

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

114

CR No.1668 of 2019

Date of decision:12.3.2019

Dr.Rajneesh Sidhu

... Petitioner

versus

Dr.Navneet Kaur

... Respondent

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

Present: Mr.M.S.Uppal, Advocate,  
for the petitioner  
Mr.Abhinav Gupta, Advocate,  
for the respondent  
...

AMOL RATTAN SINGH, J. (Oral)

On 11.3.2019, the following order had been passed:-

“By this petition, the petitioner challenges the order of the learned Civil Judge (Senior Division), Mansa, dated 26.2.2019, by which an application filed by the respondent herein, seeking interim custody of the child of the parties, i.e. a girl less than 5 years of age, has been allowed, during the pendency of a petition filed by the respondent under Section 6 of the Hindu Minority and Guardianship Act, 1956, read with the Guardians and Wards Act, 1890.

It is stated in the impugned order that evidence was still to be led by both the parties to establish their respective assertions qua the custody of the child, with “the emotional attachment of the mother with the daughter definitely required to keep the child in a good mental and spiritual health” and further, that

there was nothing to show that the mother would act adverse to the interest of the minor child (even though the contention of the petitioner herein, i.e. the respondent before that Court), was to the effect that the respondent (mother) is of uncontrollable temper and the minor is not safe with her.

It was also contended on behalf of the petitioner herein that he, i.e. the father, being a paediatrician who was running a child care hospital on the ground floor, with his residence on the second floor of the same building, and his parents being a retired teacher and an officer from the Government, the child can be looked after perfectly well by them.

Before this Court, learned counsel for the petitioner submits that the respondent on the other hand is not capable of looking after the child, she having undergone treatment for some psychiatry problem, in support of which he draws attention to the medical certificates annexed as Annexure P-5 (collectively) with the petition. A perusal thereof shows that the prescriptions are dated 13.8.2015, 12.10.2015 and 16.4.2016, with one of them shown to be dated 8<sup>th</sup> April (without the year given).

Upon query as to the present condition of the respondent, he submits that she was under treatment for the same problem even in the year 2018.

When this Court was in the process of directing him to place on record any such certificate showing that she was

undergoing some psychiatric problem due to which she was incapable of looking after the child, Mr.Abhinav Gupta, Advocate, has appeared for the respondent (even before notice of motion has been issued), and has produced in Court a photocopy of a certificate shown to be issued by the Civil Surgeon, Mansa, on 11.7.2018 (in *Gurmukhi*), stating to the effect that the respondent, Dr.Navneet Kaur, Senior Medical Officer (Gynae) at the Civil Hospital, Mansa, was being awarded for the large number of deliveries conducted by her in the month of July, 2018.

He therefore submits that obviously, if she was undergoing any such serious psychiatric issue, she would be incapable of even doing her job.

He also submits that as a matter of fact he has also filed a caveat petition which has somehow not been listed).

Notice of motion.

Mr.Abhinav Gupta having already appeared accepts notice for the respondent and seeks time to show as to how the child would be looked after when the respondent is busy with her duties in hospital, with her now posted at the Civil Hospital, Rupnagar, learned counsel for the petitioner having raised an argument that her parents also are living at Bathinda and therefore there is no body to look after the child.

Adjourned to 12.3.2019.

To be shown in the urgent list at sr.no.101.”

Notice having been issued in this petition yesterday, today Mr.Gupta, learned counsel for the respondent, has filed in Court affidavits of the respondent, i.e. the mother of the child, of her brother Navjot Singh, of her mother Labh Kaur, as also of her father Gurnam Singh, with each affidavit showing the executants thereof to be living in House No.2506, BSNL Society, Sector 50, Chandigarh.

In the affidavit of the respondent, it is stated that her father and mother have both retired from the Punjab Education Department. Her brother is stated to be working as an Excise and Taxation Officer in the Department of Excise, Punjab, posted at Mohali, and that she, her brother and parents are living together in the house, the address of which is given in the affidavit.

It has further been stated in the affidavit that she would look after her daughter, Ekam Sidhu, with the utmost love and affection and that when she would be on duty at the Civil Hospital, Rupnagar, her parents would remain at home and look after the daughter.

The affidavits of the parents are essentially to the same effect, with the affidavit of the brother, Navjot Singh, also stating in fact the same thing.

Counter to the aforesaid affidavits, learned counsel for the petitioner has filed in Court today an affidavit of the petitioner, stating therein that as a matter of fact the parents of the respondents are still residing at House No.163, Housefed Colony, Dabwali Road, Bathinda, he having also annexed therewith a photocopy of a voters list of the said area, showing the parents of the respondent, the respondent herself as also her

brother, to be all listed voters therein (at sr.nos.203 to 206).

He further contends that in the caveat petition filed by the respondent (which has somehow not been listed even today), the address of the respondent given is House No.1006, Phase IV, Mohali, and therefore the affidavits being filed today, showing the address of the respondent, her brother and her parents to be of Sector 50, Chandigarh, are actually all false statements made.

He further submits that in fact the aforesaid house at Mohali has remained locked for the past six months, as per the petitioner.

In response thereto, learned counsel for the respondent submits that the respondent, her brother and her parents have all taken a common residence in Chandigarh and as such, with them now living together, there would be no issue of the daughter being looked after while the respondent is away to work.

Other than the above, learned counsel for the respondent refers to Section 6 of the Hindu Minority and Guardianship Act, 1956, which reads as follows:-

**“6. Natural guardians of a Hindu minor.-** The natural guardian 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) in the case of an illegitimate boy or an illegitimate unmarried girl- the mother, and after her, the

father;

- (c) in the case of a married girl- the husband:

Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section-

- (a) if he has ceased to be a Hindu, or  
(b) if he has completely and finally renounced the world by becoming a hermit (*vanaprastha*) or an ascetic (*yati* or *sanyasi*).”

Having considered the contentions raised as regards where the respondent is residing; she as also her brother and her parents, having stated on affidavits that their residence is at the address given in the affidavits, and the respondent and her brother both being Government servants, I see no reason to disbelieve the affidavits executed by them, unless at any stage it is shown by the petitioner before the trial Court, in the pending proceedings or even subsequently, that they are actually not residents of the said place, in which case of course the trial Court would accordingly pass orders, with the petitioner also at liberty to file an application bringing to the notice of this Court, any perjury committed by the respondent, her brother and/or her parents.

As regards the statutory provision, i.e. Section 6 of the Act of 1956, obviously clause (a) thereof stipulates that the mother of a child less than 5 years of age would ordinarily have custody of the child.

That being so and it not having been shown to this Court that the respondent is in any manner incapable of looking after her daughter, I

see no reason to interfere with the interim order passed by the learned trial Court, as has been impugned in this petition, with of course liberty to the petitioner to bring to the notice of the trial Court any other circumstances to show that the child is not being looked after in the custody of the mother, in case such a situation arises.

It needs to be noticed that though learned counsel for the petitioner yesterday had submitted that he would be bringing further medical evidence to show that the respondent is undergoing psychiatric treatment and therefore is incapable of looking after her daughter, no such medical record has been produced today, and as regards the medical prescriptions referred to yesterday, the the argument of learned counsel on that aspect had already been 'negated' by this Court yesterday itself, though it is seen that only the reasoning given by learned counsel for the respondent has been actually incorporated in the order.

Hence, on that issue, it is found that though learned counsel for the petitioner had produced in Court medical prescriptions dated 13.8.2015, 12.10.2015 and 16.4.2016, as also one shown to be dated 8<sup>th</sup> April (with no year given therein), simply on the basis of those prescriptions, for any psychiatric issue, with it not shown by learned counsel for the petitioner that there was any serious problem with the respondent, who is, as already noticed in yesterdays' order, being awarded prizes for her work, it has to be accepted by this Court that she is suffering from no serious ailment which would disqualify her from looking after her minor daughter.

The respondent is also present in Court and nothing from her behaviour, whatsoever, is seen by this Court to substantiate any allegation

made on behalf of the petitioner to the effect that she is not in a fit mental state of mind to be able to look after her daughter.

Thus, it seems very obvious, in the absence of any medical certificate certifying to that effect, with her work in Government service continuing as it should, that the allegation is being made only to try and deprive her of the custody of her child.

With the aforesaid observations, this petition is dismissed.

The custody of the child would be handed over immediately by the petitioner to the respondent before the learned trial Court within the next week, with the trial Court directed to adjourn the matter for that purpose to a date within one week.

Naturally, whatever has been stated herein above is only in the context of the interim custody as has been correctly granted to the respondent herein by the learned trial Court, with nothing stated herein above to be taken as an opinion of this Court on the actual merits of the case still pending before that Court, which would consequently be adjudicated upon in the light of the evidence led on both sides.

12.3.2019  
pk

**( AMOL RATTAN SINGH )**  
**JUDGE**

Whether speaking/reasoned  
Whether Reportable

Yes/No  
Yes/No