

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

FAO-1472-2018

Date of Decision: 18.01.2019

Dushiant Kumar

. Appellant

Vs.

Nivea Sharma and others

. Respondents

**CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN
HON'BLE MR.JUSTICE ANUPINDER SINGH GREWAL**

Present: - Mr.Gaurav Gogna, Advocate,
for the appellant.

RAKESH KUMAR JAIN, J. (ORAL)

This appeal is filed against the judgment and decree dated 25.7.2017 by which a petition filed by the appellant under the provisions of the Hindu Minority and Guardianship Act, 1956 and the Guardians and Wards Act, 1890 for the custody of his son Kartik, being the natural father, has been dismissed.

In brief, the marriage of the appellant with respondent No.1 was solemnized on 12.9.2008 at Moga as per Hindu rites and rituals. They were blessed with a male child, named Kartik, on 1.1.2010. Since there was an issue of compatibility, they both decided to part their ways by seeking a decree of divorce by way of mutual consent and in pursuance thereof filed petition under Section 13B of the Hindu Marriage Act, 1955 [for short 'the Act'] before the Additional District Judge, Moga bearing HMA No.13 dated 3.2.2012 which was decreed on 4.8.2012 and the custody of the minor child was retained by respondent No.1. Thereafter, the appellant had filed the petition for seeking custody of his minor son, *inter alia*, on the ground that

respondent No.1 has got remarried and his minor son is in the custody of his Nana (respondent No.2) and Nani (respondent No.3). The said petition was contested by the respondents in which it was urged that though respondent No.1 has got remarried with Vasudev Sharma but the child Kartik has been duly adopted by them by way of registered adoption deed dated 10.4.2015 and he is thus being looked after by respondent No.1, her second husband Vasudev Sharma and is not in the custody of respondents No.2 & 3. On the pleadings of the parties, as many as five issues were framed by the trial Court on 17.4.2015 and while deciding issues No.1 & 4 together, finding has been recorded that the appellant is not entitled to the custody of the minor child not only on the ground that he has already got married and has admitted that photograph Ex.DG which belongs to his wife but also on the ground that the appellant had made a clear statement before the Court where the petition under Section 13B of the Act was filed that the minor son would remain with respondent No.1 and he would have no concern with him.

Learned counsel for the appellant has submitted that the appellant had suffered the said statement at that time because he was divorcing respondent No.1 and was not aware that she would ultimately get remarried. It is submitted that the petition for seeking custody of the minor, namely, Kartik has been filed only when the appellant had realized that the custody of the minor son is with Nana (Respondent No.2) and Nani (respondent No.3) and not with respondent No.1.

On the other hand, learned counsel for the respondents has submitted that the appellant has never shown any kind of interest to even meet the minor child despite having been granted visitation rights. In this regard, he has referred not only to the order of grant of visitation rights passed on 1.3.2016 but also the finding recorded by the trial Court wherein it

has been held that while the minor, namely, Kartik is studying in Dr.Kitchlu Public Senior Secondary School, Moga no effort was ever made by the appellant to meet him. It is sought to be argued that the appellant does not have any love and affection for Kartik rather the petition for seeking custody of Kartik has been filed because he wanted to cause a dent in the happiness of respondent No.1 who after her divorce has resettled having been remarried with one Vasudev Sharma, who is giving all love and affection to her and has duly adopted the son of the appellant as son by way of a registered adoption deed.

We have heard learned counsel for the parties and after perusal of record, are of the considered opinion that there is no merit in this appeal because even if the appellant as a father has a right under the Act for the custody of the minor child yet the fact remains that the said right he had waived at the time when the decree of divorce was granted to respondent No.1 by way of mutual consent and he had abandoned all his rights of looking after/welfare of the minor apparently on the pretext that he wanted to remarry and start his life *de novo*. The appellant has actually performed second marriage which is evident from the photograph Ex.DG which is also admitted by him that the photograph belongs to his wife and the fact that despite the grant of visitation rights by the trial Court he had never visited his minor child even for the purpose of creating any kind of bond with him. These aspects of the matter indicates the mind set of the appellant, who had abandoned the visitation rights even at the stage of decree of divorce, which was granted way back in 2012 and at that time the child was only 2 years of age having been born on 1.1.2010. It was not expected from a father to behave in a manner in which he has abandoned all his rights in regard to the custody of his minor son and has now filed a petition for seeking his custody

only when he had found that his wife is happily remarried and the son has been duly adopted by way of registered adoption deed by the second husband of the wife and has woken up to cause injuries to enhance her agony by snatching the child from her who has been looked after continuously by her alone during this interregnum. Thus keeping in view the act and conduct of the appellant for seeking custody of the minor for which the present petition has been filed there is hardly any error or irregularity in the impugned order which requires our interference.

In view of the above, the present appeal is hereby dismissed though without any order as to costs.

(RAKESH KUMAR JAIN)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

18.01.2019

Vivek

Whether speaking /reasoned : *Yes/No*

Whether Reportable : *Yes/No*