

In the High Court of Punjab and Haryana at Chandigarh

114

CR-231-2023 (O&M)

Date of Decision: January 13, 2023

SUMIT VERMA

.....PETITIONER

VERSUS

JYOTI SONI AND ANOTHER

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr.Ajay Kumar Kansal, Advocate
for the petitioner.

Mr. Deepak Gollen, Advocate
for the respondent No.1.

ANUPINDER SINGH GREWAL, J (ORAL)

The petitioner has challenged the order passed by the Family Court on 03.01.2023 whereby the petition preferred by the respondent under Section 25 of the Guardianship and Wards Act, 1890 read with Section 6 of the Hindu Minority and Guardianship Act, 1956 (for short, 'the HMG Act') for custody of the child has been allowed.

Learned counsel for the petitioner submits that the impugned order has been passed without application of mind inasmuch as it does not set out the reasons which are necessary for determining the issue of custody of child. The child has been abandoned by the mother and the father is bringing up the child. The father has adequate resources to take care of the child. He also submits that Section 6 of the HMG Act provides that the custody of a child under the age of 05 years to the mother should not be mechanically applied as it is the welfare of the child which has to be taken into account by the Courts. In

support of his submissions, he has relied upon the judgment of this Court in the case of **Mukta Agarwal versus Vineet Gupta, 2020 (1) RCR (Civil) 94**. The petitioner is a law graduate and has sufficient means to bring up the Child. The child is presently studying in a play school by the name of Kids Play Garden at Jind.

Heard.

The petitioner and respondent/wife are stated to have developed matrimonial differences and are residing separately since 09.01.2022. The dispute is with regard to the interim custody of the elder son namely Viyansh, whose date of birth is 25.04.2020. The second son is stated to have been born on 06.01.2022 and is in custody of the mother since his birth which is not the subject matter of dispute between the parties. The minor child Viyansh was stated to have been residing with the parents till the birth of the second son. It is rather unfortunate that after the birth of a child parents have started living separately. The younger child is with the mother while the custody of the elder child is stated to have been forcibly taken by the father at the time of birth of the second child.

In response to the query of this Court about the education of the respondent-wife, learned counsel for the respondent submits that she is a Post-Graduate in Political Science and, therefore, is capable of proper upbringing of the child. He also submits that the minor child would be put up in a good play school at Rewari.

It is stipulated in Section 6 of the HMG Act that ordinarily the custody of a child below the age of 05 years is to be with the mother. The word

'ordinarily' does not make it mandatory. However, departure from the same would be done in only exceptional cases. There is no denying the principle of law laid down that the welfare of the child would be of paramount importance and the convenience of the parents would not be of much relevance while deciding the issue of custody of the child.

In the instant case, the child is below 03 years of age and the infant brother is residing with the mother. The mother is an educated lady and, therefore, it would be difficult to deviate from the mandate of Section 6 of the HMG Act. The child would require the love and affection of a mother. Therefore, I am satisfied that it would be in furtherance and welfare of the child if the custody is granted to the mother. The judgment of this Court in the case of **Mukta Agarwal versus Vineet Gupta** (supra) is distinguishable on facts and not applicable to the instant case inasmuch as in that case, the issue was with regard to the custody of the minor daughters, who were aged 05 and 07 years. This Court after interacting with both the children, who were residing with the father was of the opinion that the welfare of the children would be best served if the custody is maintained with their father.

In the instant case, the child is less than 03 years of age and interaction with him about whom he wants to reside would not be of much use.

Consequently, I do not find any merit in this petition, which stands dismissed. The parties shall appear before the Family Court, Rewari on 19.01.2023 and the Family Court would obtain the services of a Counsellor, who would ensure smooth transfer of the custody of the child to his mother.

The petitioner and his mother would be permitted to meet the minor child every fortnight for two hours at mutually agreed place as directed

in the impugned order. However, the petitioner would also be allowed to interact with the child twice a week through whatsapp/video call at a time to be mutually agreed between the parties. In the absence of mutual agreement, this interaction would take place at 05.00 pm on every Tuesday and Thursday.

(ANUPINDER SINGH GREWAL)
JUDGE

January 13, 2023
A.Kaundal

Whether speaking/ reasoned	:	Yes/No
Whether Reportable	:	Yes/No