

Sunita

.....Petitioner

versus

Satish Kumar

.....Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Suresh Dhull, Advocate
for the petitioner

Sudhir Mittal, J. (Oral)

The petitioner has filed a petition for custody of the minor children. In the said petition, an application under Section 25 read with Section 12 of the Guardians and Wards Act, 1890 has been preferred for grant of interim custody, which has been dismissed vide the impugned order dated 24.12.2020.

The parties got married on 07.02.2012 and two children, a boy and a girl have been born out of the wedlock. The boy was aged 8 years on the date of passing of the impugned order whereas the girl was aged about 4 ½ years. The parties have been residing separately since October, 2018 whereas the petition has been filed on 04.02.2020. Thus, on the date of separation from the husband, the daughter was about 2 ½ years of age and the son was about 5 years of age.

The learned Court below has rejected the application for interim custody on the ground that the father is looking after the minor children very well. He is educating them in good schools and is also saving money for their benefit. The economic condition of the mother is not known and the fact that petition for custody was filed about one year and four months after the separation shows that the mother is not very keen for custody.

Learned counsel for the petitioner has argued that proviso to Section 6(a) of the Hindu Minority and Guardianship Act, 1956 envisages the custody of a child below 5 years of age with the mother. The daughter is less than 5 years of age

and, thus, the trial Court was in error in rejecting her interim custody. It has further been submitted that poor economic condition is not a sufficient ground for denying custody. Love and affection of a mother are paramount and have to be taken into consideration. Reliance has been placed on *Narender Kaur vs. Purshotam Singh 1988 (93) PLR 42 and Mukul Chauhan vs. Neha Aggarwal and Others, 2019 (3) LH 2611*.

Proviso to Section 6(a) of the Hindu Minority and Guardianship Act, 1956 states that custody of a minor below 5 years of age shall ordinarily be with the mother. It does not stipulate that under all circumstances a child below 5 years must remain in the company of the mother. Thus, reliance on the said provision by counsel for the petitioner is misplaced. The Court below has found as a matter of fact that the children are getting all the love, affection and care from their father and, thus, there is no bar in law in their custody remaining with the father. It is true that there is no substitute for a mother's love and affection but economic conditions play a major role in the upbringing of children. If, the children were not being well looked after in the custody of their father, probably the contention of learned counsel for the petitioner may have been well founded but under the circumstances existing in the present case, the contention cannot be accepted. Judgments in *Narender Kaur (supra)* and *Mukul Chauhan (supra)* have been delivered in the peculiar facts and circumstances of the said cases and are not applicable to this case.

For the aforementioned reasons, the revision petition has no merit and is dismissed.

February 26, 2021
Poonam Negi

[SUDHIR MITTAL]
JUDGE

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