

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4729-2018 (O & M)
Date of decision: 02.09.2019

Harpreet Singh

.... Appellant

V/s

Rupinder Kaur

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Anil K. Malhotra, Advocate,
with Mr. N.K. Manchanda, Advocate and
Mr. Sahil Nayyar, Advocate, for the appellant.

Mr. V.K. Sandhir, Advocate, for the respondent.

RAJAN GUPTA , J. (Oral)

Present appeal is directed against the order dated 22.05.2018 passed by Civil Judge, Senior Division at Amritsar. Mr. Malhotra has referred to the relevant para wherein the court has held that it had no jurisdiction to entertain the petition in view of provisions of Section 9(1) of the Guardian and Wards Act as the child was residing alongwith her mother (respondent herein) at Bathinda. He further submits that in such eventuality, the court ought not to have made any observations on merits as regards the rights of the petitioner-husband (appellant herein) to seek custody of the child. However, certain observations pertaining to this aspect are contained in the order.

Mr. Sandhir, learned counsel representing the respondent-wife submits that respondent is employed in a bank and is posted at Bathinda. The child is residing with her. The appropriate jurisdiction would, thus, be

at Bathinda. He further submits that in case the appellant-husband prefers any petition before the competent authority at Bathinda, respondent would not raise the plea of lack of jurisdiction. Besides, he would have no objection if the court decides the matter within a fixed time-frame.

We have heard learned counsel for the parties and given careful thought to the facts of the case. It appears marriage between the parties was performed on 06.01.2013 according to Sikh rites and customs at Amritsar. The parties cohabited and out of the wedlock, one male child namely Armandeep Singh was born on 04.12.2013 at Amritsar. Both the husband and wife are well settled and employed in different banks. Soon after marriage, differences developed between the couple and there was constant bickering. This led to considerable litigation between the parties. It appears that FIR under Sections 406/498-A/506 and 323 IPC was lodged by the respondent-wife at Dabwali. She also filed a petition under Section 12 of the Domestic Violence Act at the same place and another petition under Section 125 Cr.P.C. was also filed.

Admittedly, now a divorce petition has been filed by her at Amritsar where a petition under Section 9 of the Hindu Marriage Act was also preferred by the appellant-husband and same was allowed ex parte. Appellant-husband filed the instant petition at Amritsar under Section 25 of the Guardian and Wards Act seeking custody of the child-Armandeep Singh. The Civil Judge, Senior Division, Amritsar, passed a detailed order which is under challenge. The court while giving a finding on issue No.1 held that the court had no jurisdiction to entertain the petition as the child was

ordinarily residing at Bathinda. We feel that having come to this conclusion only option left with the court was to remit the petition to be filed before the court of appropriate jurisdiction.

In view of statement made today by learned counsel for the respondent, we feel that appellant-husband needs to be granted liberty to file a fresh petition under Section 25 of the Guardian and Wards Act at Bathinda. In case, such a petition is filed, District Judge would ensure that the same is entrusted to the competent court of jurisdiction. As much time has elapsed, since the petitioner (appellant herein) has been seeking custody of the child, it shall be ensured that the petition is decided at the earliest preferably within six months.

Under the circumstances, appeal is hereby disposed of with liberty to the appellant-husband to file appropriate petition before the court at Bathinda. In terms of the statement made today by Mr. Sandhir, the respondent shall not object to the jurisdiction of the said court. In case, there is any observation on merits contained in the order passed by the court at Amritsar, the court at Bathinda shall not be swayed by it and decide the case purely on merits.

(RAJAN GUPTA)
JUDGE

(B.S. WALIA)
JUDGE

September 02, 2019
sukhpreet

Whether speaking/reasoned : Yes
Whether reportable : No