

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-2700-2015 (O&M)

Date of Decision: 08.04.2019

Sanjana @ Sonu

.....Appellant

Versus

Kuldeep Verma

.....Respondent

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

Present: Mr. Harish Mehla, Advocate, for the appellant.

Mr. Chander Kant, Advocate, for
Mr. Amit Jain, Advocate, for the respondent.

Harnaresh Singh Gill, J.

The appellant-wife has filed the present appeal challenging the order dated 19.08.2014 passed by the learned Additional Civil Judge (Senior Division), Kaithal, vide which petition under Section 25 of the Guardians and Wards Act, 1890 read with Section 6 of the Hindu Minority and Guardianship Act, 1956, filed by her, has been dismissed.

It may be mentioned here that during the pendency of the present appeal, in order to explore the possibilities of an amicable settlement between the parties, the matter was referred to the Mediation and Conciliation Centre of this Court. However, the efforts for mediation remained unsuccessful.

The appellant-wife had filed a petition under Section 25 of the Guardian and Wards Act, 1890 read with Section 6 of the Hindu Minority and Guardianship Act, 1956 (for short `the

1956 Act'), for the custody of the minor children Pulkit and Dohan. The facts regarding the solemnization of marriage and birth of two minor children, namely, Pulkit and Dohan on 30.8.2003 and 02.06.2005 respectively, from the wedlock are not disputed.

The appellant had sought the custody of the minor children, inter-alia, on the grounds that she had been thrown out of the matrimonial home after having been given beatings by her husband and his family members; that the custody of the children had been forcibly taken from her by the respondent-husband and that she being the natural mother, was entitled to the custody of the minor children.

The claim of the wife for custody of the children was resisted by the respondent-husband by alleging that the appellant-wife left the matrimonial home in July, 2006 without any cause, but she was brought back. However, she did not mend her ways and continued misbehaving with the respondent-husband and pressurized him to reside separately from his parents and when he did not accede to such demand, the appellant-wife had threatened to commit suicide. On 23.02.2010, a Panchayat was convened wherein the appellant-wife had apologized for her acts and promised not to repeat the same in future. However, without informing the respondent or his family members, she had left the matrimonial home abandoning the children. Both the minors are studying in Indira Gandhi Public School Kaithal and are being provided all

necessities of life and that they are very happy in the company of the respondent-husband.

The learned trial Court has taken into consideration that though none of the parties had led any evidence in respect of their income, yet on the basis of the school fee receipts produced by the respondent-husband and after having personal interaction with the minor children, it was found that the children, who are aged 11 and 9 years respectively, did not have any love and affection towards their mother and they had expressed their desire to remain with their father. On this premise, it was held that taking into consideration the overall welfare the children, the custody of the children needed no disturbance. The appellant-wife, however, has been given liberty to meet the children whenever she feels like.

Learned counsel for appearing for the appellant has submitted that while passing the impugned order, the learned trial Court did not take into consideration that the petitioner being mother of the children, not only requires their custody but in view of the tender age of the children, they also require motherly love and affection. It is further submitted that the respondent-husband did not produce on record any source of income or any other parallel superiority, which could justify the custody of the children with him. Still further, it is submitted that the children being minor, follow the tutored version and thus, anything uttered or expressed by them before the learned trial Court and/or before the Mediation and Conciliation Centre of this Court, would not hold much ground.

Per contra, learned counsel for the respondent, while opposing the aforesaid arguments, has argued that this is not a case, where the custody of the children has been forcibly taken by the respondent-husband. The children have been living with the respondent-husband since their birth. The appellant-wife left the matrimonial house in the year 2010 with no desire or effort on her part to return. While refuting the allegations of the children being tutored by the respondent-husband, it is argued that under the orders of this Court, when the matter was referred to the Mediation and Conciliation Centre, the children were brought before the Mediation and Conciliation Centre, but again what to talk of joining the company of the appellant-wife, they were not even ready to talk to their mother. Thus, the children cannot be compelled to live in the company of the appellant-wife and if it is so done forcefully, the same would tantamount to negating the overall welfare of the children.

We have heard the learned counsel for the parties and perused the record.

As referred to above, the efforts for reconciliation between the parties yielded no result. That was the only course, which could have paved the way for ending the rival claims. However, that being not done, the issue remains as to whether the trial Court is justified in dismissing the petition filed by the appellant-wife.

Instant is not a case, where the claim of the appellant-wife being mother of the children has been completely negated, qua the children. She has been given the visiting rights

and that too at her liberty and choice i.e. if, as and when she desires. The only fact which weighed in the mind of the trial Court is the overall welfare of the children. The trial Court has taken into consideration the evidence led by the parties and the situation that had emerged after personal interaction with the children. Nothing has been pointed out which could even, prima-facie, establish that the children are not being taken care of by the respondent-husband properly and/or not being provided proper education and the other necessities of life.

In view of the above, we do not find any infirmity or illegality in the impugned order, which may warrant interference by this Court in the present appeal. Hence, the appeal is dismissed.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

08.04.2019
ds

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No