

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

**CR No. 2078 of 2020 (O&M)
DATE OF DECISION : 30.07.2020**

SIMARJIT KAUR VERMA

...PETITIONER

VERSUS

AMIT VERMA

...RESPONDENT

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Presence : Petitioner in person from England and
Mr. M. S. Sachdev, Advocate
Representing her in India.

Respondent in person from India
along with Two minor sons.

(Presence marked through video conference).

ARUN MONGA, J. (ORAL)

Before this Court is a mother of two minor sons namely Sahil Verma aged 17 years 08 months and Neev Verma aged 11 years 11 months, respectively, who are currently stated to be in the custody of their father. Respondent/father and his two minor sons are presently residing at Adampur, District Jalandhar, while the petitioner/mother is residing at Willenhall, England.

2. Petitioner's UK work Visa entitles her to seek Visa for her dependent family members also. She asserts that she is in better position to look after the welfare of her minor sons and, therefore, their permanent custody be given to her by declaring her as a sole Guardian, being their mother. As far respondent/husband, he had initially shifted with the petitioner to England in the year 2012. But on account of various reasons, which are not relevant for adjudication of the lis herein, he was deported to India. Before his deportation,

the petitioner, *inter-alia*, on the grounds of domestic violence etc. preferred a divorce petition before the Family Court, Bradford, UK while her husband/ respondent was still residing in UK. The said divorce petition was decreed and petitioner and respondent have been granted divorce by Family Court, Bradford.

3. It is pleaded in the petition that prior to her going to UK., along with the Respondent, both the minor sons were living with petitioner in her lawful custody, she being mother and natural guardian. No relationship of husband and wife exists between the parties, asserts the petitioner, after the lawful decree of divorce passed by the U.K. Court. Accordingly, petitioner requested the Respondent/father to hand over the custody of both the sons but he has been avoiding it on one pretext or the other.

4. Petitioner alleges that both the minor sons of Petitioner are being neglected and have been almost abandoned by the Respondent in the absence of Petitioner. Both the minor sons do not want to live with the Respondent, claims the petitioner. They want to live with the Petitioner, who is well settled in U.K. Both the minor children are grown up and can take their decisions.

5. Petitioner is an educated lady and is currently working in U.K. and has sufficient income to educate and bring up her minor sons in all respects. Therefore, it is in welfare of minors that they should live with Petitioner being their mother as she can manage/offer better prospects to settle her both minor sons abroad, states the petitioner. However, respondent is not handing over custody of the minor sons to the petitioner.

6. Left with no other alternative, petitioner filed a petition in the Court of Principal Judge, Family Court-cum-Guardian Judge (NRI), Jalandhar under

Sections 7,8 & 9 of Guardian and Wards Act for her appointment as guardian of her both minor sons namely Sahil Verma and Neev Verma, who are currently living with Respondent. A declaration to the effect that the Petitioner is lawful guardian of her two minor sons has also been sought. Prayer has also been made for granting permission to the Petitioner to get their passports prepared/renewed from the Pass port Authority and further, to take both minor children to abroad to enable her to educate, nourish and to take care of them in a better way keeping in view their welfare.

7. Respondent did not appear before family court despite service and accordingly, Principal Judge, Family Court, Jalandhar passed an order, whereby the Respondent was proceeded ex-parte in January, 2020.

8. Though it is not pleaded in the petition, but on a query of this Court, it is stated that the proceedings in the Family Court, Bradford, UK were conducted ex parte qua the husband/respondent. While he was still in England, he chose not to appear despite service of summons of Family Court, Bradford. The situation herein also seems to be somewhat similar. As already stated here in above, he has been proceeded ex parte before Family Court, Jalandhar. The proceedings before this Court have arisen out of a guardianship petition filed by the petitioner under Sections 7, 8 and 9 of The Guardians and Wards Act, 1890, before Family Court, Jalandhar, seeking a declaration to be declared as guardian of her two minor sons.

9. Petitioner does seem to be in a better financial position to look after the welfare of the two minor children as compared to their father. The petitioner is stated to have done an MBA from India, then a second MBA from U.K. followed by successfully qualifying as a Chartered Accountant. She is stated to be currently working as Senior Finance Assistant in a reputed organization and

is comfortably in a position to afford expenses of upbringing of her two minor sons. On a query of the Court, she submits that she is currently earning 30,000 to 40,000 Pound Sterling (GBP) annually, which equivalent to Rs.30 to 40 lakhs.

10. While on the other hand, respondent/father submits that he is currently earning between Rs.30,000 to Rs.40,000 per month (300 to 400 GBP per month) working as collection executive for M/s Capital First Limited which is an outsourced agency hired by the banks in India for collection of debts.

11. In order to explore an amicable way out, petitioner joined court hearing in person from UK through video conference and the two minor sons along with their father were also joined in person through video conferencing at Family Court, Jalandhar.

12. I had detailed and elaborate interaction with the entire family in presence of learned counsel for the petitioner. Court then took a recess to enable the petitioner/mother to have an opportunity to exclusively interact in privacy with her minor sons through video conference. Thereafter, the Court proceedings were resumed again.

13. After the entire family had an interactive session, a question was put by the court to both the parents that while keeping their personal differences aside if there can be an amicable way out in the best interest and welfare of both the minor children so that needless litigation can be avoided. Deliberations ensued between the parties herein and after consulting both their children, petitioner and respondent are mutually agreeable that as far as the elder son namely Master Sahil Verma, who is currently on the cross roads of his decision making years of life in terms of both career and education, having finished his high school recently, his exclusive custody be given to his mother so that she can initiate the requisite documentation to live together in England/UK. The elder

son, in any case, is of age that he fully understands qua the choices of his life. I have had an occasion to interact with him and found him mature enough to take his decisions. He candidly consented and requested to live under care and custody of his mother.

14. After interacting with two minor children together and then one by one, it transpires that the petitioner and respondent had left India in the year 2012, when the elder son was 9-10 years old and younger son was 4-5 years old. Thereafter, though the respondent was deported sometime in the year 2016-17 and has ever since been with his sons, but the mother, on the contrary, has been living at England ever since. She did not have an opportunity to be with her children despite her wishes. Accordingly, she has only met her both sons on two occasions in past 7-8 years. Once when she visited India in the year 2014 for a period of two weeks and thereafter recently in March, 2020 when she came for her testimony before the Family Court, Jalandhar. Resultantly, it is but natural that younger son will have reluctance to take a decision all of a sudden or react to the mother's attempt to have his exclusive custody.

15. Even though, the consent of a minor child may be little relevant but what is more pertinent is ultimately the welfare of the child. Be that as it may, it is left open to the Family Court, Jalandhar to decide the same on merits, without being influenced by observations of this Court, which are merely prima facie.

16. Thus, as far as younger son namely Master Neev Verma, who is currently about 12 years and is studying in Kendriya Vidyalaya, Adampur, the parties have decided to pursue their remedy before the Family Court, Jalandhar where a petition qua same is already sub-judice.

17. In the course of hearing, a suggestion was made by learned counsel for the petitioner that with joint consent guardianship petition be withdrawn from

Family Court, Jalandhar and transferred to this Court and the same can then be accordingly proceeded further in accordance with law. However, this Court refrains to do so, particularly in view of the fact that respondent/husband is though present but is not represented by any counsel and he is not aware of the legal formalities.

18. In the premise, by joint mutual consent of the parties qua their elder son Master Sahil Verma, his mother Ms. Simranjit Kaur Verma is declared as his lawful guardian under section 7 of the Guardian and Wards Act, 1890. Registry is directed to prepare a decree sheet accordingly. Petitioner shall henceforth have the custody of her elder son and look after him and take care of him in the best of his interest to keep his welfare in mind and take all appropriate steps in pursuance thereof, including getting his passport made and taking him abroad/UK. The respondent is directed to render all co operation for the needful, keeping in mind the welfare of his son. With the joint consent of the parties, the guardianship petition pending before family Court, Jalandhar is directed to be withdrawn only qua elder son Sahil Verma.

19. As regards the minor son namely Master Neev Verma, as observed aforesaid, the Family Court, Jalandhar, shall proceed in accordance with law. The Family Court, Jalandhar shall make an endeavour to dispose of the same as expeditiously as possible, since at stake is the welfare of a minor child.

20. The petition stands disposed of in above terms.

(ARUN MONGA)
JUDGE

JULY 30, 2020
Shalini

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