

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

FAO No. 5897 of 2018 (O&M)
Date of Decision: 28.2.2019

Raghvir Singh

.....Appellant

Vs.

Manjinder Kaur

.....Respondent

**CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: - Mr. M.S.Dhami, Advocate
for the appellant.

Mr. M.K.Pundir, Advocate
for the respondent.

RAKESH KUMAR JAIN, J. (ORAL)

This appeal has arisen from the order dated 3.7.2018 by which a petition filed by the appellant under the provisions of Guardian and Wards Act, 1890 for his appointment as a Guardian of minor Lakhvir Singh, has been dismissed.

In brief, marriage of the respondent was solemnized with Lakhwinder Singh (since deceased) in the year 2006 at village Begowal, District Kapurthala as per Sikh rites. Out of this wedlock, Lakhvir Singh was born on 8.11.2017. Unfortunately, the husband of the respondent namely Lakhwinder Singh died on 3.3.2017 at Lisbon, Portugal. The appellant, who is living in England, has filed this petition and appointed Joginder Singh son of Kartar Singh resident of village Gilzian, P.O. Miani, Tehsil Dasuya, District Hoshiarpur as his Special Power of Attorney to

depose on his behalf in this case. Though, Joginder Singh (SPA) had appeared as PW-2 and stated that the appellant wanted to be appointed as a guardian of minor Lakhvir Singh and has no conflict of interest yet the learned trial Court dismissed the petition on the ground that the appellant did not appear before the trial Court, therefore, it would not be in the interest and welfare of the minor if the appellant is appointed as the guardian.

After notice was issued, the respondent has put in appearance along with her counsel. She has categorically stated that she is ready and willing to give custody of her minor son to the appellant. Be that as it may, the fact remains that the trial Court could not repose confidence in the statement of the Special Power of Attorney and has dismissed the petition only on the ground that the appellant did not put in appearance for the purpose of stating on oath that he wanted to take the custody of minor Lakhvir Singh. Therefore, we find it just and expedient to set aside the impugned order and remand the case back to the trial Court with a direction that the trial Court would record the statement of the appellant by way of video conferencing in order to remove any kind of doubt which was in the mind of the Court about the welfare and well being of minor Lakhvir Singh who is to be given in the guardianship of the appellant.

Accordingly, the appeal is allowed. Impugned order dated 3.7.2018 is set aside and the matter is remanded back to the learned trial Court with a direction that it would record the statement of the appellant by way of video conferencing to find out whether Raghvir Singh himself is interested in taking the custody of minor Lakhvir Singh or there is any conflict of interest in so far as the property or person of Lakhvir Singh is

concerned with the said appellant.

With these observations, the parties are directed to appear before the learned trial Court on 18.3.2019.

It is made clear that at the time of video conferencing, besides the Presiding Officer, the counsel appearing on behalf of the appellant would be present to identify him.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

February 28, 2019
Gurpreet

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