

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

FAO No.2439 of 2018  
Date of Decision: 7.2.2019

Sapna Devi

.....Appellant

Versus

Vinod Kumar

.....Respondent

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

Present: Mr. Parminder Singh, Advocate, for the appellant.

Mr. Saggar Aggarwal, Advocate, for the respondent.

**Harnaresh Singh Gill, J.**

The appellant-wife has filed the present appeal challenging the judgment dated 27.02.2018 passed by the learned Family Court, Karnal, vide which the petition under Section 12 of the Guardians and Wards Act, 1890, filed by the respondent-husband, has been allowed and custody of the minor child of the parties aged about 7-1/2 years, given to the respondent-husband.

It may be mentioned here that when the matter came up for hearing before this Court on 7.5.2018, while issuing notice of motion, the matter was referred to the Mediation and Conciliation Centre of this Court enabling the parties to arrive at an amicable settlement regarding the visitation rights of the respondent during the pendency of the appeal. However, as the mediation had failed, the matter was ordered to be listed for arguments on 7.2.2019.

We have heard the learned counsel for the parties and with their able assistance gone through judgment of the learned trial Court.

A perusal of the judgment passed by the learned trial Court would show that while deciding the petition filed by the respondent-husband, the overall welfare of the child, has been deliberated upon in extenso and well taken into consideration by the learned trial Court. The learned trial Court while examining the comparative resources available at the ends of the parties, has found that the appellant-wife had failed to prove that she was working and earning and thereby capable of giving a good life to the minor child, whereas the respondent-husband being a driver by profession and, was found to be more suitable to raise the child. Yet further, it was found that the maternal grandmother of the minor, who is living with the respondent-husband, can take care of the minor child.

The learned trial Court, has had an interaction with the minor child and noticed that despite being 7-1/2 years old, he was unable to recite English or Hindi alphabets or basic counting. Still further, it has been noticed by the learned trial Court in its order that the appellant-wife along with the minor Dhruv and another son of the appellant-wife, namely, Dev (aged 10 years) from her first marriage with Pappi, who had died before her marriage with the respondent-husband, is living with her mother in a Jhuggi having only one room. Apart from that, the appellant-wife could not produce any evidence before the learned trial Court to show or establish that the minor is going to any school. It was in this view of the matter the learned trial

Court recorded, in para Nos. 27 and 28 of its judgment, as under:-

“27. From the aforesaid, it is evident that the respondent is not providing good education to minor Dhruv and her older son is not going to school at all. There is no atmosphere of studies in the one room house of the mother of the respondent who has admitted that each and every member of her family is illiterate. No doubt, the petitioner is also not much educated, however, while interacting with the parties, it became obvious that the petitioner is alive to the value of good education and he was pained to see that his son was not getting any.

28. In view of the aforesaid observations and the facts and circumstances of the case, this Court is of the considered opinion that the welfare of minor Dhruv demands that his custody be given to the petitioner, who can provide better education and better life to the child. The petitioner is, therefore, held entitled to the custody of minor Dhruv. However, in the absence of simultaneous association with both the parents, the child will miss completeness of his relationship. Therefore, the respondent is being granted visitation rights.....”

Learned counsel for the petitioner has vehemently argued that the learned trial Court has failed to take into consideration that the minor child in his interaction with the Court, had expressed his desire to live with his mother. He has further argued that the appellant-mother had placed on record the documentary evidence to prove that she is employed in a factory and thus, she is well within her resources to raise the minor child.

However, we do not find any merit in the arguments raised by the learned counsel for the appellant. As stated above, the learned trial Court has taken into consideration the overall

welfare of the minor child, after having examined the parallel/comparative resources at the ends of both the parties. Besides, as is revealed from the perusal of the judgment of the learned trial Court, the appellant-wife is having another child, namely, Dev, aged 10 years, from her first marriage. Thus, taking into consideration that the minor child is not going to school and further taking into consideration that he is living along with his mother and parental grandmother as also another son of the appellant-wife in a Jhuggi having only one room, it cannot be said that the order passed by the learned trial Court, suffers from any illegality.

It has come on record that the appellant-wife is suffering from HIV (Human Immunodeficiency Virus) positive and on a petition filed by the respondent-husband under Section 13(1)(v) of the Hindu Marriage Act, 1955, a decree of divorce has been granted on the said very ground.

It is not a case where the appellant-mother has not been given any rights as regards her access to the minor child. The learned trial Court has given visitation rights to the appellant-mother, as detailed at page No.24, para 29 of its judgment. A perusal thereof would show that the appellant-wife has been given visitation rights on every second and fourth Sunday of the month besides on the occasions of Diwali, Dussehra and Holi festivals. She has further been given the rights to talk to the minor on telephone for a reasonable time, when the child so desires or when the respondent-wife calls. Besides, the respondent-wife has also been permitted to attend

other function in the school, when the child performs and if she so desires. The respondent-wife has also been given rights to visit the child in case of any medical condition of the child requiring hospitalization/medical procedure.

In view of the above, we find that the learned trial Court has given a well reasoned judgment, the sole consideration being the welfare of the child. As mentioned above, the appellant-mother has been given the visitation rights, so as to remain in continuous touch with the minor. The minor child is at a growing age and with the passage of time, he would learn to live with the pragmatic circumstances. Still further, as deciphered from the judgment of the learned trial Court, the appellant-wife, besides minor Dhruv, is also having another child Dev, aged 10 years, from her first marriage. Thus, from that point of view also, it can well be said that the respondent-husband is a more suitable parent to provide the minor child with a quality education, right upbringing and other necessities of life.

Consequently, we do not find any infirmity or illegality in the judgment of the learned trial Court, which may warrant any interference by this Court in the present appeal.

Hence, the present appeal is dismissed.

**(RAKESH KUMAR JAIN)**  
**JUDGE**

**(HARNARESH SINGH GILL)**  
**JUDGE**

7.2.2019  
ds

Whether Speaking/ Reasoned:  
Whether Reportable:

Yes/ No  
Yes/ No