

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.4175 of 2019
Date of Decision: 19.07.2019

Poonam Mann

..... Petitioner

Versus

Jitender Kumar

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Rajesh Sethi, Advocate, and
Mr. Arun Biriwal, Advocate,
for the petitioner.

Mr. H.S. Hooda, Senior Advocate, with
Mr. Chander Shekhar Singh, Advocate,
for the respondent.

SUDIP AHLUWALIA, J. (ORAL)

The present revisional petition is directed against the order dated 02.07.2019 (Annexure P-5), passed by the Ld. Additional Principal Judge, Family Court, Gurugram, vide which the petitioner's application for directing the respondent to give his consent for taking the minor child, of the parties, with her to Sweden, was dismissed. It transpires that such prayer of the petitioner was dismissed *in limine*, without even seeking any response from the respondent side, by the Ld. Court below, after holding that:-

“No such direction can be given to the authority or the consent of respondent cannot be obtained by filing this misc. application as no provision

of law has been given by the applicant to force the respondent to give his consent to get child permanently settled in Sweden. Hence the petitioner/applicant can have appropriate remedy to approach before the competent authority but certainly Court cannot be made a tool to get the direction passed to the respondent to give his consent to travel to Sweden or to settle down there. Hence, the present application is dismissed.”

2. As already noted in the earlier order passed on 09.07.2019, Ld. Counsel for the petitioner had drawn attention of this Court to the Explanations (d) and (g) to Section 7 of the Family Court's Act in contending that the Ld. Court below would have been within its Powers to entertain the petitioner's application notwithstanding the fact that the original proceedings for dissolution of marriage between the parties has already been decided.

3. The decision of the Ld. Apex Court in “**Lalit Kishore Vs. Meeru Sharma**”, **2010(1) RCR(Civil) 10** has been relied upon by Ld. Counsel for the petitioner to emphasize that a Family Court has wide inherent powers beyond the bare provisions of the CPC, which can be resorted to in appropriate cases, if so warranted. In that particular case, the respondent-wife was held to be liable to undergo a Medical Examination at the instance of the appellant-husband, even though otherwise it is the settled position of law that no person can be compelled to undergo such examination.

4. In the decision of the Punjab and Haryana High Court, in the case of “**Dr. Tripat Deep Singh Vs. Dr. (Smt.) Paviter Kaur**”, **2018 (3) RCR(Civil) 71**, it was held, “*Taking the recourse of the provisions of*

Order 18, Rule 17 read with Section 151, CPC, the learned Trial Court, in the considered opinion of this Court, has rightly denied to recall RW1 Dr. Paviter Kaur for the purpose of recording further cross-examination. That apart, it is settled proposition of law that the provisions of the Civil Procedure Code are not applicable in those proceedings where the Family Courts deal with a dispute relating to marriage and family affairs and for matters connected therewith between husband and wife in view of the reasons that the Family Courts have to adopt their own procedure for imparting justice.”

5. The above position of law is not controverted by any contrary citation from the other side.

6. In the given circumstances, this Court is of the opinion that this was certainly not a fit case for dismissal of the petitioner's prayer *in limine*. The moot point to be considered ought to have been “whether by making such prayer, the paramount welfare and interest of the minor child was sought to be ensured, after duly balancing the visitation rights according to the respondent-husband in the earlier consent Decree of Dissolution of Marriage”.

7. For the aforesaid reasons, the impugned order dated 02.07.2019 (Annexure P-5) is set aside and the matter is relegated to the Ld. Court below for taking an appropriate decision again on merits on the petitioner's prayer. It is reiterated that there is no bar upon the Ld. Family Court for taking an appropriate decision in the matter and there is no need to refer to any specific provision of law in invoking such inherent powers.

8. The parties are directed to appear before the Ld. Court below

on 29.08.2019. Thereafter, the said Court shall make an endeavour to decide the petitioner's application as expeditiously as possible on merits after granting a reasonable time and opportunity to the respondent's side to file its reply, if any.

19.07.2019

Apurva

**(SUDIP AHLUWALIA)
JUDGE**

1. Whether speaking/ reasoned : Yes/ No
2. Whether reportable : Yes/ No