

CR-4012-2022 (O&amp;M)

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

CR-4012-2022 (O&amp;M)

Date of decision: May 16, 2023

Parshant Kataria

....Revisionist

versus

Monika Kataria

....Respondent

**CORAM: HON'BLE MR. JUSTICE ARUN MONGA****Present:-** Mr. Gautam Dutt, Advocate,  
Mr. Saurabh Sharma, Advocate for revisionist.

Mr. Ashish Yadav, Advocate for respondent.

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**ARUN MONGA, J. (ORAL)****CM-12211-CII-2022**

For the reasons stated in application, same is allowed subject to all just exceptions. Annexures P-1 to P-5 are taken on record.

**Main case (O&M)**

Petition herein *inter alia* is for setting aside impugned order dated 18.07.2022(Annexure P-3A) passed by learned Additional Principal Judge, Family Court, Gurugram whereby petitioner was directed to hand-over the custody of minor child to the respondent on every Saturday at 4:00 p.m.. and respondent was directed to handover custody of minor child to the petitioner by 7:00 p.m. on the following day.

2. Vide order dated 20.09.2022, a Co-ordinate Bench of this Court presided over by Arvind Singh Sangwan, J. (as he then was seized of the matter) passed the following order:

*“Prayer in this petition is for setting aside the order dated 18.07.2022, passed by the Additional Principal Judge, Family Court, Gurugram, vide which the interim custody of the minor child, who is aged about 09 years, has been ordered to be given to respondent/mother on every Saturday of the month at 4:00 PM with a further direction that respondent/mother would hand over the custody of the child to petitioner/father by 7:00 PM on the following day.*

*Learned senior counsel has referred to impugned order, the operative part of which reads as under:*

*“Undoubtedly, the minor son is in the custody of father for long time and he is not in touch with mother as pleaded by both the parties. So far as permanent custody of the child is concerned that shall be decided at the time of final decision. But at this stage, in view of catena of judgment of Hon'ble Supreme Court as well as statute, no parent should be deprived of bestowing his/her love and affection on the child unless otherwise proved. Except of raising allegations that the petitioner did not contact the minor child for long time, has shown any reasonable cause which can deprive a biological mother from meeting her own child. Therefore, at this stage, without hearing arguments on the application for interim custody at length, the respondent is directed to handover the child on every Saturday of the month at 4:00 p.m. and the petitioner in return would hand over the custody of minor child to his father by 7:00 p.m. on following day. It is also made clear that the respondent shall not interfere during said meeting as the serious apprehension shown by the petitioner that respondent would not comply with the order. If the respondent intentionally tutores the child to stay away from his mother, adverse presumption shall be raised against the respondent.”*

*Learned senior counsel further submits that even before granting any opportunity to petitioner/father to file reply, the aforesaid order was passed. Learned senior counsel has further referred to subsequent order dated 01.08.2022, wherein the following observations are made:*

*“Reply to the application for interim custody of the minor child has been filed by the respondent. Copy supplied. There is no need to hear the arguments as the petitioner has already been allowed to meet her child in view of order dated 18.07.2022. Therefore, this application stands disposed of.*

*An application to restrain the petitioner to generate false evidence against the respondent has been filed by the respondent through his counsel. Copy supplied. Reply to the said application be also filed on 08.12.2022. PWs be also brought on the date fixed.”*

*It is argued by learned senior counsel that at no point of time, any opportunity of hearing was afforded to the petitioner/father before passing the impugned order and the cardinal principles for granting visitation rights or interim custody i.e. paramount consideration of a child is not at all considered by the Additional Principal Judge, Family Court, Gurugram, which shows total lack of application of judicial mind.*

*Learned senior counsel further argues that as the child is residing with the father for the last more than 03 years, only visitation rights for a few hours could be granted initially, so that the child becomes acquainted with his mother.*

*Learned senior counsel further submits that the child is residing with the petitioner/father since 2019 and at this stage granting visitation rights, which amounts to interim custody as it is for about 24 hours on every Saturday of the month, is likely to affect the mind of the child, who is growing up and is studying in a school in the care and custody of the petitioner/father, therefore, the manner in which the Additional Principal Judge, Family Court, Gurugram has proceeded is totally uncalled for.*

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*Notice of motion for 03.11.2022.**In the meantime, the operation of impugned order dated 18.07.2022 shall remain stayed.**However, it will be open for the trial Court to pass fresh order in accordance with law.”*

3. *Apropos*, on resumed hearing, while arguments were being addressed, on joint suggestion, revision petition is disposed of with a request to learned trial Court to consider the matter afresh by taking note of averments made in the reply and after re-hearing the matter, in case it feels that impugned order needs to be modified/ recalled, it may take a call on it depending on the merits of submissions to be made. Meanwhile, impugned order is not being interfered and the same is being kept in abeyance, subject to learned trial Court taking a call on it, as aforesaid.

4. Furthermore, given that considerable time has elapsed from the time the impugned order was passed and same has not been implemented owing to the interim order passed by this Court, it is expected of the learned Family Court that it shall hear the matter afresh, as aforesaid on the next date of hearing itself and peremptorily on the same day, pass fresh orders. No observations are being made on merits of the impugned order, in view of the aforesaid consent given by learned counsels.

5. Disposed of accordingly.

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

**(ARUN MONGA)**  
**JUDGE**

**May 16, 2023**  
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No