

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4180-2022 (O&M)
Date of Decision: 13.04.2023

RAMAN YADAV

..... Appellant(s)

Vs.

DIVYA

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGOREPresent: Mr. Prashant Singh Chauhan, Advocate
for the appellant.

LISA GILL, J.

This appeal has been filed challenging judgment dated 05.07.2022, passed by learned Principal Judge, Family Court, Rewari, whereby petition filed by the present appellant (father) seeking custody of minor child, has been rejected.

Brief facts necessary for adjudication of the matter are that appellant filed a petition seeking custody of minor child with the averments that his marriage with the respondent was solemnized on 19.01.2012 as per Hindu rites and ceremonies. A son was born out of this wedlock on 13.02.2014. However, due to irreconcilable differences, divorce under Section 13-B of the Hindu Marriage Act, 1955 (hereinafter referred to as the Act) by mutual consent was taken by the parties. It is further averred that respondent-wife forcibly and illegally took custody of minor child and did not allow appellant to meet his own son. It is further stated that economic condition of appellant is much better than that of respondent, who does not

have sufficient means to fulfill needs of the minor. Appellant, it is stated, has a degree of B.Tech and is serving with Reliance Company, getting handsome salary. He also claims to have agricultural land at his native village and two shops at Jaipur. Moreover, a healthy and happy environment could be better provided by appellant.

Petition was resisted by the respondent-wife while submitting that appellant did not even know the real name of minor child, which was Daksh and not Hardik. Appellant was alleged to be addicted to alcohol, hot tempered and a quarrelsome person, who used to beat the respondent and minor child when they were living together. It is further stated that atmosphere and environment of appellant's home was not conducive for well being and proper development of minor and that respondent-wife had sufficient income to look-after and maintain minor child. Appellant, it is stated, had never made any effort to even meet the child. Dismissal of petition was sought.

Following issues were framed by the learned Family Court on the basis of pleadings of the parties:-

- i) Whether the petitioner is entitled for custody of minor child namely Hardik on the grounds as alleged in the petition?OPP
- ii) Whether the present application is not maintainable in the present form?OPR
- iii) Whether the petitioner has concealed the material facts from the court?OPR
- iv) Whether this court has no jurisdiction to try and entertain the present petition?OPR
- v) Relief.

Appellant himself testified as PW1. PW2 Dharampal, uncle of appellant was examined and certain documents were tendered by the appellant and evidence closed. Respondent-wife herself testified as RW2 and examined her mother as RW1.

Learned Family Court, Rewari, after considering the facts and circumstances, observed that at the time of seeking divorce under Section 13-B of the Act, it was duly settled between the parties that custody of minor would remain with respondent. Therefore, it was with consent of petitioner that custody of minor was handed over to the respondent. It was noted that doubtlessly the appellant was in receipt of salary of ₹79,000/- per month but no document had been placed on record to indicate that he was owner of two shops at Jaipur. Mutation no.1562 (Ex.P4) was placed on record to indicate that appellant had purchased 01 Kanal 04 Marlas of land on 09.07.2020. Respondent - wife it was noted, was earning a salary of ₹23,000/- per month and her financial condition was found to be sound with the child being provided a proper environment for a wholesome development. Therefore, respondent – wife was permitted to retain custody of minor. Appellant, however, was permitted visitation rights for meeting minor child on a Sunday after every fortnight for two hours at a mutually agreed place. Aggrieved therefrom this appeal has been filed.

Learned counsel for the appellant vehemently argues that appellant is in fact entitled to custody of minor child, who is now 08 years old. It is submitted that appellant has sufficient source of income to maintain the minor child and it is in his welfare that he should grow-up amongst his cousin brothers/sisters and paternal grandparents. Economic

condition of appellant, it is submitted, is positively better than that of respondent – wife. It is thus, prayed that this appeal be allowed.

Heard learned counsel for the appellant and have gone through the file with his able assistance.

It is a matter of record that parties have secured divorce under Section 13-B of the Act by mutual consent on 14.11.2018. It is not denied that in the petition under Section 13-B of the Act, it was agreed between the parties that custody of minor child would remain with respondent-wife. At that time, child was about 04 years old.

Learned counsel for the appellant is unable to point out any ground whatsoever to indicate as to how welfare of child would be better served by handing over custody of child to appellant at this stage. Once having agreed that custody of minor child would remain with respondent-wife, it does not lie with the appellant to now back-out therefrom and seek custody of child. It has further come on record that respondent – wife is drawing a salary of ₹25,000/- per month. Furthermore, mother of respondent has transferred a house at Housing Board Colony, Rewari in her favour on 31.03.2022. Respondent – wife is admittedly educated having a residential house, gainfully employed and also in receipt of financial support from her parents. It is not denied that minor child is receiving proper education and is being brought-up in a proper manner.

Keeping in view the factual matrix of this case, we do not find that welfare of child would be better served by affording his custody to the appellant at this stage. Learned Family Court has rightly held that appellant

being the father is duly entitled to visitation rights on a Sunday after every fortnight for two hours at a mutually agreed place.

At this stage, it is relevant to note that this matter had been adjourned for today to enable learned counsel for the appellant to seek instructions as to how appellant would secure future of his child. No such proposal has come forward before us.

In the given facts and circumstances, learned counsel for the appellant is unable to point out any illegality, infirmity or irregularity in the impugned order dated 05.07.2022, passed by learned Principal Judge, Family Court, Rewari, which calls for any interference by this Court.

No other argument has been addressed.

Appeal is accordingly dismissed.

Pending miscellaneous applications, if any, stand disposed of accordingly as well.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

13.04.2023

Sunil

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