

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

Reserved on :06.12.2023

Date of decision: 16.12.2023

1. FAO-5654-2019 (O&M)

Kamal Maini

....Appellant

Versus

Natasha @ Mona and others

....Respondents

2. FAO-5678-2019 (O&M)

Kamal Maini

....Appellant

Versus

Natasha @ Mona and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE SUMEET GOEL**

Present:- Mr. Amit Jain, Senior Advocate with
Mr. Chetan Slathia, Advocate,
Mr. Anupam Mathur, Advocate and
Mr. Aryaman Thakur, Advocate for appellant(s).

Mr. Sunny K. Singla, Advocate for respondent No.1.

SUDHIR SINGH, J.

This order shall dispose of the above noted two appeals as common questions of facts and law are involved therein.

2. FAO-5654-2019 is directed against the judgment dated 24.05.2019 passed by learned Principal Judge, Family Court, Hoshiarpur, vide which petition under Section 25 of the Guardians and Wards Act, 1890 (for short 'Act') filed by the

appellant-husband seeking custody of minor child, namely, Vivan Maini, was dismissed. However, appellant-husband was granted visiting rights in respect of minor child by imposing certain conditions.

Challenge in FAO-5678-2019 is to the order dated order 27.05.2019 passed by the learned Principal Judge, Family Court, Hoshiarpur, whereby application filed by the appellant for initiating contempt proceedings against the respondents, was dismissed.

FAO-5654-2019

3. The marriage between the appellant-husband and respondent No.1-wife was solemnized on 10.12.2005. Out of the said wedlock, a male child, was born on 19.01.2008. The appellant-husband had filed a petition under Section 25 of the Act, seeking custody of the minor child, namely, Vivan Maini, inter-alia, on the ground that his paramount welfare lies in his parental house and not in the house of his maternal grandparents, where he had/has been living since 2014. The appellant-husband, had pleaded that the health condition of his maternal grandparents was not good as they were suffering from various chronic diseases and even the conduct of his maternal uncle was not good, besides there being no financial resources at the end of respondent No.1-wife. It was further pleaded that the Schools at Ludhiana, impart a quality education as compared to the ones at Hoshiarpur. It was further averred that the child was removed by the respondents from the custody of the appellant on 15.07.2014, when he had been at his shop and

his parents away to Delhi and that as the said act was done without the knowledge and consent of the appellant-husband, the child should be restored to the custody of the appellant-husband. The petition also contained various general allegations as regards the matrimonial differences.

4. Upon notice, respondent No.1-wife appeared and had filed her written statement disputing and controverting the allegations of forcible removal of the child from the custody of the appellant and further leveled the allegations of atrocities committed upon her by the appellant-husband and his family members.

5. On the basis of pleadings of the parties, following issues were framed by the Court below:-

- “1. Whether petitioner is entitled to custody of minor Vivan Maini as prayed for? OPP*
- 2. Whether Civil Courts at Ludhiana has no jurisdiction to entertain and try present case as prayed for? OPR*
- 3. Whether petitioner has not approached the Court with clean hands and suppressed the material facts, if so, its effect? OPR*
- 4. Whether petitioner is stopped by his own acts and conduct from filing present petition? OPR*
- 5. Relief.”*

6. On the basis of evidence adduced by the parties and after considering the rival contentions, trial Court decided issue No.1 in favour of respondents and against the appellant herein. Issues No.2 to 4 were not pressed. Consequently, petition filed by the appellant-husband was dismissed vide the order impugned herein. However, visiting rights were granted to the

appellant-husband after 15 days i.e., on first and third Saturday of every month in the office of Secretary, District Legal Services Authority, Hoshiarpur from 2:00 p.m. to 3:00 p.m. The appellant-husband, was, however, restrained from giving any gift or eatables to the child during such meeting and both the parties were directed to maintain cordial atmosphere during meeting of child.

7. Aggrieved against the aforesaid order, the appellant has preferred the instant appeal.

8. Learned Senior counsel appearing for the appellant-husband has vehemently contended that the minor child is not able to get a proper ambience for his over-all growth in the house of his maternal grandparents. In this regard, he has referred to the pleadings raised by the appellant-husband with regard to the health conditions of the maternal grandparents of the child in the petition before the trial Court and even the very conduct of the maternal uncle of the child. Still further, learned Senior Counsel, has seriously disputed the findings of the trial Court as regards the sound financial capacity of the appellant-husband, inasmuch as it is submitted that the appellant-husband is the only child of his parents and his parents have various movable and immovable properties to their names, which are ultimately to be inherited by the appellant-husband himself and then by the child. It is further submitted that the Court while recording the testimony of the minor child, had found that the child had deposed before the Court a tutored version.

9. The learned Senior counsel for the appellant-husband, has further submitted that respondent No.1-wife had illegally removed the minor child from the custody of the former, when the child was just 6-year old and even she did not bother to honour the interim order dated 09.03.2015 passed by the Court below during pendency of the petition filed by the appellant-husband, whereby, the appellant was allowed to meet his minor son on 15th day of every month from 10:00 a.m. to 12 noon in the School i.e., Toddlers Home Study Hall School, Model Town, Hoshiarpur. It is further submitted that now the child is of around 15-year of age and he can well understand about his welfare and if his custody is granted to the appellant-husband, the appellant would make his all out efforts to give the child a better and bright future.

10. On the other hand, learned counsel appearing on behalf of respondent No.1 while controverting the aforesaid submissions of learned Senior counsel for appellant has submitted that impugned order passed by the Court below is perfectly legal and does not require any interference by this Court.

11. We have heard learned counsel for the parties and gone through the case files.

12. We do not find any merit in the arguments raised by the learned Senior Counsel for the appellant. It is an admitted position that the minor child was about 6 years of age when he was allegedly removed from the custody of the appellant. The minor is now a grown-up child of 15 years of age, which makes

it harder to believe that he will be willing to leave the company of his mother to join the appellant. A lot of water has flown down the bridge since 2014 as there has been almost a complete absence of communication/interactions of minor child with his father and/or grandparents. We have also perused the report of the counselor, in which it has clearly been noticed that minor child did not want to meet his father and/or grandparents. While the appellant-husband has pleaded with utmost vehemence as regards the custody of the child, nothing has been said as to what efforts had been made by him to bring back the respondent-wife.

13. It was found by the trial Court that as the respondent-wife had been meeting all the expenses of child, including his school fee, it could not be said that she was not possessed of the means. It was further found that the literacy rate at Hoshiarpur was better than Ludhiana (where appellant/husband was/is residing), and therefore, the education and well being of the child could better be taken care of by the respondent No.1-wife.

14. Faced with the aforesaid situation, learned Senior counsel appearing on behalf of the appellant confines his prayer to the modification of the impugned order to the extent of visiting rights to the appellant-husband. At this stage, grandfather of the minor also appears in person and makes merciful submission that the appellant is his only son and the minor is the only grandson. He has further submits that ultimately, his property has to be inherited by the minor and

therefore, they should be granted permission to meet the minor child so that they would be able to positively persuade the minor to come back to his parental house and maintain cordial relations with his father and grandparents.

15. In view of the above, the present appeal is dismissed. However, taking into account the totality of facts and circumstances, we are inclined to accept the limited prayer of the learned Senior counsel for the appellant and accordingly, modify the order passed by the trial Court, as regard the visitation rights, as under:-

1. The minor child shall be brought by respondent No.1-wife in the office of the Secretary, District Legal Services Authority, Hoshiarpur on every 1st and 3rd Saturday at 10:30 a.m., and thereafter the appellant and the grandparents of the minor, shall be allowed to meet the minor from 10:30 a.m. till 4:00 p.m.;
2. During aforesaid period, the appellant and the grandparents of the minor may offer the child any gift items and/or eatable as per the desire/choice of the minor child;
3. Beyond the aforesaid stipulated period, no attempt whatsoever shall be made by the appellant and/or the grandparents of the minor to compel either the office of District Legal Services Authority, Hoshiarpur and/or mother of the minor child to produce the minor before the former to meet them;
4. After the aforesaid visitation hours, at around 4:15 p.m., the custody of the minor child shall be handed over to respondent No.1-wife by the appellant-husband.
5. During this period, a cordial atmosphere shall be maintained by the parties and either of them shall

not be allowed to flout any of the conditions/ directions as aforesaid.

6. Needless to say that aforesaid exercise shall be subject to the willingness of the minor child only and he shall not be compelled to do the things against his wishes/desire.

16. Pending application(s), if any, shall also stand disposed of.

FAO-5678-2019 (O&M)

17. Learned Senior Counsel appearing for the appellant contends that in view of the order passed in FAO-5654-2019 aforesaid, the instant appeal has been rendered infructuous.

18. Dismissed as having been rendered infructuous.

19. Pending application(s), if any, shall also stand disposed of.

(SUDHIR SINGH)
JUDGE

(SUMEET GOEL)
JUDGE

December 16, 2023

Mahavir/ds

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