

Mukul Chauhan

...Appellant

Versus

Neha Aggarwal and others

...Respondents

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

Present: Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Akhtar Hussain, Advocate
for the appellant.

Mr. Prateek Gupta, Advocate with
Ms. Gayatri Nandwani, Advocate
for the respondents.

RAKESH KUMAR JAIN, J. (ORAL)

This appeal is directed against the order dated 30.04.2019 passed by the Family Court, Faridabad by which respondent No.1 has been given the interim custody of her two minor children.

In brief, the marriage of the parties was solemnized on 07.11.2011 at Faridabad as per Hindu rites and ceremonies. They were blessed with male twins namely, Atharv and Avyan on 25.11.2015. It is alleged that it was a premature delivery. There was some misunderstanding or incompatibility on the part of both the parties therefore, they decided to part ways amicably by filing a petition under Section 13B of Hindu Marriage Act, 1955 (for short, 'the Act'). The said petition was filed on 28.11.2017 and was assigned the number as HMA/2247/2017. Both the

parties recorded their statements at the first motion stage on 30.11.2017 and the case was adjourned for recording the statements at the second motion on 30.05.2018. However, in the interregnum, they entered into a settlement/agreement on 20.04.2018.

Respondent No.1 had also allegedly made a criminal complaint against the appellant which is pending enquiry and also filed an application seeking guardianship of both the minor children which was assigned the number as GW No.27 of 2018.

While the guardianship case bearing GW No.27 of 2018 was fixed for 20.4.2018, the parties to the *lis* decided to settle their dispute by reducing a settlement into writing on the same day. They decided to live together as husband and wife forever for the sake of their children and it was also decided that they would withdraw the petition bearing HMA/2247/2017 which was fixed for 30.5.2018 as it has become infructuous and also decided that the minor children would not be made subject matter of any kind of litigation and would continue to remain at the present address or any other address where the 1st party (husband) would reside till the dispute is resolved and the custody of the children is decided by any Court of law. The said settlement was produced in the proceedings of HMA/2247/2017 as Ex. C1 and both the husband and wife made a joint statement on 20.4.2018 to withdraw the said petition. The joint statement made by both the husband and wife in HMA/2247/2017 on 20.4.2018 read as under:

*“Joint Statement of Sh. Mukul Chauhan son of Sh.
Jagdeep Singh Chauhan, r/o House No.380, Sector*

9, Faridabad on SA.

And

*Smt. Neha Aggarwal wife of Sh. Mukul Chauhan,
d/o Sh. Pramod Kumar Aggarwal, r/o House
No.930, Sector 9, Faridabad.*

*Stated that since both the parties to this
petition for the welfare of their children, and to
have happy married life have decided to stay
together with the children. We entered the
settlement in writing, which is Ex. C1 on record.
We shall be bound by the settlement. In view of the
settlement the petitioner does not want to proceed
with the petition and withdraws the same.”*

On the basis of aforesaid statement, the order was passed by the
Court on 20.4.2018, which read as under;-

*“File taken up on the application filed by the
parties. Sh. P.S. Tomar, Advocate appeared on
behalf of petitioner No.2 and filed power of
attorney. Taken on Record. The petitioners
appeared and made statement to withdraw the
instant petition. Thus, in view of the statement
made by the petitioners, the instant petition stands
dismissed as withdrawn. File after needful, be
consigned to records.”*

It is also a fact that GW No.27 of 2018 filed by the appellant was also withdrawn.

The present controversy started with the filing of the petition under Sections 7 and 12 of the Guardians and Wards Act, 1890 (for short 'the Wards Act'] read with Section 6(a) of the Hindu Minority and Guardianship Act, 1956 [for short 'the Act of 1956'] at the instance of respondent No.1, who has alleged in her petition that after the withdrawal of HMA/2247/2017 and GW No.27 of 2018 in view of the settlement (Exhibit C-1), the parties started living together as husband and wife but the appellant started misbehaving with her again and the averments in this regard are in Para Nos. 63, 64 and 65 which are produced as under:-

On 07.01.2019, when the petitioner returned home from work in the evening, she wasn't permitted to enter inside her matrimonial house. Immediately, respondent No.2 (father-in-law) came outside and told the petitioner that he has thrown the petitioner out of the house. Upon enquiring the whereabouts of her two minor children (both 3 years old), respondent No.2 told the petitioner that she shouldn't be concerned with the children any more since the children shall henceforth be staying with respondent No.2 & 3 (Father-in-law & Mother-in-law) at House No.380, Sector 9, Faridabad, Haryana. The petitioner tried to enter the premises but Respondent No.2 suddenly came

unto the petitioner and slapped her repeatedly, pulled her hair and threw her away from the house gate. Petitioner was crying profusely and begging the respondents to take her in and let her be with the children but respondent No.2 paid no heed.

In the midst of the incident, respondent No.1 came out from inside the home and told the petitioner that she can now go and stay at M-103, BPTP Park Floor 1 Sector 77, Faridabad and handed her the keys of the flat and further told her to go & wait for him in the flat. That all the belongings of the petitioner are still lying in her matrimonial house i.e. House No.380, Sector 9, Faridabad. All her jewellery articles are lying in the almirah owned and possessed by respondent No.2 & 3. It is pertinent to mention here that even basic clothing and other utility stuff were not provided to the petitioner.

Little did the petitioner know that through the respondents were making her withdraw all Police Complaints titled Suit titled “Mrs. Raj Bala Chauhan & Anr. V. Shri Mukul Chauhan & Ors.” before the Id. Court of Senior Civil Judge, District Courts, Faridabad, praying inter alia to permanently injunct the petitioner as well as

respondent No.1 from entering the aforesaid premises.”

It is also averred in the said petition that the parents of the appellant-husband also filed a collusive suit titled as *Mrs.Raj Bala Chauhan and others vs. Mrs.Mukul Chauhan and another* before the Civil Court at Faridabad for seeking a decree of permanent injunction against respondent No.1 as well for restraining her to enter her matrimonial home. Faced with all those acts of alleged cruelty, respondent No.1 had also filed a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 [for short 'the DV Act'] before the Court at Delhi and filed this petition bearing GW/9/2019 on 21.01.2019 for being appointed as a guardian of her minor twins and also to seek their custody in the meantime. At the initial stage, the Family Court, on the petition filed by respondent No. 1 to which GW No.9 of 2018 is assigned, had passed the interim order on 7.2.2019, which read as under:-

“The respondents have appeared through counsels and have filed their power of attorneys. They moved applications under Section 13 of the Family Courts Act, 1984 for granting permission to engage Advocates on the ground that they have no knowledge of technicalities of law. In view of the contents of their applications, submission made in this regard and in the larger interest of justice they are allowed to be represented by legal practitioner in this case.

Any application on behalf of respondent No.1 for supply of documents annexed with the petition also filed. In view of the averments made in the application same is allowed and requisite documents have been supplied.

It was prayed by the learned counsel for petitioner that till adjourned date some interim relief regarding custody/visitation of the children be given to the petitioner.

Keeping in view that the children are minor children, till the adjourned date the petitioner is granted visitation rights of the children in the Chunmun Mall in Haldiram Outlet from 3.00 to 4.00 p.m. on the coming Saturdays and Sundays, which fall before 26.02.2019. Reply to the application for interim custody of the children be also filed on the same day, while written statement be filed on 10.4.2019.”

According to the aforesaid order, respondent No.1 was given the visitation rights to meet both the children in the Chunmun Mall in Haldiram outlet at Faridabad from 3:00 p.m to 4:00 p.m on the Saturday and Sunday. However, the application for seeking interim custody was ultimately decided by the learned Court below vide its order dated 30.4.2019 and keeping in view the age of the twins and the fact that the

mother is the natural guardian in terms of Section 6 (a) of the Act of 1956, the custody was ordered to be given to respondent No.1 and the visitation rights have been given to the appellant in the same manner in which it was earlier given to respondent No.1.

Aggrieved against the said order, the present appeal has been filed.

Learned Senior counsel appearing on behalf of the appellant has submitted that Section 6 (a) of the Act of 1956 uses the expression “shall ordinarily”. It does not mean that it is mandatory for the Court to hand over the custody of the child, who is below the age of 5 years to the mother in view of the provisions of Section 13 of the Act of 1956 in which it is provided that the welfare of the minor would be the paramount consideration for the purpose of appointment of the guardian. It is further submitted that the past behavior of respondent No.1 does not entitle her to get the custody of the minor children because allegation against her is that she had gone to Goa from 27.07.2017 to 29.07.2017 while she was working with M/s Ernst and Young company and stayed in a hotel with some persons and also the allegation is that she had been going to Bhuwaneshwar and staying with her colleague in the hotel. It is also submitted that at the time she had left for Goa both the minor children were suffering from fever but she, instead of looking after the health of minor children, preferred to go to Goa.

On the contrary, counsel for respondent No.1 has denied all the allegations made by the appellant that she had not been a caring mother for both the minor children. It is also submitted that the allegations had no

substance until and unless they are proved in the Court of law by leading cogent evidence. It is rather submitted by respondent No.1 that there was an act of assault on her by the appellant on 05.11.2018 for which she had to register a complaint in police and has referred to a medico legal report in which the injuries suffered by her is specifically mentioned. She has also made various complaints to the police from 16.1.2019 after the suit for injunction was filed by the parents of the appellant. It is further submitted that respondent No.1 is not working with M/s Ernst and Young Company as she has recently joined Deloitte and has produced before us her appointment letter as a Manager in the consulting function of Deloitte Touche Tohmatsu India LLP (Organisation) based in Delhi. Respondent No.1, who is present in the Court, has also stated before us that she would be working from home and shall be available to look after both the children through out the day besides her parents are also available. The counsel for respondent No.1 has then referred to a certificate issued by Little Columbus Nursery School, Faridabad bearing reference No. LCNC/OP dated 08.04.2019 as per which the attending teachers of both children namely, Sheebu Madam of Atharv Chauhan and Shweta madam of Avyan Chauhan have reported to the Principal that both the children are not attending the school from 16.01.2019 till the end of the session.

We have heard learned counsel for the parties and perused the record with their able assistance.

The facts are not much in dispute in regard to the marriage of the parties and the birth of the children. The dispute is in regard to the allegations made against the character of respondent No.1 by the appellant

which is yet not been established in the Court of law. It is also pertinent to mention that the parties still have the status of husband and wife as no petition under Section 13 of Act has been filed by either of them. The issue before us is as to whether the order passed by the learned trial Court dated 30.04.2018 is in accordance with law?

For the purpose of custody, the legislature has provided Section 6(a) in the Act of 1956 which is reproduced as under for ready reference:-

“6(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.”

According to the aforesaid provision, the natural guardian of a Hindu minor in case of a boy or an unmarried girl would be the father and after him the mother but for the purpose of custody of a minor who has not completed the age of 5 years shall ordinarily be with the mother.

Insofar as Section 13 of the Act of 1956 is concerned, it also talks of the appointment of a guardian by taking into consideration the welfare of the minor.

In the present case, we are dealing with the interim custody not of the appointment of the guardian. The Court has awarded the interim custody to respondent No.1 keeping in view the fact that the children are too young i.e. 3 ½ years as of now and are twins. The earlier litigation which was initiated by both of them by filing a petition under Section 13B of the Act came to an end when the settlement was arrived at between the parties

and they were abiding by the settlement till the dispute again triggered off with the alleged misbehaviour of the appellant from the month of January, 2019. Thus, keeping in view the aforesaid facts and circumstances we are of the considered opinion that there is no error in the order passed the Court below which requires interference of this Court. The present appeal is thus hereby dismissed though without any order as to cost.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

May 27, 2019
Jyoti-IV

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No