

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-5736-2017

Date of Decision : 26.07.2019

Manohar Lal..... Appellant

VERSUS

Ritu Rani and another..... Respondents

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

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Present: Mr. Arun Luthra, Advocate
for the appellant.

Mr. Gaurav Jindal, Advocate
for the respondents.

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MANJARI NEHRU KAUL, J.

The instant appeal has been preferred against the impugned judgment and order dated 03.04.2017 passed by the Additional Civil Judge (Sr. Division), Guhla, vide which the petition of the appellant for custody of the minor child was dismissed.

As per the averments made in the petition filed by the appellant-Manohar Lal before the Court below, the parties had solemnized their marriage on 15.04.2008 as per Hindu rites, customs and ceremonies. Out of the said wedlock, one girl child-Radhika @ Vasnavi was born to the parties on 28.01.2009 at Cheeka. It was averred that the respondent-Ritu Rani along with the minor child had left the company of the petitioner (appellant herein) without any reasonable cause and had started residing in

her parental house. Since the parties were unable to reconcile their differences, a joint petition under Section 13-B of the Hindu Marriage Act, 1955 was filed leading to the dissolution of marriage between the parties by mutual consent vide order dated 10.12.2012 passed by the Additional Civil Judge (Sr. Divn.), Guhla. As per the appellant/petitioner, it had been agreed upon between the parties that the custody of the minor child-Radhika @ Vasnavi would remain with her mother i.e. the respondent-Ritu Rani as long as she did not re-marry and on performance of a second marriage, the appellant would be entitled to the custody of the minor child. It was also averred in the petition that ever since the re-marriage of the respondent-Ritu Rani, she had been residing with her second husband at Kaithal leaving the minor child in the custody of respondent No.2 i.e. the father of respondent No.1. It was pleaded that since the minor child was not being taken proper care of and was being neglected by the respondents, she was not growing up in a conducive atmosphere which was necessary for her healthy and normal upbringing. Hence, in this background, the appellant/petitioner pleaded that he and his family were ready and willing to keep his minor daughter with him so that he could provide her with a normal and good life.

In the written statement filed by the respondents they refuted and emphatically denied the allegations and averments of the appellant/petitioner. It was contended by the respondents that in fact the appellant/petitioner and his family treated the respondent No.1 with mental and physical cruelty right from the time of their marriage as they were dissatisfied with the dowry which the respondent No.1 had got at the time of her marriage with the appellant. It was further alleged that the appellant and his family would often taunt respondent No.1 for delivering a female child

and had turned her out of the matrimonial home along with her minor child who at that point of time was only 05 months of age. The respondent No.1 while refuting the allegations of the appellant qua the minor child being neglected, submitted that in fact she was being properly taken care of with love and affection not only by her but by her second husband as well and she was growing up in a normal, healthy and conducive atmosphere.

The appellant/petitioner stepped into the witness box and besides examining himself, examined PW2 Krishna and PW3 Balbir Singh and also tendered other related documents. The respondents stepped into the witness box and examined themselves as RW1 and RW2 besides tendering documents qua the school receipts of the minor child.

It may be pertinent to notice that no evidence was led in rebuttal by the appellant/petitioner and thereafter the evidence was closed by the learned counsel for the appellant/petitioner. The learned Court below after going through the evidence adduced by both the parties did not deem it fit to allow the custody of the minor child to be given to the appellant/petitioner.

We have heard learned counsel for the parties and have perused the evidence and other material on record.

It may be mentioned that both the parties have stuck to their respective stand and reiterated the submissions made before the Court below. It would also be relevant to mention that during the pendency of the instant appeal, the parties were referred to the Mediation & Conciliation Center of this Court to explore the possibility of an amicable settlement between them, but the same did not meet with any success. Thereafter, vide order dated 28.11.2018 both the parties were directed to present themselves

in this Court along with their minor daughter.

We interacted with the minor girl-Radhika @ Vasnavi and during our interaction, she outrightly refused to live with the appellant. Rather, she broke down and stated that she would not be able to live without her mother i.e. respondent No.1. It would be pertinent to notice that the minor girl-Radhika @ Vasnavi is now 11 years of age and after an interaction with her there was nothing to infer or show that she was being neglected or was unhappily living with her mother and step father. Moreover, it has come on record that the minor child is studying in a good school at Kaithal from which an inference can be safely drawn that not only is she residing with her mother and step father at Kaithal but also that she is adequately being taken care of and provided for.

The contention of the appellant that at the time of obtaining the decree of divorce by mutual consent under Section 13-B of the Hindu Marriage Act, 1955 it had been mutually agreed upon by both the parties that in the eventuality of the respondent No.1 re-marrying, the appellant would be entitled to seek the custody of the minor child, the same is not supported by any shred of evidence as no such agreement has been brought on record by the appellant. Even PW2 Krishna and PW3 Balbir Singh in their deposition before the Court below were unable to throw any light over any such agreement arrived at between the parties.

It will not be an exaggeration to reiterate a universal fact that any child specially at a tender age, such as Rahika @ Vasnavi who is 11 years of age, needs constant nurturing and guidance of none other than her biological mother with whom she has shared an incomparable and inexplicable bond right from the security of the womb to the time she was

brought into this world and thereafter. The status of a mother in a child's life cannot even be substituted by the biological father. It would be thus, very unfair and traumatic to uproot the minor child from the custody of the respondent-mother and force her to start living against her wishes with the appellant-father, who had abandoned and turned out her mother i.e. respondent No.1 along with her when the latter was just a few months old. The allegations of the appellant-husband for claiming custody of the minor child on account of neglect by the respondent-wife are totally vague and, as already noticed above, not supported by any shred of evidence.

In view of this matter, the learned Additional Civil Judge, (Sr. Division), Guhla, has rightly denied the custody of the minor child to the appellant. We find no illegality, infirmity or perversity in the impugned judgment dated 03.04.2017.

This appeal is, accordingly, dismissed.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

26.07.2019

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Note: Whether speaking/reasoned
Whether Reportable:

Yes / No

Yes / No