

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

CR-3010-2021

Date of decision: 21.01.2022

Pranshu @ Priyanshu

.....Petitioner

versus

Sunita

.....Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Vinod Ghai, Senior Advocate with
Mr. R.K. Doon, Advocate
for the petitioner.

Mr. Vivek Khatri, Advocate
for the respondent.

FATEH DEEP SINGH, J.

This civil revision petition with the aid of Article 227 of the Constitution of India filed by the husband-Pranshu @ Priyanshu, seeks setting aside of order dated 18.11.2021 (Annexure P-4) passed by the Principal Judge, Family Court, Hisar Camp at Hansi, by virtue of which, the Court below has allowed custody of the minor child to the mother-Smt. Sunita, then applicant, now respondent.

Heard counsel for the parties and perused the records.

Out of wedlock between Sunita (wife) and Pranshu @ Priyanshu (husband), a minor son, namely, Dharpaney, was born to the couple, who at the time of filing of the application for interim custody was aged around 02 years and 05 months. After estrangement, the mother/wife filed a petition under the Hindu Minority and Guardianship Act as well as Guardianship and Wards Act (in short 'the Act') in which an application for interim custody of child was also moved. It is claimed by the mother that the child being a minor, breast-fed, she is entitled to have the custody of the child and which the husband has stoutly opposed that the welfare of the child is of paramount importance and the wife having no source of income would be unable to bring up and raise the child. It is in these circumstances, the impugned orders have come about.

It is by virtue of Section 6 (a) of the Hindu Minority and Guardianship Act, it has been provided that custody of a minor who has not completed the age of 05 years shall ordinarily be with the mother and which could not be displaced by counsel for the either sides and so is the law laid down in judgments titled as 'Roxann Sharma versus Arun Sharma' 2015(4) AIR Bom.R 87; 'Mukul Chauhan versus Neha Aggarwal' 2019(4) R.C.R. (Civil) 342; 'Kulwinder Singh Kalra' 2019(2) R.C.R. (Civil) 813; 'Pallavi

versus Nand Kishor alias Naveen (P&H)' 2018(4) R.C.R. (Civil) 136; 'Mandeep Kaur versus State of Punjab (Punjab and Haryana)' 2021(3) R.C.R. (Civil) 451; 'Dr. Rajneesh Sidhu versus Dr. Navneet Kaur (P&H)' 2020(1) R.C.R. (Civil) 942 and 'Ramita Rani versus State of Punjab' 2021 (2) R.C.R. (Civil) 299.

It is not in any manner put to question that custody of a child is a highly sensitive matter that needs to be considered taking into account each and every aspect of the factual scenario. Admittedly, the husband is able bodied having independent source of income, whereas, the wife does not has her own source of income but at the same time, keeping in view the age of the minor, who is growing and is of very sensitive age, motherly love, affection and rearing is also very important. The Court below has considered at length the ratio laid down in judgment titled as 'Jayant Ganguli 2008(7)' S.C.C. 673 and has rightly considered that it is the primary duty of this Court to see the welfare of the child in determining the question of custody. No doubt, the scales of better financial position tilts towards the husband but at the same time, no amount of money or wealth can replace motherly love. This Court had anxious moments while considering such a sensitive issue before it and having regard to the totality of the

circumstances of each of the parties, since, the child can be better brought up by the mother as the husband who admittedly is carrying on his avocation, may not be able to devote much time and energy and it would be in the best interest of the child if both of them are assigned the task of bringing up the child.

This Court feels that keeping in view the very tender age of the child, his custody needs to remain with the mother so that she is able to look after the child and give her immense love and affection to the child but to ensure that there is balanced growth of the child and he does not miss his fatherly love as well, it would be in the fitness of things, if the custody of the child is ordered to be handed over to the mother and the father be granted visitation rights twice in a month, for 04 hours, on each occasion, at a common place agreeable by both the parties in Tehsil Narnaul, the area where the wife resides. However, at the same time, it be ensured that visitation rights do not interrupt with the study of the child and there is free access to the father who will ensure due protection of the child during that period. At the same time, father would be under obligation to bear the upkeep and educational expenses of the child as well. The custody of the child be handed over immediately to the mother.

The present petition, in light of the same, stands disposed off with this modification to the impugned order.

21.01.2022
Neha

(FATEH DEEP SINGH)
JUDGE

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