

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

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**CWP-16602-2023 (O&M).  
Date of Decision: 02.08.2023.**

**Pardeep Kaur****...Petitioners****Versus****Union of India and others****...Respondents****CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ**

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Present: Mr. Krishan Kanha, Advocate, for the petitioner.

**VINOD S. BHARDWAJ. J (ORAL)**

The petitioner has approached this Court raising a challenge to the demand of No Objection Certificate from respondent No.3, by the authorities before allowing the petitioner to take her minor child Suraj Sangar Singh along with her to Germany.

Learned counsel appearing for the petitioner contends that the marriage of the petitioner was earlier solemnized with respondent No.3, in the month of May 2018. However, the things did not turn up well. Consequently, the petitioner started residing separately and also filed a petition for divorce in May 2019. She then started living with respondent No.4 and the minor son was born to the petitioner from the loins of respondent No.4 on 30.09.2021 i.e. during the subsistence of her

earlier marriage. The marriage of petitioner with respondent No.3 was dissolved subsequently vide ex parte judgment and decree of divorce dated 17.01.2022 passed by the Additional Principal Judge, Family Court, Jalandhar. The petitioner intends to settle abroad along with respondent No.4 and wanted to take the minor child along with her. However, when the documents were submitted for seeking VISA, the same was declined by the Authority as it sought No Objection Certificate from respondent No.3 since a legally subsisting marriage existed as on the said date and there is a presumption under Section 112 of the Evidence Act, 1872 to the effect that any child born during the continuance of a valid marriage and within 280 days thereof would be conclusive proof that he is the legitimate son of that man unless it can be shown that parties had no access.

Learned counsel for the petitioner contends that a DNA test was also conducted by the petitioner as per which respondent No.4 is the biological father of the child.

He, however, fairly concedes that all these issues would require a declaration to be issued by the Civil Court after examining the evidence and also that the issue of custody ought to have got settled between the petitioner and her former husband at the time of finalization of divorce proceedings.

Be that as it may, the issue would require a declaration by the Civil Court on the basis of evidence led before it and the High Court, in exercise of its writ jurisdiction would not be competent to rebut the presumption without evidence being recorded. Even otherwise, the

above documentation has also not been placed on record. Moreover, the said requirement, if any, has been prescribed by the Republic of Germany. Nothing has been referred by the learned counsel as to how the Embassy of Federal Republic of Germany would be subject to writ jurisdiction of this Court. Learned counsel for the petitioner thus seeks withdrawal of the present writ petition so as to take recourse to the appropriate remedies as per law. He submits that he would be satisfied in case the Civil Court is directed to look into the matter sympathetically and to decide the same expeditiously in the event of any such suit being filed. The prayer appears to be innocuous.

The present writ petition is accordingly disposed of as withdrawn with liberties as aforesaid.

Needless to mention that in the event of the petitioner filing a civil suit before the Civil Court for declaration of any such rights, the Civil Court shall make every earnest endeavour for an expeditious adjudication of the same.

August 02, 2023  
*raj arora*

(VINOD S. BHARDWAJ)  
JUDGE

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