

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

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**FAO-1660-2019 (O&M)
Decided on:17.05.2023**

Amarjeet Singh

...Appellant

Versus

Baljeet Kaur and others

...Respondents

**CORAM: HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGORE**

Present: Mr. G. S. Nahel, Advocate
for the appellant.

RITU TAGORE, J.

1. Appellant-petitioner, the father, has challenged judgment dated 23.10.2018 passed by learned District Judge Family Court, Moga (hereinafter referred to as the 'Guardian Court'), whereby petition filed by him under Section 25 of Guardian and Wards Act, 1890 (hereinafter referred to 'the Act') seeking custody of his minor daughter 'RK' has been dismissed. Instead, the Court granted him monthly visitation rights of one hour, to be exercised within the school premises.

2. Relevant facts required for adjudication are as hereunder-

The appellant-petitioner (husband) and respondent No.1 (wife) entered into matrimony on 16.12.2012 following Sikh rites and customs. The marriage was consummated and they were blessed with a daughter referred to as 'RK' born on 26.11.2013. However, matrimonial dispute arose between the parties, leading respondent No.1 to leave the society of the

appellant-petitioner and take up residence at her parental home at village Rama, District Moga.

3. According to the appellant-petitioner, he tried his best to bring back respondent No.1 to his conjugal fold. However, she intentionally refused to join his society and deserted him without any reasonable cause. With the intervention of respectable individuals, the matrimonial dispute was resolved through a compromise reached between the parties. According to the terms of compromise reached between the parties, it was settled that appellant-petitioner would retain the custody of the minor child and respondent No.1 received a sum of Rs.14,40,000/- towards permanent alimony etc. Both the parties filed a joint petition under Section 13-B of Hindu Marriage Act, 1955 and in the joint statement on first motion recorded on 08.10.2015, respondent No.1 confirmed and acknowledged the fact of handing over the custody of the child to appellant-petitioner at the time of recording the statement on second motion.

4. Subsequently, it is alleged that respondent No. 1 changed her stand and raised dispute regarding the custody of the child. To prevent further legal complications and to resolve the conflict and to facilitate their divorce proceedings; additionally, considering the fact that child was very small and still being breastfed by the mother, with the intervention of the elders and family members, appellant-petitioner agreed to temporarily hand over custody of the child to respondent No.1 as an interim measure. The arrangement was based on a verbal understanding between him and respondent No.1, with the understanding that respondent No.1 would return custody of the minor child to appellant-petitioner after a year and a half. Moreover, respondent No.1 also assured that she would provide the minor child with best care, facilities and nurturing environment. Trusting

respondent No.1's commitment, appellant-petitioner handed the child to the respondent No.1. Statements of the parties at second motion were recorded accordingly and decree of divorce was granted under Section 13-B of Hindu Marriage Act, 1955 dissolving the marriage of the parties.

5. Appellant-petitioner pleaded that respondent No.1 failed to honour her oral commitment and did not hand over custody of minor child as promised. Instead, she handed over custody of the child to respondents No.2 and 3, her parents. Respondent No.1 is working as a staff nurse at Mohali. She is alleged to have neglected the child, who is living away from the care and custody of the mother-respondent No.1. It is alleged that parents of respondent No.1 have enrolled the child in a small and sub-standard school, and respondent No.1 has not provided a good standard of living to the child. The appellant-petitioner, claiming to be the biological father of the minor child, asserted strong interest in the welfare of the child. Further pleaded that he has immense love and affection for the child and for that reason has refrained from entering into a second marriage. Furthermore, the appellant- petitioner claimed that he has all wherewithal to provide best education and other facilities for the overall growth and progress of the child, as such future of the child would be brighter and more secure in his custody as compared to that of the respondents. On the above premise, it is pleaded that custody of the child be handed over to him. The appellant-petitioner also maintained that his earlier petition for custody of the child was dismissed on the ground of lack of territorial jurisdiction with the concerned Court.

6. Respondents, on notice filed the response and pleaded that the appellant-petitioner has concealed material facts from the Court and due to immoral conduct of the appellant-petitioner; led to dissolution of the

marriage between appellant-petitioner and respondent No.1 as such he cannot be given custody of the child. Respondent No. 1 is a staff nurse and has good source of income to maintain the child, whereas appellant-petitioner lacks financial capability to rear the child and has never even maintained the child and respondent No.1 during the period they remained together. It is pleaded that appellant-petitioner voluntarily relinquished the custody of the child and suffered a statement in said regard before learned District Judge, Sangrur on 04.05.2016 and entrusted the custody and responsibility of the child to respondent No. 1 and even declined to provide maintenance to minor child in future and any share in his property. Respondent No.1 further asserted that she was kept uninformed about the custody of the child and was led to believe that sister of the petitioner would adopt the child. However, she later on discovered that appellant-petitioner was attempting to sell the child to her sister. As a result, after her first statement recorded in a petition under Section 13-B of Hindu Marriage Act, 1955, she refused to hand over custody of child. Subsequently, matter was again resolved and appellant-petitioner voluntarily handed over custody of child to respondent No.1. Statements of both the parties in said regard were recorded, and decree was passed, accordingly. Respondents denied the averments raised by the appellant- petitioner regarding only interim custody of the minor child being given at the time of recording of statements at second motion. It is asserted that the appellant-husband was not entitled to back out from the terms and conditions as finally settled.

7. Respondent No.1 further asserted that she is looking after the minor child with the help of respondents No.2 and 3-parents and is providing best of education and all necessary facilities to the child to ensure her optimal upbringing. It is claimed that future of the child is secure under

her vigilant care and custody. On the above broad assertions, respondents prayed for dismissal of the petition.

8. On the basis of the pleadings, the learned Guardian Judge formulated the following issues:-

“1. Whether petitioner is entitled to custody of minor child 'RK' (DOB 26.11.2013)?OPP

2 Whether petitioner has not come to Court with clean hands, if so, its effect?OPR

3 Whether petition is not maintainable?OPR

4 Relief.”

9. The parties were called to lead their respective evidence. To substantiate his petition, appellant-petitioner Amarjeet Singh appeared as PW-1 and reiterated the version of his petition. To provide aid to his oral account, appellant-petitioner examined Balvir Singh son of Gurdial Singh as PW-2 and Balbir Singh son of Roor Singh as PW-4. Both the witnesses asserted that welfare of the minor is better served under the custody of appellant-petitioner than with the respondent No.1, who lacks any concern or commitment towards the welfare and best interest of the child. Appellant-petitioner also examined Ritu Bala, Senior Law Officer, Max Superspeciality Hospital, Mohali as PW-3 who provided evidence confirming the employment of respondent No.1 as staff nurse in Max Hospital, Mohali. Apart from the oral account, appellant-petitioner also placed on record the documentary evidence i.e. order dated 18.08.2017 passed by learned District Judge, Sangrur (Ex.P-1); judgment and decree dated 04.05.2016 (Ex.P-2 and P-3 respectively), statement of respondent No. 1 recorded on 08.10.2015 and 04.05.2016 in a petition under Section 13-B of Hindu Marriage Act, 1955 as Ex. P-4 and P-5 respectively.

10. To controvert the above, respondent No.1-Baljit Kaur appeared as RW-1 and substantiated the version given by her in her reply by rebutting the stand of the appellant-petitioner. To support her oral account, she tendered certified copy of the statement of appellant-petitioner dated 04.05.2016 (Ex.R-4); copies of her bank statements (Ex.R-1 and R-3); photocopy of receipts of school fee of the minor child (Mark-D to Mark-P).

11. Guardian Judge consolidated issues No.1 to 3 as they were interconnected and on appraisal of the evidence and by making a comparative analysis of the prevailing circumstances between the parties, concluded that welfare of minor daughter is best served by allowing the child to be in the care and custody of the mother-respondent No.1, who has been providing the child with all necessary amenities including good education, besides guiding the minor child to the best of her capability and capacity. Additionally, the child was also receiving excellent support and mentorship of her maternal grandparents (respondents No.2 and 3). On the other hand, Guardian Judge observed that despite asserting a life of celibacy and dedicating himself entirely for the welfare of the child, appellant-petitioner had remarried and even failed to provide any financial support and assistance to the child. He also failed to substantiate his plea of reaching an understanding with respondent No.1 regarding the interim custody of the minor child. As a result, Guardian Judge disallowed the plea of appellant-petitioner for grant of the custody of the minor child as it was not deemed conducive for the welfare of the child. However, granted meeting/visitation rights on monthly basis, enabling him to maintain and nurture filial bond.

12. Being aggrieved with the aforesaid order/judgment dated 23.10.2018, appellant- petitioner has filed the instant appeal.

13. Learned counsel for the appellant urges that there was an oral understanding between the parties that minor child was to remain in the interim care and custody of respondent No.1-mother for another one and a half year until the child grows older. After that period, custody of the minor child was supposed to be transferred to appellant-father. Learned counsel states that the aforesaid material facts have received support from the oral account of the appellant-petitioner and his witnesses that remained unrebutted on record. Additionally, the statement of respondent No.1 recorded on 08.10.2015 (Annexure A-1/Ex.P-4) at the first motion recorded in a petition under Section 13-B of Hindu Marriage Act, 1955 confirms the said agreement. In that statement, respondent No. 1 explicitly got recorded that she had no objection if the child was given in adoption to the sister of the appellant-petitioner.

14. Learned counsel submits that subsequently respondent No.1 reneged from her undertaking and caused a dispute to arise. In an effort to resolve and settle the matrimonial dispute between the parties and to prevent further litigation, the interim custody of the child was given to the respondent No.1, with assurance that she would ensure the well being of the minor child in all aspects during temporary custody with her for a period of one and half year. Learned counsel submits that respondent No.1 failed to fulfil her promise; instead, she entrusted the custody of the minor to her elderly parents.

15. Learned counsel for the appellant-petitioner contends that evidence clearly shows that respondent No.1 is not living with the child and has failed to enroll the child in a good school. The welfare of the minor child has been completely overlooked and neglected by the respondents.

Learned counsel states that the appellant-petitioner is the father of the child

and possesses deep love, care and concern for the child. The best interest and welfare of the child lies with the appellant-father, who has categorically deposed that he cannot imagine a life without his child and wants to spend his entire life with the child for the well being of the child. Furthermore, the appellant-petitioner is capable of providing all the necessary amenities of life and ensuring education of the child as well.

16. Learned counsel submits that the learned Guardian Judge, while deciding the custody issue, failed to adequately consider all these material facts and circumstances in the light of fundamental principles of prioritizing and promoting the welfare and best interest of the child. Learned counsel contends that the findings of the Guardian Judge observing that respondents are more suitable for the welfare of the minor, are a result of misinterpretation of the evidence, based on conjectures and surmises and lacking any substantial basis or logical conclusion. Accordingly, a prayer is made to set aside the findings.

17. We have heard the learned counsel for the appellant-petitioner and have gone through the paper book and photocopy of the record supplied by learned counsel during the course of hearing.

18. It is an admitted position that appellant-petitioner and respondent No.1, have a daughter 'RK' born on 26.11.2013 during their marriage and is currently ten years old. The child resides with her mother-respondent No.1 and her maternal grandparents, respondents No.2 and 3. It is also undisputed that due to matrimonial discord between the parties, they parted their ways and obtained a decree of divorce by mutual consent dated 04.05.2016 (Annexure A-3/Ex. P-2) under Section 13-B of Hindu Marriage Act, 1955.

19. Perusal of the judgment and decree dated 04.05.2016 (Annexure A-3/Ex. P-2 and P-3) dated 04.05.2016 rendered under Section 13-B of Hindu at Marriage Act, 1955 shows that during the recording of the statement at first motion, respondent No.1-mother had initially agreed to relinquish the custody of the child to appellant-father and even consented to the adoption of the child by her sister-in-law. However, at the time of recording of the second motion statement, it was mutually agreed between the parties that custody of the child would remain with respondent No.1-mother. Additionally, both the parties, in presence of District Judge, Sangrur affirmed that they have amicably resolved all their disputes and recorded their statements voluntarily and with free consent. Accordingly, judgment dated 04.05.2016 (Annexure A-3/Ex.P-2) was passed.

20. During course of arguments in the appeal, learned counsel for the appellant-petitioner informs that judgment and decree dated 04.05.2016 has not been challenged by either of the parties including the appellant-petitioner. Therefore, judgment and decree dated 04.05.2016 has clearly attained finality. Appellant-petitioner filed the petition under Guardian and Wards Act on 30.08.2017, seeking custody of the child on the aforementioned grounds as discussed, approximately one year after the decree was passed under Section 13-B of Hindu Marriage Act, 1955 on 04.05.2016.

21. It is a settled principle of law that any issue involving a minor must be examined and resolved solely from the perspective of welfare and best interests of the minor. In dealing with matters concerning a minor, the Court carries a special responsibility and obligation to evaluate the question of custody, guided solely by the paramount concern of welfare of the minor.

The question regarding custody of the minor cannot be decided merely on

the basis of legal rights of the parties. It has to be decided on the predominant criterion of what would best serve the interest and welfare of the minor. In this regard, gainful reference can be made to the observations made by Hon'ble the Supreme Court in **Chandrakala Menon Vs. Capt. Vipin Menon, 1993(2) SCC 6.**

22. In selecting a Guardian, the Court exercises parens patriae jurisdiction and is expected to give due weight to child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings above all physical comfort, moral and ethical values cannot be ignored and they are equally important, essential and indispensable considerations. The desire of the child coupled with availability of a conducive and appropriate environment for proper upbringing together with the ability and means of the concerned parent to take care of the child are few of the relevant factors that have to be taken into account while resolving the issue of custody of minor. It is crucial to adhere to and fully embrace the doctrine of 'best interest' of the child in letter and spirit when resolving the custody battles. In **Rosy Jacob Vs. Jacob A. Chakramakkal, (1973)1 SCC 840** Hon'ble the Supreme Court observed that the object and purpose of Guardian and Wards Act 1890 is not mere adjudication of physical custody of the minor but due protection of the rights of ward's health, maintenance and education. Power and duty of the Court under the Act is to be exercised for welfare of the minor.

23. Upon conducting a comprehensive comparative analysis of the pleadings and evidence of the parties, while considering the prevailing facts and circumstances amongst the parties as well as guiding principles of law, particularly the predominant doctrine of 'best interest of the child', we have arrived at the conclusion that Guardian Judge committed no illegality in

passing the impugned order/judgment dated 23.10.2018. In fact, after careful examination of actual matrix, we firmly believe that retaining the custody of the child RK with respondent No. 1-mother is in the best interest and welfare of the minor child, for the reasons outlined below.

24. Firstly, the appellant-petitioner led no substantive and reliable evidence to support his plea that any oral understanding had been arrived at between the parties regarding interim custody of the child remaining with respondent No.1-mother for about one and a half year and subsequently custody being given to the appellant-petitioner. Perusal of his statement (Annexure A-2/Ex.R-4) recorded on 04.05.2016 clearly indicates that he agreed to unconditionally hand over custody of the minor daughter to respondent No.1-mother, Baljit Kaur, and entrusted her with the responsible for raising the child. He also relinquished his claim for custody of the child and also debarred the mother and child from raising any claims on his property. In his statement, he explicitly recorded that no dispute remained between the parties and also undertook to abide by his statement. The statement of respondent No. 1-mother was recorded separately wherein she acknowledged having received Rs.7,20,000/- from the appellant-petitioner towards her she alimony, maintenance etc. and she accepted the custody and responsibility of upbringing of the minor child. She also undertook not to claim any share in the property of appellant-petitioner, and he (appellant-petitioner) agreed not to claim and seek custody of the minor child. Based on said statements of the parties, judgment and decree dated 04.05.2016, (Annexure A-3/Ex.P-2 & Ex.P-3) was passed, specifically mentioning that the minor child would remain in custody of the respondent No.1-mother as per the agreement between the parties.

25. In the present case, the parties reached an agreement concerning the custody of their minor child, as is evident from their statements recorded on the first and final motions in the petition filed under Section 13-B of Hindu Marriage Act, 1955. From the statements of the parties, it appears that respondent No.1-mother initially agreed to give custody of the child to the appellant-petitioner, however, later on, the parties reached a resolution where respondent No. 1-mother would retain custody of the minor. Statements recorded by the parties at second motion in the petition under Section 13-B Hindu Marriage Act, 1955, do not indicate that custody given to the mother was interim custody, as claimed by the appellant-petitioner. Except the oral account of the appellant-petitioner, there is no other evidence to substantiate the claim of only interim custody being granted to the respondent No.1. Statement of Baljit Singh (PW-4) does not help the appellant-petitioner, as PW-4 was unable to provide any information about the family affairs of the respondent No. 1 and the measures taken by her and her parents in raising the minor. So his statement is insignificant in relation to the allegation of the appellant-petitioner that respondents are not taking proper care of the child.

26. Similarly, statement of Balvir Singh (PW-2) does not contribute anything to the case of the appellant-petitioner. Balvir Singh (PW-2) in his cross-examination admitted that appellant-petitioner is unemployed, while respondent No.1 is employed as a staff nurse. He also admitted that appellant- petitioner has remarried. He could not deny that the minor child is being raised by the respondents. Significantly, appellant-petitioner in his cross-examination admitted that he is unemployed and has remarried after dissolution of his marriage with respondent No.1. He also admitted that respondent No.1 is a staff nurse working at Max Hospital,

Mohali. He has acknowledged the contents of his statement recorded on the second motion in its entirety, which clearly states that custody of the child was to remain with her mother. He admitted that no writing was prepared regarding giving interim custody to the respondent No.1-mother. Thus, there is no convincing evidence or circumstances to support the claim of an oral understanding that the child would remain in interim custody of the respondent No.1-mother and then be handed over to the appellant-petitioner, the father, as raised by him.

27. Addressing the second limb of argument raised on behalf of appellant-petitioner, it is asserted that respondents are neglecting the child and have not enrolled her in a good and reputed school. It has been recorded by the Guardian Judge that the child is studying in Gillco International School, Sector 127, Gillco Valley, Mohali. In fact, during cross examination, appellant-petitioner has admitted that child was previously studying in Royal Convent School, village Dhurkot Nihal Singh Wala. There is no evidence on record that the school in which the child is studying is sub-standard or not upto the mark a per status of the appellant. The appellant-petitioner has failed to present any evidence to suggest that child's physical, mental or psychological growth or development is lacking in any way. Furthermore, no evidence has been brought by the appellant-father on record, such as testimonies from the school authorities, to show that the child was not performing well at school or is having some social or behavioral problem due at to any deficiency in her upbringing. This clearly demonstrates that the respondents are actively ensuring good and holistic growth of the child.

28. Appellant-petitioner has pleaded that he has not remarried solely for the sake of the child and he deeply loves and cares for the child,

and cannot imagine his life without the child and that he is fully committed to provide the best care and education for the child. However, the appellant-petitioner failed to substantiate the aforesaid pleas. In fact, he admitted solemnizing a second marriage. His witnesses have also stated so. The appellant-petitioner educated upto 10+2, admitted to being unemployed, while the respondent No. 1-mother is working as a nurse. He also admitted that in his statement at second motion, it was recorded that child would not claim any maintenance or share from his property. The aforesaid material facts have rather falsified his tall claims of being concerned for the welfare of the child throughout his life. Rather, the evidence shows that he is unwilling to contribute financially for the welfare of the child. Moreover, his averment that he handed over the custody of the child to expedite divorce proceeding by itself exhibits his self interest rather than genuine concern for the child.

29. Overall analysis of the evidence demonstrates that welfare and best interest of the minor child lie with her custody being with respondent No.1-mother and respondents No.2 and 3 (maternal grandparents), who are imparting valuable life experiences and instilling good values to the child for her holistic growth. Further it is important for the minor daughter to have her mother's guidance and support in navigating any specific challenges that may arise in her life. It is to be noted that respondent No.1 has clearly explained that the child till 17.11.2017 was at Royal Convent School, village Dhurkot Nihal Singh Wala but thereafter was studying at Gillco International School, Sector 127, Gilco Valley, Mohali and was being looked after and cared for by respondent No.1 and her parents. The child having successfully adjusted to her current living arrangements, school and surrounding environment and company of her peers and friends, it is not

advisable to disrupt her settled and comfortable environment at this stage as it could have adverse psychological and emotional effects on the child, which would not contribute to her welfare or promote her best interest.

30. Keeping in view the facts and circumstances as above, in our considered opinion learned Guardian Court has correctly upheld the custody of the minor to be retained by respondent No.1-mother while granting visitation rights to appellant-petitioner.

31. Per discussion, findings recorded and direction given by the Guardian Judge are well merited in given factual situation and based on evidence, which calls for no interference. Findings on issues No.1 to 3 are thus affirmed.

32. No other argument has been raised.

33. Appeal is accordingly, dismissed with no order as to cost.

34. Pending miscellaneous applications, in any, stands disposed of.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

May 17, 2023

Rimpal

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