

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

FAO-7196-2017

Decided on : 15.10.2019

Sandeep

..... Appellant

Versus

Neelam

..... Respondent

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

Present: Ms. Neha Rana, Advocate for
Mr. Abhimanyu Singh, Advocate
for the appellant.

Mr. Manish Soni, Advocate
for the respondent.

Manjari Nehru Kaul, J.

The instant appeal has been preferred by the husband - Sandeep against the judgment and order dated 06.10.2017 vide which petition filed by the wife-Neelam under Section 25 of the Guardian and Wards Act, 1890 (for short 'the Act') for getting the custody of their minor children namely Deep and Sanskriti was allowed by the trial Court.

2. A few facts as contained in the petition filed before the Court below by the respondent-Neelam (mother of the minor children) may be noticed.

Marriage between the parties was solemnized on 30.11.2007 as per Hindu rites and ceremonies. Two children, a son, namely Deep and a daughter namely Sanskriti were born on 14.10.2008 and 25.05.2011 respectively out of the said wedlock. The respondent-wife would be subjected to frequent physical and mental harassment by her husband and his family on account of insufficient dowry. In the month of November,

2010, she was thrown out of her matrimonial home. Several meetings were convened thereafter and with the intervention of respectables, the appellant-husband and his family after admitting to their mistakes brought her back to the matrimonial home with an assurance that she would not be maltreated in future. On 25.12.2010, the respondent-wife and her brother were physically assaulted by the appellant-husband and his family as a result of which the matter had to be reported to the police. The matter was compromised and she returned to her parental home with her brother. After the birth of her daughter, she went back to her matrimonial home but still there was no change in the behaviour of the appellant-husband and her in-laws. Yet again her brother along with the respectables of the society tried to bring about a reconciliation between the parties but it was short lived as she was mercilessly assaulted by the appellant-husband and his father, which resulted in a fracture being suffered by her, for which she had to be hospitalised. A criminal case too was registered under various Sections of Indian Penal Code including Section 498-A on 04.03.2015. It was further averred by the respondent-wife that the appellant-husband was a drunkard and a man of criminal antecedents, who would not even hesitate to beat her up in front of their children and as such the environment of their home was most unconducive for the healthy growth and development of the children. Hence, in these circumstances, the custody of the children should be handed over to her being a mother and natural guardian of the minor children.

3. Per contra, the appellant-husband in his reply filed before the Court below, refuted and categorically denied the allegations of the respondent. It was submitted that in fact it was the respondent-wife, who

had left the matrimonial home without his knowledge. The FIR, which had been registered against him, was in connivance with the police. So much so, even the medico-legal report pertaining to the injury suffered by the wife had been fraudulently prepared in collusion with the hospital authorities. He claimed that the minor children were being well taken care of and were being showered with all love and affection. He claimed that the children were extremely attached to his parents. So much so, in pursuance to an earlier order passed by the Court, the minor children had even refused to stay with the respondent-wife for more than a night and had in fact returned to him the following morning.

4. On completion of pleading of the parties, following issues were framed by the learned trial Court:

1. Whether petitioner is entitled for the custody of minor children namely Deep and Sanskriti as prayed for? OPP
2. Relief.

5. In order to prove the case, the respondent herself stepped into the witness box as PW-1 and tendered documents i.e. Ex.P1 to P-5. On the other hand, appellant stepped into witness box as RW-1 and tendered certain documents as well.

6. After analyzing the evidence and other material on record, the Family Court allowed the petition by granting custody of the minor children to the respondent-wife.

7. We have heard learned counsel for the appellants and perused the evidence as well as other material available on record.

8. It would be pertinent to mention that during the pendency of appeal the parties were referred to Mediation and Conciliation Centre of this

Court to explore the possibility of an amicable settlement, however, it failed to yield any positive result. The parties along with the children too were interacted with by this Court.

9. In the case in hand, it would be worthwhile to refer to the observations of the learned Family Court in the impugned judgment wherein it has been recorded that during the Court's interaction with the minor children, they were extremely uneasy and uncomfortable talking about their parents, particularly the mother. As per the observations of the learned Court, it was very obvious and apparent that they had been tutored to come up with a crammed version qua their mother. The minor children are just 11 years and 08 years old respectively. It is thus, not a very happy situation and rather unfortunate for children as young as them to be called to the Court and forced to speak a tutored version rather than what they may have naturally and actually felt like stating and expressing. A duty is, therefore, cast on the Court to step in as "*Parens patriae*" and exercise its discretion judiciously after considering all the relevant facts and circumstances and in particular by giving due weightage to the education, health, intellectual development, physical well being and emotional security of the child/children. It is not the legal rights alone of a parent or a guardian, which have to be considered, but only the welfare and welfare of the child alone, which has to be of paramount consideration while deciding the question of custody of minor children.

10. We are unable to agree with the submissions of the learned counsel for the appellant that he has a better claim over the children as the mother does not have any independent source of income. Going by that analogy, his financial status is no better than that of the respondent-wife.

The appellant-husband as per his own admission in the cross-examination as RW-1 and in an affidavit Ex.P4 furnished by him before JMIC, Sohna in the complaint under Section 12 of The Protection of Women from Domestic Violence Act, 2005 stated that he did not have any independent source of income either and was completely dependent on his father, who is a small time farmer. So much so, he was unable to even comply with the Court's direction to pay Rs.3,000/- as maintenance to the respondent-wife.

11. Hence, in the facts and circumstances of the instant case and after giving our anxious consideration, we have no reason to differ with the learned Family Court that the custody of the children cannot be retained by the appellant-husband. The two minor children are at an impressionable age and they need a happy and healthy environment for their overall development and growth.

12. As a sequel to the above discussion, we do not find any ground to interfere in the impugned judgment dated 06.10.2017 passed by the court below, which is well reasoned one.

Consequently, the present appeal being devoid of any merit stands dismissed.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

15.10.2019
sonia

Whether speaking/non-speaking: Yes

Whether reportable : Yes