

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

CR-1011-2021 (O&M)

Date of decision: 03.05.2021

Ahsaan

...Petitioner

Versus

Sitara

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Sandeep Kumar, Advocate for the petitioner.

H.S. MADAAN, J.

Case taken up through video conferencing.

Petitioner Ahsaan had filed a petition against his wife Sitara before Family Court, Ludhiana, seeking custody of minor child of the parties, namely, Mohd. Zaid born on 16.03.2016.

Notice of the petition was given to the respondent, who appeared and filed written reply, contesting the said petition. In those proceedings, petitioner had filed an application for interim custody of the minor child, which was resisted by the respondent. It was, however, declined by learned Addl. Principal Judge, Family Court, Ludhiana, vide detailed order dated 26.02.2021. The operative part of the order runs as follows:-

“49. I have heard the rival submissions of the Ld. Counsel for the parties and have gone through the record carefully.

50. The marriage between the parties is not in dispute.

The child born out of the wedlock is also not disputed.

51. *The petitioner has pleaded that the marriage was very simple affair, which has been denied by the respondent. This aspect does not have any effect on the decision of the application for interim custody at this stage*

52. *The petitioner has pleaded that he has given divorce to the respondent, which has been denied by the respondent. Again this aspect can be decided only after evidence is led. At this stage there is no finding from any court that the marriage between the parties has been dissolved.*

53. *The petitioner is seeking interim custody of the minor child on the ground that the welfare of the child lies with the petitioner. At this stage there is no material on record to show that the minor is not being looked after properly by the respondent.*

54. *The arguments of Ld. Counsel for the petitioner that the petitioner has been mentioned to be a man of means by the respondent in the petition u/s 125 Cr.P.C filed by her, carries no weight as petitioner himself does not admit the same to be correct.*

55. *The petitioner has mentioned in the present petition that he is a labourer and earns Rs. 8000/- p.m. Thus there is word against word levelled by the parties against each other. No finding can be recorded, without evidence being led by the parties as to whether the respondent is not taking good care of the minor and the petitioner is entitled to the custody of the minor.*

56. *As regards the point of law that mother is entitled to the custody of the male child upto 7 years of age the three rulings i.e. one ruling cited by Ld. Counsel for the petitioner and both rulings cited by Ld. Counsel for the respondent lay down that court has to see the welfare of the child is*

paramount consideration in matters of custody of child.

57. *Therefore, in no manner, the petitioner has been able to make out a case for grant of interim custody of minor child to him and accordingly prayer of petitioner for the grant of interim custody of minor child is declined.*

58. *However the petitioner being the father of minor child is entitled to visiting rights. The respondent is directed to produce the minor child in court on every 3rd Wednesday of the month or the next working day in case 3rd Wednesday is not working day, so that the petitioner may meet the minor child during the pendency of the petition.*

59. *The application for interim custody stands disposed of in above terms. Nothing observed herein shall have effect on the merits of the case.”*

Feeling aggrieved by the order, the petitioner has approached this Court by way of filing the present revision petition.

I have heard learned counsel for the revision petitioner besides going through the record.

The impugned order is quite detailed and well reasoned. It does not suffer from any illegality or infirmity, much less apparent on the face of it. The order passed can certainly be not termed as arbitrary or in violation of settled legal position on the subject.

Though, learned counsel for the petitioner has contended that the child is not being provided proper education and for that reason, he is seeking interim custody because he is ready and willing to bear expenses for education of the child but then he can approach the Family Court, Ludhiana for issuance of direction to the respondent to

admit the child in some good school, offering to bear the expenses for that. No case for upsetting the impugned order by exercising of revisional jurisdiction is made out. The revision petition is found to be without any merit and is dismissed accordingly.

03.05.2021

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(H.S. MADAAN)
JUDGE

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