

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

**FAO-5824 of 2018 (O&M)
DATE OF DECISION : 16.12.2019**

Sandeep Singh Sangwan

.....Appellant

Versus

Ritu @ Ridhima

.....Respondent

**CORAM : HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present : Mr. J.S.Jaidka, Advocate,
for the appellant.

Mr. Anil Mehtra, Advocate, and
Mr. Arun Sharma, Advocate,
for the respondent.

KARAMJIT SINGH, J.

The instant appeal has been filed by Sandeep Singh Sangwan, the appellant, against the judgment and decree dated 28.03.2018 passed by the learned District Judge (Family Court), Ambala, vide which the petition filed by him under Section 25 of the Guardians and Wards Act, 1890 read with Section 13 of the Hindu Minority and Guardianship Act, 1956 (for short 'the Act'), seeking custody of his minor daughter, was dismissed.

Brief facts of the case are that marriage between the parties was solemnized on 24.03.2010 at Shagun Palace, Ambala City, according to Hindu rites and ceremonies. After the marriage, the parties cohabited together in their matrimonial home and out of this wedlock, one female child, namely, Bhomika, was born on 05.10.2011. Since the day of marriage, the act and conduct of the respondent was very cruel towards the

appellant and she used to harass and humiliate the appellant and his parents. Respondent used to leave her matrimonial home after a short intervals of time, without consent and knowledge of the appellant or his family members and used to stay at her parental house. The appellant always remained concerned for the welfare and education of his minor daughter. In the month of April, 2014, the appellant got the child admitted in Father Angel Convent School, Nanhera, Ambala Cantt. Even thereafter, respondent used to quarrel on petty matter. However, under the pressure of the police, the custody of the minor daughter was again taken by the respondent, as a result of which, the minor failed to attend the school for about two months. On 02.11.2015, the parents of the respondent left the minor child with the appellant and then the child again started attending the school. However, on 11.03.2015, the respondent illegally took away the minor child from the school without the consent or permission of the appellant. The matter was reported to the police but the police failed to take any action. Finally, petition under Section 25 of the Act was filed by the appellant seeking custody of the minor daughter.

The petition was contested by the respondent, who filed written statement in which, it was denied that she used to ill-treat the appellant. However, it was admitted that the marriage between the parties was performed on 24.03.2010 and one female child, namely, Bhomika, was born out of this wedlock on 05.10.2011. It was also pleaded that she along with her minor daughter was turned out of the matrimonial home in February, 2015 and all the efforts made for reconciliation failed.

From the pleadings of the parties, following issues were framed by the learned trial Court:-

- “1 Whether the petitioner is entitled for custody of minor daughter Bhomika on the grounds pleaded in the petition? OPP.
2. Whether the petition is not maintainable? OPR.
3. Relief.

Appellant himself appeared in the witness-box as PW1 and reiterated the contents of the petition in his affidavit (Exhibit PW1/A). He also produced documents, Mark-A to Mark-K.

On the other hand, respondent herself appeared in the witness-box as RW1. She also tendered documents, Mark-DW1/1 to Mark-DW1/4. In rebuttal, appellant tendered documents, Mark-L to Mark-S.

After hearing learned counsel for the parties, the court of learned District Judge (Family Court), Ambala, dismissed the petition. However, the visitation rights were granted to the appellant, as per which, the minor child is to remain in the interim custody of her father from 10:00 a.m to 4:00 p.m, on every second and last sunday of the month.

Aggrieved by the said judgment dated 28.03.2018, the present appeal has been filed by the appellant.

We have heard learned counsel for the parties and have perused the record carefully.

Learned counsel for the appellant submitted that the respondent is unemployed and she has got no resources to provide proper education to

the minor child, who is now eight years of age. It is further contended that future of the child is not safe and secure in the hands of the mother, who has already lodged false complaint under Section 498-A IPC against the appellant. It is further contended that the appellant being a father is entitled to get the custody of the minor child, he being her natural guardian.

It is further submitted that the respondent concealed the material facts and tried to mislead the court. Learned counsel for the appellant further contended that the paramount consideration, while dealing with such like cases, is the welfare and the interest of the child. In the case in hand, learned court below ignored the fact that the appellant was having all the resources to provide decent education and other amenities of life to the minor child. It is pleaded that judgment of the learned court below deserves to be overturned.

On the other hand, learned counsel for the respondent submitted that the appellant always ignored his wife and minor daughter, who is presently living comfortably with the respondent, who is imparting her proper education. It is further submitted that the respondent is M-Tech and is presently working in Chitkara University situated on Chandigarh-Patiala road. It is further contended that when the minor child was called in the learned court below, she refused to go with her father and accordingly, the said court passed judgment dated 28.03.2018.

Learned counsel for the respondent further contended that if the custody of minor child is handed over to the appellant, it would definitely caused psychological impact on the child. So, the Family Court rightly

dismissed the petition filed by the appellant.

We have considered the submissions made by the learned counsel for the parties and gone through the record.

There is no dispute with regard to the fact that parties got married on 24.03.2010 and out of the said wedlock one female child, namely, Bhomika was born on 05.10.2011. As per the respondent, the parties got separated in February, 2015 and since then, the minor daughter is residing with her mother.

In such matters, welfare of the child is of paramount consideration. The right of the natural and legal guardian of the minor to have its custody is not the only consideration. In the present case, the child was emotionally attached to her mother. The child is now more than eight years of age. As per the observations made in the impugned judgment, the child was called in the learned court below on 21.03.2018 but she did not want to go with her father. While dealing with custody matters, age and desire of the child is also to be seen by the court.

In the present case, the respondent is well educated and it is brought to the notice of this court by her counsel that at present she is working in Chitkara University situated on Chandigarh-Patiala road. It means that the respondent mother is capable of providing proper education to the minor child. The mother is looking after her daughter (minor) with all love and affection. So, at this stage, it would not be advisable to uproot the minor child by handing over her custody to the appellant. However, at the same time, we are of the view that the child should also remain in touch

with her father. So, the learned court below rightly declined the request of the appellant for having custody of the minor child while providing him visitation rights.

Consequently, this appeal fails and is hereby dismissed.
However, the parties are left to bear their own costs.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

16.12.2019
adhikari

Whether speaking/non-speaking	:	Yes/No
Whether reportable	:	Yes/No