

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

FAO-945-2021

Date of decision:- 02.08.2022

Khushboo Garg

...Appellant

Vs.

Ankur Aggarwal

...Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Mr. Gaurav Chopra, Sr. Advocate with
Mr. Anurag Chopra, Advocate and
Ms. Himani Jamwal, Advocate
for the appellant-wife.

Mr. Anil Malhotra, Advocate
for the respondent-husband.

Ritu Bahri, J.

By way of filing the present appeal, the appellant-wife is seeking setting aside of impugned order dated 09.07.2021 passed by Principal Judge, Family Court, Hisar, whereby application filed under Section 26 of the Hindu Marriage Act, 1955 (for short 'Act 1955') by the respondent-husband was allowed and custody of the minor-Divyam Aggarwal was given to the respondent-husband

Brief facts of the case are that the appellant was married to the respondent according to Hindu rites and ceremonies at Hisar on 04.03.2016. The appellant-wife is a Software Engineer and is permanently employed at Pune, Maharashtra. Out of this wedlock, the minor child Divyam Aggarwal was born at Hisar on 14.01.2017 (A-1). However, the appellant left the

company of the respondent and returned to her native place at Hisar on 17.12.2019. The respondent admitted his son in Small Wonder School . However, on 16.04.2020, the appellant took Divyam Aggarwal forcibly with her despite resistance from school administration. Hence, the above application was filed by the respondent, which was allowed, vide impugned order dated 09.07.2021 on the ground that the appellant took away Divyam Aggarwal forcibly from the school. It was the respondent who admitted Divyam Aggarwal in school. The minor was deprived of his initial education.

The appellant approached this Court and on 14.09.2021, the child Divyam Garg was ordered to remain in the custody of the appellant-mother. On 21.09.2021, the respondent-husband was allowed to meet the child once a week for two hours. On 16.12.2021, this Court observed that both the parents shall meet counsellor/psychologist in Delhi for the emotional needs of the child and will submit the report on the next date of hearing. On 12.01.2022, this Court passed the following order:-

“Pursuant to the order dated 16.12.2021, both the parties had taken their child before Psychologist/Counsellor and they have placed a report dated 07.01.2022 of A.C. Verma, Consultant Psychologist of Pt. Deen Dayal Upadhyaya, Institute for the Physically Handicapped.

As per this report, the intelligence of the child is found clinically within average limits. However, the child can be managed with proper parenting. The age of child is five years. Both the parties have appeared virtually today.

Keeping in view the Covid situation, the respondent father- Ankur Aggarwal can meet the child virtually and in the meantime, both the parents independently without the presence of the child can also virtually interact with each other for the concept of custody and mutual divorce. It is expected that the

emotional/financial needs of the child will be taken care by both the parties.

List on 22.02.2022.”

On 22.02.2022, the a direction was given to the parties to stay in Chandigarh from 28.02.2022 to 04.03.2022 to make the child more friendly and come to the Court everyday from 10 a.m to 5 p.m so that the child can meet his father. Parties were then directed to remain present in the Court on the next date of hearing.

On 20.04.2022, this Court was informed that there is no chance of amicable settlement between the parties and the matter was kept for 04.05.2022 for final arguments.

Today, respondent engaged new counsel i.e Mr. Anil Malhotra, Advocate who argued the matter at length. He argued that before the Family Court, the mother i.e appellant was proceeded ex parte. Learned counsel for the respondent, contended that the appellant had taken away the child forcibly from the school, which shows the behaviour of the mother was not responsible. Thus, the interim custody of the child be given to the respondent-father, as granted by the Family Court. He has referred to proceedings initiated under Section 9 of the Hindu Marriage Act, 1955 (A-7) whereby it has been stated that the child was selected for the admission in OP Jindal Modern School Hisar. The Fee of the minor child to the tune of Rs.48,500/- was also deposited. A request was also made to the learned SDM to recover the minor child urgently and handover his custody to the respondent.

Reference has further been made to order dated 15.01.2021 (A-8) to show that the summons sent to the appellant-wife had been received back unserved with the report of refusal through her mother. The appellant was

not interested to contest the petition and was thus proceeded ex parte. Thereafter, an application was made for setting aside ex parte proceedings and to engage a counsel to contest the petition. The same was allowed and the ex parte proceedings were set aside, vide order dated 29.01.2021 (A-9). The matter was adjourned for 12.02.2021 for presence of parties for reconciliation proceedings. However, the appellant along with minor child did not appear for the next few dates. This act of appellant showed that she did every possible act to delay the proceeding and to procure her safe absence from the Court proceedings. The respondent was again proceeded ex parte, vide order dated 12.04.2021 (A-16) . Thereafter, the case was adjourned time and again due to COVID 19 situation.

Learned counsel for the respondent has vehemently argued that the appellant has evaded to appear before the Court below time and again. She has never appeared with the child. In this backdrop, the interim custody of the minor child was rightly given to the respondent.

Heard learned counsel for the parties.

A bare perusal of impugned order shows that initially the husband and wife shifted shifted to Pune where some differences crept in between them. The appellant-wife left the company of her husband and returned to her native place at Hissar on 17.12.2019. The respondent also returned back to Pune and thereafter got his son admitted with Small Wonder School. He was regularly attending the school till 16.04.2020 when the appellant-wife visited the school and abruptly took Divyam Aggarwal forcibly with her despite resistance from school administration. Hence, the petition was filed by the respondent for restitution of conjugal rights and also for custody of minor child Divyam Aggarwal.

The appellant has now approached this Court seeking custody of the minor child, as the custody of the child was given to the father i.e respondent, vide impugned order dated 09.07.2021.

The parents in the present case are well educated person, as the appellant is a Software Engineer and the respondent was working as Financial Consultant. The child was staying with the mother i.e appellant. The child is about 05 years of age. An attempt was made by this Court to settle the dispute amicably with respect to custody of the child and visitation rights. The parties had taken the child before Psychologist/counsellor. A report dated 07.01.2022 of A.C. Verma, Consultant Psychologist of Pt. Deen Dayal Upadhyaya, Institute for the Physically Handicapped was also received. As per this report, the intelligence of the child is found clinically within average limits. However, the child can be managed with proper parenting.

After going through the facts of the case, as far as respondent-father is concerned, he has taken every steps to take care of his child. He got his son admitted, which is not in dispute despite the fact that the appellant had left his company. On the other hand, the appellant-mother evaded her appearance time and again before the Court below after taking the son forcibly from the school. Even if the custody of the child is with the mother-appellant since 14.09.2021, her behaviour does not show that she can take the benefit of her own wrong by keeping the custody of the child. She does not seem to be a matured lady. The child need emotional support from both the parents. The respondent was taking care of his son in a very responsible way and thus, the custody of the child should be with the father. The learned Court below has rightly given the custody of child to the father,

who was taking care of the child from the beginning when the appellant left the company of her husband.

Accordingly, the petition is dismissed. The interim custody of the child be handed over to the respondent, within a period of 15 days from the date of receipt of certified copy of this order.

(RITU BAHRI)
JUDGE

02.08.2022
G Arora

(ASHOK KUMAR VERMA)
JUDGE

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