

216 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2720-2020(O&M)

Date of decision:24.02.2021

Dinesh Kumar

.....Petitioner

Versus

Isha Rani

.....Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.M.K.Singla, Advocate for the petitioner

Mr. Vikas Bahl, Sr. Advocate with
Mr. Nikhil Sabharwal, Advocate for respondent

ANIL KSHETARPAL, J.

CM-1132-CII-2021

Allowed as prayed for. Annexures R-1 to R-9 are taken on
record.

Main case

This revision petition has been filed by minor- Prayansh Mittal's father seeking the setting aside of the order granting his interim custody to his mother-respondent herein.

The contest is between the mother and the father of the minor child who was born on 25.02.2016. The mother of the child has filed a petition under Section 25 of the Guardian and Wards Act, 1894, praying for the custody of the child. The mother is serving as a Govt. teacher in a senior secondary school. Both the parents are litigating for

quite some time.. The Guardian Judge after considering various aspects of the matter has found that for the physical, mental and emotional growth of the minor child, the mother is the appropriate person who should be in the custody of the child. It has also come on record that the mother of the minor child resides with her parents. Her brother also has two kids of the same age.

Learned counsel for the petitioner contends that in the absence of an application for interim custody the court erred in granting the same. He further contends that the child is in his custody since 08.09.2018.

Per contra, Sh.Behl, learned senior counsel while drawing the attention of the court to the order dated 13.10.2020 passed in CRWP-4751-2020 has submitted that the Court has decided the interim prayer for the custody of the child in view of the direction given by the High Court. The operative part of the order dated 13.10.2020 is extracted as under:-

“The petitioner-Isha Rani, stated to be aged 33 years, has filed the present criminal writ petition *inter alia* with a prayer for issuance of a writ, especially in the nature of habeas corpus for seeking custody of minor son Priyansh (date of birth 25.02.2016) aged four years to the petitioner being mother of minor child who has been detained by respondent No.4 against her wishes.

Records of the case show that on 13.07.2020, notice of motion was issued. Thereafter, on 05.08.2020, directions were given to the State, to serve the notice upon respondent No.4. On 7.09.2020, Mr. Dinesh Kumar respondent No.4 had appeared in person and had sought time to engage counsel.

Today, Mr. Bipan Ghai, Sr. Advocate assisted by Mr. Paras Talwar, Advocate, appears on behalf of respondent No.4.

Learned State counsel, on instructions

from Isha Rani-petitioner, submits that it is a matter of fact that petitioner filed a petition under Section 25 of Guardian and Wards Act, for custody of the minor Son in March 2019, which is registered as GW/155/2019. Copy of the said petition is appended as Annexure P1. Learned counsel however submits that inspite the petition having been filed in the year 2019, till date, no significant progress has taken place. He submits that the petitioner had not been able to meet her child and therefore, was constrained to file the present petition.

Reply on behalf of respondent No.4 has been filed. The petition is contested on merits and in the reply, it has been *inter alia* submitted in para 6, that the present petition seeking custody, is just to arm twist the answering respondent into settlement. It is submitted that once the petition under Guardianship Act, has been filed, the present petition is abuse of process of law.

In view of the peculiar facts and circumstances of the case as noticed above, this Court deems it appropriate to dispose of the criminal writ petition with the following directions:-

i) The Court under the Guardian and Wards Act, assigned the case GW/155/2019, is directed to take up the matter on 30.10.2020 (the date already fixed) through video conferencing, if the physical Court proceedings are not feasible.

ii) In the peculiar facts and circumstances of the case, two opportunities each, be granted to the petitioner as well as the respondent No.4 to make their submissions regarding the interim prayer for the custody of the child. It will be appreciated if the proceedings are concluded, expeditiously, maximum within a period of one month i.e. by 30.11.2020.

iii) Both the parties are directed to co-operate with the proceedings as aforementioned.

With the above observations the present criminal writ petition is disposed of.”

He further submits that as per Section 12 normally the custody of a child below the age of 5 years is to be granted to the mother. He submits that on the date the order was passed, the child was below 5 years of age.

It may be noted here that the child will turn 5 years old on 25.02.2021.

Section 12 of the Guardians and Wards Act, 1894, enables the Court to pass interlocutory order for production of the child and his interim protection. Section 12 is extracted as under:-

“12. Power to make interlocutory order for production of minor and interim protection of person and property.

—(1) The Court may direct that the person, if any, having the custody of the minor shall produce him or cause him to be produced at such place and time and before such person as it appoints, and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper.

(2) If the minor is the female who ought not be compelled to appear in public, the direction under sub-section (1) for her production shall require her to be produced in accordance with the customs and manners of the country.

(3) Nothing in this section shall authorise—

(a) the Court to place a female minor in the temporary custody of a person claiming to be her guardian on the ground of his being her husband, unless she is already in his custody with the consent of her parents, if any, or

(b) any person to whom the temporary custody and protection of the property of a minor is entrusted to dispossess otherwise than by due course of law any person in possession of any of the property.”

From the reading of Section 12, it is apparent that it does not envisage any separate application. Still further, the parties contested the litigation in CRWP-4751-2020 referred to above and the Presiding Officer of the Court under the Guardians and Wards Act, 1894, was specifically requested to pass an interim order after considering various aspects of the case. It is not in dispute that the order in question has

been passed after granting an opportunity to the petitioner. Still further, the trial court has also granted visitation rights to the petitioner. As regards the argument of learned counsel that the child is in custody of the father since 08.09.2018, it may be noticed that the child is of a very tender age. At this stage, the child is required to be in the company of mother for his overall growth. Still further, the interest of the child is of paramount consideration. In the present case, the Guardian Judge has passed the order after considering various aspects of the matter. In absence of perversity this Court while hearing a revision petition cannot interfere. Hence, no ground to interfere is made out.

Dismissed.

24.02.2021

rekha

Whether speaking/reasoned

Whether Reportable

Yes /No

Yes / No

(ANIL KSHETARPAL)
JUDGE