

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

CR-2579-2022 (O&M)

Date of Decision: December 16, 2022

Rahul

...Petitioner

V/S

Shalini

...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Pankaj Mahavir Chauhan, Advocate
for the petitioner.

Mr.G.C.Shahpuri, Advocate
for the respondent.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 04.05.2022 passed by learned Addl. Principal Judge, Family Court, thereby, allowing the application filed by the respondent qua interim custody of the minor son of the parties to the lis.

Initially, respondent-Shalini had filed the petition under Section 6 of the Hindu Minority and Guardianship Act, 1956, thereby, seeking custody of the minor son, namely Viraj, from the petitioner-husband Rahul.

Therein, an application for seeking interim custody was filed by respondent-Shalini.

The facts, as culled out, from the pleadings of the parties, are that petitioner-Rahul and respondent-Shalini (as making appearance in the

present petition) got married on 05.02.2018 and from their wedlock, a son, namely Viraj, was born on 06.03.2020. Although, there are allegations and counter allegations about bad behaviour and conduct of both the petitioner as well as the respondent, as spelt out from the pleadings, but it also reflects that parties are residing separate, since December 2020.

Thereupon, the petition under Section 6 of the Hindu Minority and Guardianship Act was filed by Shalini against her husband Rahul, thereby, seeking custody of minor child Viraj, when he was 1 year 7 months old. During the pendency of the aforesaid petition, interim custody was granted to mother-Shalini, vide impugned order. However, besides the same, visitation rights were also given to father-Rahul and detailed terms to facilitate the interaction of the child with the father, were also made by the Court below.

Feeling aggrieved by the aforesaid order of interim custody, father-Rahul has filed the present petition.

In pursuance of the notice issued, respondent-mother Shalini had made appearance.

Counsel for the parties heard.

Amidst marital discord, there is unfortunate dispute between petitioner-husband and respondent-wife, with regard to handing over the custody of minor child Viraj. In a custody tussle, each case has to be decided on its own peculiar facts and circumstances, but however, underlying paramount consideration, is the welfare of the minor child. What is welfare of the child depends upon several factors. A custody dispute involves human issues, which are always complex and

complicated. There can never be a straight jacket formula, even to adjudicate the question of interim custody.

Parties to the lis have raised allegations and counter allegations regarding bad behaviour and conduct of each other. Suffice to consider the same, but there is no need to dilate it further, at this stage, lest it may have impact upon the final outcome of the case. The minor child, namely Viraj, is less than 5 years of age. At the time, when the petition for seeking guardianship was filed, the child was 1 year and 7 months old. Now, he is about 3 years old. However, he requires love and affection and proper care, which is normally expected from the mother.

Section 6 of the Hindu Minority and Guardianship Act is of seminal importance. It reiterates Section 4(b), vis-a-vis, definition of '**guardian**' and again clarifies that guardianship covers both the persons as well as the property of the minor; and then states that the father and after him the mother, shall be the natural guardian of a '**Hindu**'. Having said so, it immediately provides that the custody of the minor who has not completed the age of 5 years shall ordinarily be with the mother. This provision is in the nature of an exception to what has been generally prescribed, in the earlier portion of the Section. Meaning thereby, the aforesaid proviso places onus upon the father to prove that it is not so in the welfare of the infant child to be placed in the custody of his/her mother.

In this context, although, learned counsel for the petitioner has assiduously submitted that the mother is not suitable to have custody as she has no love and affection, but however, at present, there is no such material to so spell out, coming on record. Learned counsel for the petitioner

submits that the petition for seeking custody has been filed after about gap of 10 months, after parting ways. May it be so, as noted above, but this *ipso facto*, does not challenge the bonafides, on the part of the mother. Even though, indulgence of the respondent in the litigation against the petitioner has been stated to be there, but however, this initiation of litigation, shall also not be 'sufficient reason' to doubt the onerous duty of the mother to look after the minor child. Paramount consideration, at this stage, is the welfare of the child.

Petitioner-father is stated to be working in a private sector, so he steps out of the house, to follow his avocation and as such, may not be having ample time to look after the minor child. Though, it is pointed out by learned counsel for the petitioner that the petitioner's parents and other family members are there to look after the minor child and more particularly, there is wife of younger brother of the petitioner, to take care of the minor child, but however, other family members of the either side, cannot take place of father or mother, so far as, taking care of the minor child is concerned. The respondent is staying with her parents and she can provide ample time to look after the welfare of the minor child.

In view of the above, learned Addl. Principal Judge, has appropriately, as per the demand of the situation, given the interim custody to the respondent-mother and at the same time, it also ensured that minor child has good interaction with the father and therefore, had granted visitation rights, while making arrangement, to facilitate the manner of interaction, to be so carried out.

Thus, the impugned order with regard to the handing over the

interim custody to the mother (respondent), calls for no interference, by way of present petition and as such, the present revision petition, sans merit and is hereby dismissed.

However, the aforesaid observations are circumscribed only for the purpose of making purely temporary arrangement, considering the welfare of the child and therefore, learned Addl. Principal Judge, Family Court, shall proceed further to decide the main petition, after the parties adduce evidence, without being influenced by any observation, made herein above.

December 16, 2022
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No