

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

**FAO-2022-2018 (O&M)
Decided on : 26.07.2019**

Darshan Malik

... Appellant(s)

Versus

Smt. Rajesh @ Radhesh

... Respondent(s)

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

Argued by: Mr. Sushil Jain, Advocate
for the appellant(s).

Dr. Anand Kumar Bishnoi, Advocate
for the respondent(s).

MANJARI NEHRU KAUL, J.

The instant appeal has been preferred by the appellant impugning the judgment dated 30th August, 2017, passed by the Ld. District Judge, Family Court, Gurugram (hereinafter referred to as 'Ld. Family Court'), vide which the petition of the appellant filed under Section 7 and 25 of the Guardian and Wards Act, 1890 read with Section 6 of the Hindu Minority and Guardianship Act, 1956, seeking custody of the minor sons, was dismissed.

A few facts necessary for adjudication of the case, as narrated in the petition filed by the appellant before the Ld. Family Court may be noticed. Marriage between the parties was solemnized on 15.11.2002 at Village Garauli Khurd, district Gurugram, as per Hindu rites and ceremonies. On the same day, the younger sister of the respondent-wife also got married to the younger brother of the appellant. After their marriage, parties lived and cohabited together as husband and wife at Village Sihi, Faridabad and two sons were born out of this wedlock on 21st May, 2004 and 06th January, 2006, respectively. Everything as per the appellant-husband was going on well in his marriage with the respondent-wife

on 01.01.2007, when his brother, who was married to the sister of the respondent-

wife, in a fit of rage murdered his wife i.e. younger sister of the respondent-wife. Thereafter, a case under Section 302 IPC was registered against the younger brother of the appellant and other members of the family. However, after investigation, only his brother was charged and tried while rest of the members of the family were discharged. Later on, at the behest of the members of the family of the respondent-wife, the respondent-wife left the matrimonial home on the night of 19.03.2007 along with both the minor sons and also decamped with all the valuables etc. The appellant-petitioner tried many a times to bring the respondent-wife back into the conjugal fold, but without any success. Rather, as per the appellant-husband, a false case under Sections 498-A, 406 IPC was registered against the appellant-husband and his family, leading to a great deal of trauma and mental harassment to him and the family. As per the appellant-petitioner, during the subsistence of his marriage with respondent, he made earnest efforts to keep her and the children happy and also shifted to his uncle's place, so that the respondent-wife and children could live in a tension free and conducive environment. Learned counsel for the appellant urged that since he had deep love and affection for his minor sons, he wanted them to be brought up in a atmosphere, which would be conducive for their all round of development. He *inter alia* urged that since the respondent-wife was not financially stable and did not have any steady source of income to maintain herself as well as the children, being dependent on her old and infirm father, he should be handed over the custody of the children.

Per contra, learned counsel for the respondent-wife while appearing before the Ld. Family Court in her written statement refuted and emphatically denied the averments of the appellant-husband. It was submitted that the respondent-wife as well as her deceased sister were ill-treated by the appellant-

husband and his family in the matrimonial home. In fact, it was submitted by the respondent-wife that her deceased sister bore the brunt of the appellant and his family leading to her murder on 01.01.2006 for not fulfilling the illegal demands of dowry of the appellants and his family. The respondent-wife further alleged that after being mercilessly beaten-up on 19.09.2006, she was thrown out by the appellant and his family out of the matrimonial home along with her two minor children and ever since then, she had been residing with her parents in her parental home. It was also submitted that the appellant had never contributed a single penny towards the tuition fees etc. of both minor children. She, further alleged that the appellant-petitioner was a drunkard and she and her children did not feel safe in the presence of the appellant and his family.

In the present case, the following issues were framed by the Ld. Court below:-

- “1. Whether the petitioner is entitled for the custody of minor sons, namely, Krishan Malik and Deepanshu Malik, as prayed for ? OPP*
- 2. Relief.”*

The appellant-husband examined as many as two witnesses and himself stepped into the witness-box as PW-1. On the other hand, respondent too stepped into the witness-box as RW-1.

Ld. Family Court after taking into consideration the evidence on record, dismissed the petition filed under Sections 7 and 25 of the Act. However, only limited visitation rights were granted to the appellant-husband.

We have heard learned counsel for the parties and also gone through the evidence and other material on record.

Learned counsel for the appellant-husband while sticking to his stand

reiterated his submissions made before the Ld. Family Court. He further urged

that the rider imposed by the Ld. Family Court of meeting the children only for a short duration would not be conducive for their normal and healthy growth.

Learned counsel for the respondent-wife also stuck to the stand taken before the Ld. Family Court and reiterated her submissions by holding that both their sons were about 4 years and 1½ years of age respectively, when she along with them had been turned out from her matrimonial home. Approximately, 10 years had elapsed since then and there had been no meaningful interaction between the appellant-father and the children. So much so, the younger son, who was just 1½ years of age when the parents started living apart, did not even recognize his father. Learned counsel for the respondent-wife further submitted that her financial dependency on her old and infirm father could not be a ground to hand-over the custody of the children to the appellant-father, as they had been living with her since their birth and she had been leaving no stone un-turned to provide them with good education and comfortable life.

On 23.01.2019, this Court interacted with both the parties and their children, however, the children did not show any inclination to go and live with the appellant-father.

Needless to say that the welfare of the children is to be seen while granting their custody to a parent. In the case in hand, as has also been observed by the Ld. Family Court, during the interaction with the children, they are living happily with the respondent-mother.

In the light of above discussion, no interference is warranted in the impugned judgment. The custody of the children cannot be granted to the appellant-father. Accordingly, the present appeal stands dismissed. However, the relief granted *qua* the visitation rights granted to the appellant by the Ld. Family

Court will continue in the same terms.

Since, the main appeal has been dismissed on merits, therefore, no separate orders are required to be passed in the application for condonation of delay of 37 days in filing the appeal and the same is disposed of as such.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

July 26, 2019
J.Ram

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*