to produce the minor children in the Court on every 1st and 3rd Saturday. Keeping in view the age of the minor children and interaction done by this Court, the frequent meeting of the children with the respondent may or may not be proved fruitful as it depends upon human behaviour, I deem it appropriate to curtail meeting of the respondent with the children only for once in a month for which the Guardian Judge will re-fix the schedule. Respondent should also be called upon to maintain the children and be asked to create some nucleus/fixed deposits in the name of the children

in view of their academic pursuits.

[14]. In view of aforesaid, it would be just and appropriate to direct the respondent to deposit an amount of Rs.1,00,000/- each in the shape of FDR in some nationalized bank in the name of the children and also contribute an amount of Rs.10,000/- per month each for their recurring maintenance towards education and other expenses. The Guardian Judge after compliance of the aforesaid conditions by the respondent, shall re-fix the schedule of meeting of the respondent with the children only for once in a month after due consultation with the parties.

[15]. With the aforesaid directions, this revision petition is disposed of.

April 05, 2019

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No