

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

CR-3508-2021 (O&M)

Date of decision: 14.12.2022

Saawan Kumar

....Petitioner

Versus

Sweety

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sapan Dhir, Advocate for the petitioner

Mr. Akashdeep Singh, Advocate for the respondent

ANIL KSHETARPAL, J (Oral)

1. The petitioner herein is the father of the girl child, now aged about 5 years. Keeping in view the welfare of the child, the Family Court has ordered that the custody of the female child is required to be handed over to the mother. This revision petition has been filed challenging the correctness of the aforesaid order.

2. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

3. Learned counsel representing the petitioner contends that the original petition under Section 25 of the Guardians and Wards Act, 1890, was filed by the petitioner for the custody of the child. On the intervention of the respectables, the custody of the child was handed over to the petitioner. Accordingly, he filed an application for permission to withdraw the said petition. The same was permitted to be withdrawn on 02.09.2021, however, on the same day, a counter claim by the respondent was permitted to be filed.

4. Learned counsel representing the petitioner contends that such counter claim does not fulfill the requirements of the plaint as contents are neither verified nor supported by an affidavit. He further contends that the child is now studying in Bombay, whereas, the mother is residing in a small village in Haryana.

5. On the other hand, learned counsel representing the respondent submits that before the petitioner was permitted to withdraw the petition, a counter claim was filed, which is deemed to be a plaint in a cross suit. He submits that the mother is in a better position to take care of the child, particularly when the petitioner is in active service of Indian Air Force, presently posted at Nagaland and the child is living with the grandparents.

6. The Family Courts have been created in order to decide the disputes while taking a pragmatic view of the matter. The hyper technicalities of the law are required to be avoided and a holistic approach must be adopted while dealing with such sensitive matters.

7. Learned counsel representing the petitioner does not dispute the fact that the petitioner is presently posted in Nagaland. When the application was filed, the child was only 3 ½ years old. As per the provisions of the Guardians and Wards Act, 1890, ordinarily the mother of a child below the age of 5 years is entitled to the custody unless there are facts which dissuade the court from handing over the custody to her. The respondent has undertaken to provide the best educational facilities

to the child.

8. Keeping in view the aforesaid facts, no ground to interfere is made out.

9. Hence, dismissed.

10. All the pending miscellaneous applications, if any, are also disposed of.

14.12.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE