

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

**FAO No.1081 of 2020 (O&M)
Date of Decision: July 27, 2020**

Shakuntala Jain and another

...Appellants

VERSUS

Himanshu Jain

...Respondent

**CORAM: HON'BLE MR. JUSTICE S.N.SATYANARAYANA
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr.S.S.Hira, Advocate
for the applicants-appellants.

S.N.SATYANARAYANA, J.

Legal heirs of judgment debtor Anjul in Execution Petition No.786 of 2019 on the file of Principal Judge, Family Court, Sonipat, have come up in this appeal impugning the order dated 06.01.2020, wherein the objections raised against the Execution Petition levied by the respondent herein was considered and rejected. The brief facts leading to this litigation are as follows;

The appellants herein are parents of deceased Anjul, wife of respondent Himanshu Jain. The records would indicate that both Anjul and Himanshu Jain were divorcees prior to their marriage to each other on 07.07.2007. In the wedlock, a child by name of Navindu was born to them on 11.04.2013. Thereafter, it is seen that there were differences of opinion between Himanshu Jain and Anjul, which led to both of them living

separately. The custody of minor child Navindu was with the mother. It is in this background, the petition under Section 25 of the Guardians and Wards Act was filed by the respondent herein in HMG Act/70/2018, where after full fledged trial judgment was rendered on 23.10.2019, in allowing the petition. It is seen, that after the evidence was recorded and arguments were heard, before the judgment was pronounced, Anjul died.

Thereafter, husband Himanshu Jain filed Execution Petition in 786 of 2019 to secure the custody of his minor son pursuant to judgment and decree in HMA Act/70/2018. In the said proceedings, his wife was shown as deceased and represented by her successors namely Shakuntala Jain and Devinder Kumar Jain, her parents. In the said proceedings, serious objections were raised by parents of deceased Anjul in opposing the execution filed for taking custody of the minor child and also claiming that the custody should be allowed to continue with them. The said objections were over-ruled by Executing Court in its order dated 06.01.2020, which is subject matter of this appeal. It is seen that father Himanshu Jain has taken custody of the child in Execution Petition 786 of 2019 and consequently, the said execution petition is closed as there is compliance of the judgment rendered in HMG Act/70/2018 proceedings.

In this appeal, the appellants, who are parents of Anjul are contending that the order of execution Court dated 06.01.2020 is erroneous, inasmuch as, it has not considered the rights of the appellants herein, with reference to custody of the child. They would also contend that the judgment passed subsequent to the death of Anjul, itself is erroneous and the same could not have been given effect to and even otherwise, appellants herein having developed affection with the child from the date of his birth

till the custody is taken away from them, it is rightful that the custody should be restored to them. In this appeal, they have also made two applications, one in CM No.7497-CII of 2020, seeking preponement of this matter. The same is allowed and the main case is taken up for hearing today itself along with CM No.7498-CII of 2020, which is filed seeking visitation rights.

Heard the learned counsel for appellants as well as respondent. Perused the orders impugned and also the judgment rendered in HMG Act/70/2018. On appreciating of material on record, we find that the order of trial Court in permitting Himanshu Jain, father of the minor child, in taking custody of the minor Navindu, pursuant to judgment in HMG Act/70/2018, appears to be just and proper and further the order dated 06.01.2020 passed in Execution Petition No.786 of 2019 also appears to be just and proper. Therefore, question of interfering with both of them does not arise. Therefore, the present appeal is required to be dismissed.

While doing so, this Court will is of considered opinion that the application in CM No.7498-CII of 2020 requires consideration. Admittedly, the appellants herein have no statutory right or any other right, which can be enforced to seek either custody of the child or visitation of the child. In any event, on humanitarian grounds, considering the facts that they are the grand-parents of Navindu, who stayed with them right from the day he was born till his custody was taken by his father pursuant to judgment rendered in HMG Act/70/2018, therefore, in the aforesaid circumstance, we are of the considered opinion that the appellants herein will have right to visit the child in the premises of his father-Himanshu Jain, periodically i.e. once in a month. As and when, the appellants herein would desire to see the minor

child, they shall do so by giving three days advance intimation to the father of the minor child, namely, Himanshu Jain, with reference to their intention to visit the child in the house of Himanshu Jain. It is made clear that such visitation shall be on a Sunday or any other national holiday, on which day, Himanshu Jain, would not be attending his official work, or if he has any personal inconvenience, then it is open for him, to make arrangement to ensure that the appellants herein, who are maternal grandparents of Navindu to meet him and spend time with him to an extent of minimum 2-3 hours, subject to the limit of visitation being between 10 a.m. in the morning to 5.00 p.m. in the evening.

Accordingly, this appeal is dismissed, whereas application in CM No. 7498-CII of 2020 stands disposed of in the above terms.

(S.N.SATYANARAYANA)
JUDGE

(ARCHANA PURI)
JUDGE

July 27, 2020
Vgulati

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No