

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

**FAO-5170-2019 (O&M)**

**Date of decision : 17.08.2019**

Sewa Singh @ Sewa Ram & anr.

....Appellants

V/s

Sonal @ Sonal Rani

....Respondent

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA  
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present: Mr. Kamal Sharma, Advocate for the appellants.

**RAJAN GUPTA J.**

Present appeal is directed against the interim order passed by Guardian court whereby interim custody of the minor child namely Meenal has been handed-over to respondent-mother during the pendency of the petition before the court below. Brief factual background of the case is that respondent-Sonal got married to Vijay Kumar, son of the appellants, on 20.11.2013. A girl child namely Meenal was born on 26.10.2016. Unfortunately, father of the child died in a road accident six months after her birth. Respondent namely Sonal, widow of Vijay Kumar, filed petition under section 10 read with section 25 of the Hindu Minority and Guardianship Act, 1890 for custody of the minor child whose custody was maintained by her grandparents after death of their son. Reply was filed by respondents (appellants herein). They stated that petitioner (respondent herein) wanted to marry some other person after the death of Vijay Kumar and she was not interested in maintaining the child-Meenal as she was a major hindrance in her second marriage. Besides, she did not give maternal love and affection to the child. According to them, a compromise dated

20.11.2017 have taken place between them wherein it was decided that compensation for the accident would be retained by the respondent. However, responsibility of the child would be with the grand-parents. It was further contended that respondent wanted to grab the property of the minor child Meenal. The trial court considered rival contentions as well as judgments cited before it. However, referring to relevant provisions, it came to the conclusion that no evidence had come forth till then except a writing of Sarpanch to show that respondent had contracted a second marriage. The child being 2½ years old needed mother's care and protection. Keeping in view the tender age of child and the judgment titled as *Nathi Ram vs. Usha Rani 2013(3) LJR 232*, it formed a *prima facie* opinion that her welfare lay in the custody of her mother. It also held that as the petition was still pending before the court below, observations made herein would not construe as an opinion on the merits of case. Before us, Mr. Sharma has raised number of contentions. He has emphasized that respondent had contracted a second marriage. Having relied upon agreement dated 20.11.2017, he contends that as per the said agreement, responsibility of the child was to be with the grandparents. He has also placed reliance on judgment of the Supreme court in Case no: Appeal (Civil) 1685-1686 of 2001 titled as *R.V. Srinath Prasad vs. Nandamuri Jayakrishna & ors.*

We have heard learned counsel and given careful thought to the facts of the case. It is evident that matter is still pending before the court below. The pleas raised before this court can be decided only after both the sides lead their evidence. This court cannot give any findings on the basis of assertion that respondent-Sonal had contracted a second marriage. As

examine whether same was executed by both the parties of their free will and is not in contravention of any provisions of Hindu Minority and Guardianship Act, 1890 or other provisions of law. The judgment in *Nandamuri Jayakrishna's* case (supra) has been delivered by the Apex court in the facts and circumstances of said case. The matter being of custody of a minor child, needles to say that facts of each case are unique. We do not intend to express any opinion as the matter is still pending before the Guardian court. The appeal is hereby dismissed.

As the appeal has been considered on merits, the delay in filing the appeal is deemed to have been condoned.

(RAJAN GUPTA)  
JUDGE

August 17, 2019  
*Ajay*

(MANJARI NEHRU KAUL)  
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No