

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

**FAO-1237-2016 (O&M)
Decided on : 04.10.2019**

Suman

... Appellant(s)

Versus

Vijay

... Respondent(s)

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

Argued by: Mr. Balraj Gujjar, Advocate
for the appellant(s).

Mr. Ashok Arora, Advocate
for the respondent(s).

MANJARI NEHRU KAUL, J.

The instant appeal has been preferred by the appellant – Suman, impugning the judgment and decree dated 23rd December, 2015, passed by the Ld. District Judge, Family Court, Hisar (in short 'Ld. Family Court') vide which the petition filed by her, under Section 25 of the Guardian and Wards Act, 1890 (for brevity 'the Act'), seeking custody of her two minor daughters, was dismissed.

A few facts necessary for adjudication of the case, as pleaded in the petition filed by the appellant-mother (petitioner therein) before the Ld. Family Court, may be noticed.

The marriage between the appellant and respondent was solemnized on 16th January, 2005, according to Hindu rites and ceremonies at Village Kasani, Tehsil Charkhi Dadri, District Bhiwani. Two daughters namely 'Bharti' and 'Shakshi' were born out of the wedlock on 27th January, 2006 and 21st October, 2007, respectively. At present, daughters are in the custody of the respondent-father. It was pleaded by the appellant-mother in

her petition that the marriage between the parties was a lavish one and sufficient dowry articles were given at the time of marriage. Her parents-in-law were dissatisfied with the dowry given at the time of her marriage and would thus subject her to a great deal of harassment and humiliation. During her second pregnancy, she was subjected to merciless beatings by her mother-in-law, as she refused to undergo a sex determination test. After the birth of her two daughters, the respondent-husband and his family after hatching a conspiracy, subjected her to merciless beatings and ousted her from matrimonial home. After staying at her parental home for about two years, she moved an application before the Women's Cell, Bhiwani, where, on an assurance given by way of an affidavit by the respondent-husband that he would keep her properly, she returned to her matrimonial home. However, the respondent and his family continued ill-treating her. A Panchayat was got convened on 26th May, 2010, by her brother, however, it bore no fruit. After being subjected to physical abuse, she was turned out of her matrimonial home without her children. All efforts made by her to seek the custody of her minor daughters proved futile. She pleaded that the daughters were being neglected by the respondent-father, who was a drunkard and had been subjecting the daughters to beatings and cruelty. She claimed that she was not only well educated but had sufficient means to take care of her two daughters. Moreover, she pleaded being a mother, she had the legal right to get the custody of her daughters.

Per contra, in the written statement filed by the respondent-husband before the Ld. Family Court, he categorically refuted and denied all the allegations. He *inter alia* submitted that the daughters were studying in one of the good schools of Hisar. They both were willingly and happily living with him. He categorically denied that the daughters were being

neglected by him and he had been subjecting them to physical assault. The respondent husband thus prayed for dismissal of the petition filed by the appellant.

From the pleadings of the parties, the following issues were framed by the Ld. Family Court:-

- “1. Whether the petitioner-wife is entitled for custody of minor daughters from the respondent as prayed for ?
OPP*
- 2. Whether the petition is not maintainable due to act and conduct of the petitioner ? OPR*
- 3. Relief.”*

Both the parties adduced evidence in support of their respective stands before the Ld. Family Court. The appellant-wife herself stepped into witness-box as PW-1 and also examined her brother Anil as PW-2, while the respondent-husband besides examining himself as RW-2, examined his uncle (mama) Balbir Singh as RW-1 and thereafter, closed his evidence.

After analyzing the evidence led by the parties and also the material on record as well as after an interaction with the daughters of the parties, Ld. Family Court declined to hand over the custody of the daughters to the mother. However, the appellant-mother was granted visitation rights once a month to meet the daughters.

We have heard learned counsel for the appellant and have reappraised the evidence and other material on record.

During the pendency of the appeal, the parties were referred to the Mediation and Conciliation Centre of this Court to settle their dispute by way of an amicable settlement, but it failed to yield any positive result.

In the case in hand, it is not disputed that the daughters are residing in Hisar and are studying in one of the better known and good schools of the city, whereas, the appellant, on the other hand is residing in Village Soff Kasni, District Bhiwani in the house of her parents. It is also a matter of record that the two daughters, who are aged about 12 and 13 years, respectively, have been happily and willingly residing with their father at Hisar, as it has come on record that during their interaction with the Ld. Family Court at Hisar, they were reluctant to meet and talk to the mother. It is also on record that the mother of the respondent-husband resides with him and his daughters in his house. Hence, it is evident that the girls are not left to fend for themselves in the house as alleged by the appellant-mother when the father is away to his workplace. It is also admitted that the appellant mother has been residing separately since 2010.

A perusal of the evidence on record reveals that the appellant-mother, while leaving her matrimonial home had herself left behind the minor children there. Undoubtedly, a mother is the natural guardian of her children and more often than not, the custody of the daughters should be handed over to her. On due consideration of all the material facts and circumstances as well as evidence, it leaves no manner of doubt that the daughters of the parties are happily living with their father and their paternal grandmother. They are being well looked after and provided good education as well. The daughters who are old enough to make an intelligent preference have themselves expressed their reluctance to go and stay with the appellant-mother. The legal right of the mother thus cannot be allowed to override the welfare and the wishes of the daughters.

However, the appellant-mother cannot be deprived to meet her

children. It would also be in the interest of the children to meet and interact with their mother as often as possible. It would help them in their all round personality development. This Court too had been from time to time, granting visitation rights to the appellant-mother to meet her children after keeping the convenience of the appellant-mother and the children in mind.

After consideration of all relevant facts, it would be just and appropriate that the appellant-mother be granted visitation rights to meet her two daughters namely 'Bharti' and 'Shakshi'. The appellant-mother is, thus, granted visitation rights to meet both daughters twice a month i.e. on every 1st and 3rd Saturday of each month between 11:00 AM to 3:00 PM, on the Court premises of the District & Sessions Judge-cum-Chairman, District Legal Services Authority, Hisar.

As a sequel to the above discussion, we are of the considered view that no interference in the judgment and decree passed by the Ld. Family Court, is called for. Consequently, the present appeal stands dismissed and the judgment and decree dated 23rd December, 2015, of the Ld. Family Court, is upheld with the modification as indicated above in respect of the visitation rights.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

October 04, 2019

J.Ram

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*