

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

1164

FAO-8217-2014

Date of decision : 04.08.2022

Hanuman

Appellant

V/S

Lalita Devi

Respondent

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

Present: Mr. J.P. Sharma, Advocate for the appellant.

RITU BAHRI, J. (ORAL)

The appellant-husband has filed the present appeal against order dated 27.08.2014 passed by learned Additional District Judge, Narnaul whereby the petition filed by the respondent-wife under Sections 7, 9, 10, 12 and 25 of the Guardians and Wards Act, 1890 (for short 'the 1890 Act') for custody of her minor son-Sumit was allowed.

A brief facts of the case are that the marriage between the parties was solemnized on 02.11.2008 as per Hindu rites and ceremony in Village Chadhwana, Tehsil Matanhale, District Jhajjar. From this wedlock one male child namely Sumit was born on 07.05.2010. The marriage did not work and the parties started living separately since July, 2013. The minor child-Sumit stayed with the appellant-husband. Thereafter, the respondent-wife filed a petition under Sections 7, 9, 10, 12 and 25 of the 1890 Act for custody of her minor son-Sumit which was allowed by learned Additional District Judge, Narnaul vide impugned order dated 27.08.2014. Aggrieved against the said order the appellant-husband has filed the present appeal.

A perusal of file shows that vide order dated 01.10.2014 dasti notice was ordered to be issued to the respondent. Order dated 28.10.2014 shows that dasti notice was duly served upon the respondent. Thereafter, on 09.12.2014 learned counsel for the appellant prays for time to ascertain the fact whether the execution proceedings have been initiated by the respondent-wife or not. On 20.01.2015 when this appeal was admitted, it was observed that no notice of any execution proceedings has been received by the appellant.

In the present case neither the respondent-wife, after being served in the year 2014, has put in appearance in person or through counsel nor any execution proceedings were initiated by her. The minor-Sumit staying with the appellant-father since his birth and as of today he is more than 12 years of age, studying in the 5th Standard. Moreover, the custody of the minor is given to the mother under Section 6 of the Hindu Minority and Guardianship Act, 1956 only when the child is below 05 years of age.

In view of above, no ground is made out for giving custody of minor-Sumit to the respondent-mother. Accordingly, the present appeal is allowed and impugned order dated 27.08.2014 passed by learned Additional District Judge, Narnaul is hereby set aside.

(RITU BAHRI)
JUDGE

04.08.2022
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(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No