

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

**FAO-3768-2018
Decided on : 31.07.2019**

Sanjeev Kumar

... Appellant(s)

Versus

Ruchi Sharma

... Respondent(s)

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

Argued by: Mr. Jagdish Manchanda, Advocate
for the appellant(s).

Mr. Narender Pal Bhardwaj, Advocate
for the respondent(s).

MANJARI NEHRU KAUL, J.

The instant appeal has been preferred by the appellant against the impugned judgment and decree dated 16.04.2018, passed by the Ld. Addl. District Judge, Family Court, Ambala (hereinafter referred to as the 'Ld. Family Court'), whereby, the petition filed by the appellant under Section 10 of the Guardian and Wards Act, 1890 (hereinafter referred to as 'the GW Act'), seeking custody of his minor son Saksham @ Aryan was dismissed and the respondent-wife was allowed to retain the custody of their minor son.

A few facts necessary for adjudication of the case, as pleaded in the petition filed by the appellant before the Ld. Family Court, may be noticed. The marriage between the parties was solemnized on 20th September, 2007, according to Hindu rites and ceremonies at Ambala Cantt. Out of the said wedlock, a son namely Saksham @ Aryan was born on 13th May, 2009, who is living with the respondent (mother of the minor son). The relations between the parties turned

sour resulting in dissolution of their marriage by way of a decree of divorce passed by the Ld. Family Court on 30th July, 2014. The appellant alleged that after the divorce whenever he would go to meet his minor son, the respondent and her family would misbehave and prevent the child from meeting with him. He, further, pleaded that his son was not safe in the hands of the respondent, who was an ill tempered woman. She remained outside the house for most part of the day as she was a working woman and the child was dependent on others, whereas, on the other hand, appellant lived in a joint family along with his parents, where the son would be better taken care of. It was also pleaded that since the appellant worked out of home, he would have all the time to devote to his son. He alleged that the respondent and her family had been poisoning the mind of the minor son against him and his family and being the father and natural guardian of their minor son he was entitled to get his custody.

Per contra, the respondent in her written statement filed before the Ld. Family Court, refuted and categorically denied the averments made in the petition filed by the appellant, *inter alia* submitting that she was looking after the material and emotional needs of the child, and was providing him with good education. She submitted that the minor son was studying in the same school where she was teaching and she was thus able to supervise him. She rather submitted that a petition had been filed by the appellant before the Addl. Civil judge (Sr. Division), Ambala, which was dismissed and no appeal had been preferred by the appellant against it due to which the said order had attained finality. The instant petition was thus not maintainable. She also submitted that the minor son could not be given to the appellant father, who was an irresponsible and arrogant man. She claimed that the appellant father had not given a single penny towards the maintenance of the son ever since his birth and the minor son

was being single handedly raised by her.

On the pleadings of the parties, the following issues were framed by the Ld. Family Court:-

- “1. *Whether the petitioner is entitled to custody of minor Saksham on the grounds pleaded in the petition? OPP*
2. *Whether the petition is not maintainable? OPR.*
3. *Relief.”*

In order to prove his case, the appellant himself stepped into the witness-box as PW-1 and examined his father Mohan Dass as PW-2 and closed his evidence. On the other hand, the respondent stepped into witness box as RW-1 and tendered into evidence documents Mark-R1 to Mark-R18 and Ex.R1 to Ex.R8 and closed her evidence.

After going through the pleadings of the parties and the evidence on record, Ld. Family Court dismissed the petition under Section 10 of the GW Act filed by the appellant.

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

The appellant admitted in his deposition while appearing as PW-1 that the respondent was staying with her parents when his son 'Saksham' was born. He also admitted that he had not paid litigation expenses as imposed upon him by the Ld. Court below, during the pendency of the petitions under Sections 9 and 13 of the Act. He also admitted that the litigation expenses which were imposed upon him by this Court in appeal i.e. FAO No. 8426 of 2014, were also not paid by him. He, further, admitted that even in the case under Section 125 Cr.P.C., which was filed by his minor son Saksham through his mother, in which he had been

directed to pay the maintenance allowance @ ₹ 3000/- per month, the payment of

₹ 20,000/-, out of ₹ 51,000/- through a cheque was not made by him but by his father – Mohan Dass. Besides, admitting to the factum that the respondent is earning ₹ 20,000/- per month, he admitted that he did not have any steady income.

It cannot be over-emphasized that the mandate of law is that the welfare of a minor child should be a paramount consideration while deciding which out of the two parents would be best suited to retain the custody of a minor child.

In the facts and circumstances of the case, we have no hesitation in concluding that the minor child would be better taken care of and would be more happy with his mother i.e. the respondent, as compared to the appellant-father. As per his own admission, the appellant-father is a freelancer, having no steady income and working out of home. Not only this, the appellant-father has also admitted in his deposition before the Court below that the litigation expenses which he was ordered to pay during the pendency of the petitions filed under Sections 9 and 13 of the Act, respectively, were not paid by him nor did he pay the maintenance to their son under Section 125 Cr.P.C., rather, a cheque of ₹20,000/- had been issued by the father of the appellant and not by the appellant himself.

The respondent admittedly is teaching in a prestigious school at Ambala, where, the minor child of the parties is studying as well. The respondent is drawing a decent salary of ₹20,000/- per month. Hence, she is definitely in a better position to look after the education and well being of the child and coupled with the fact that she has a good support system at home. This Court is of the opinion that it would be in the interest and welfare of the child that he continues to reside with the mother i.e. respondent.

Keeping in view the facts and circumstances of the case, we feel that

Consequently, the present appeal stands dismissed and the judgment dated 16.04.2018 of the Ld. Family Court is upheld.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

July 31, 2019

J.Ram

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