

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

**FAO-4581-2018
Decided on : 14.11.2019**

Het Ram

... Appellant(s)

Versus

Meena @ Asha

... Respondent(s)

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

Argued by: Mr. Surmeet S. Sandhu, Advocate for
Mr. Gagneshwar Walia, Advocate
for the appellant(s).

MANJARI NEHRU KAUL, J.

The instant appeal has been preferred by the husband – Het Ram, whereby, he has impugned the judgment and decree dated 13th September, 2017, passed by the Ld. Addl. District Judge, Jind (in short 'Ld. Court below') vide which the petition filed by him, under Section 25 of the Guardians and Wards Act, 1890 (hereinafter referred to as 'the Act'), seeking custody of his minor children aged 15 years & 12 years, respectively, was dismissed.

A few facts necessary for adjudication of the case, as pleaded in the petition filed by the appellant-husband (petitioner therein) before the Ld. Court below, may be noticed.

The marriage between the parties was solemnized on 26th November, 2002. Out of the said wedlock a daughter namely Kashish and a son namely Arun were born on 08th June, 2004 and 25th January, 2007,

respectively. Their marriage was dissolved by an *ex-parte* decree of divorce on 14.11.2009 (Ex.R-1). It was pleaded by the appellant in his petition that since the respondent Meena @ Asha had no permanent source of income, she was unable to provide good education and upbringing to the children. On the other hand, not only was he financially sound but even the children were willing to join his company and live with him. Hence, he filed the petition seeking custody of his minor children.

Per contra, the respondent-wife (respondent therein) refuted and denied the allegations of the appellant-husband, in her written statement filed before the Ld. Court below. She alleged that the appellant had never bothered to see or meet the children even once in the 10 years preceding the filing of his petition under Section 25 of the Act nor had he even once paid a single penny towards her or the children's maintenance. She further claimed that they had been residing separately since 2007 and no efforts had ever been made by the appellant to visit the minor children. She also alleged that appellant – Het Ram had since contracted a second marriage and had no independent source of income, whereas, she had sufficient means to take care of both of her children, who were being provided with good education as well. She further claimed that both the children Kashish and Arun too did not wish to reside with the appellant, let alone meet him. In the aforementioned background, she prayed for dismissal of the petition filed by the appellant before the Ld. Court below.

From the pleadings of the parties, the following issues were framed by the Ld. Court below:-

- “1. *Whether the petitioner is entitled for the custody of minor children namely Kashish and Arun as prayed for in the petition ? OPP*

2. *Whether the petition is not maintainable in the present form ? OPR.*

3. *Relief.”*

In support of their case, the appellant stepped into witness-box as PW-1, besides examining PW-2 Shakuntla, who corroborated the version of the appellant. They tendered into evidence certain documents and closed their evidence. On the other hand, respondent- Meena @ Asha examined herself as RW-1, besides examining her father as RW-2 and thereafter, closed her evidence after tendering into evidence some documents.

After analyzing the evidence led by the parties and also other material on record, the Ld. Court below dismissed the petition filed by the appellant under Section 25 of the Act.

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

It may be noticed that the parties during the arguments reiterated their earlier versions and maintained their respective stands as taken before the Ld. Court below.

It is a matter of record that the appellant was involved in criminal cases. An *ex-parte* decree of divorce was obtained thereafter by the respondent in the year 2009. The fact that the appellant never met the minor children after the year 2007 nor did he render any assistance much less financial to his children stands un-rebutted. It has been strenuously argued by the learned counsel for the appellant that being a father it is his legal right to have the custody of the minor children.

We are unable to accept the submissions of the learned counsel for the appellant that the consent and willingness of the minor children

cannot be a ground to deny the father their custody. It need not be over

emphasized that while deciding the issue of custody of minor children, the welfare of the children will supersede the legal right of a parent. This Court in **FAO No. 2600 of 2019 (O&M)**, titled as, “**Ravi Kumar Vs. Manju**”, decided on **13.11.2019**, has held that if the child is sufficiently mature and grown-up to make a choice, then due weightage must be given to his wishes, which of course should be taken into account only after the Court has arrived at a satisfaction that the child's willingness or unwillingness to go or not to go with a particular parent is free from any outside influence or coercion. This Court further observed that once the child has expressed his willingness to stay with a particular parent and has categorically expressed his unwillingness to go with the other parent, forcing him to go against his wishes would amount to subjecting the child not only to cruelty, but also trauma, which could leave its scars for the rest of his life.

Adverting to the case in hand, both the children Kashish and Arun, aged 15 years and 12 years, respectively, were called for an interaction by the Ld. Court below, wherein, they expressed their unwillingness in unequivocal terms to accompany their father as they had never seen or met him since their childhood. Hence, the Ld. Court below rightly declined to hand over the custody to the appellant.

As far as the financial incapacity of the respondent-mother to take care of the children is concerned, it pales into insignificance. She is admittedly residing in her parental home with her brothers and father, who, as is evident from the record, are not only financially supporting her and her children, but also providing them with all emotional and moral support which admittedly was totally missing from the side of the appellant for the past about 12 years preceding the filing of his petition.

It has also been prayed by the appellant that the Ld. Court below erred while granting limited visitation rights to the appellant for meeting both the minor children. We are of the opinion that the Ld. Court below has already been generous enough to grant visitation rights to the appellant once in two weeks in the premises of the school, despite the fact that the appellant rose from his slumber after almost 12 years to realise that he had two minor children, who were single handedly being raised by the respondent with the help of her supportive parental family, and so much so both the children were averse to meeting the appellant. We do not thus, wish to interfere with the visitation rights granted by the Ld. Court below to the appellant-father and increase the frequency of the meetings between the appellant-father and the minor children.

In the facts and circumstances of the case, we feel that the impugned judgment and decree dated 13th September, 2017, passed by the Ld. Court below, does not warrant any interference. Consequently, the instant appeal stands dismissed.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

November 14, 2019

J.Ram

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