

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

CR-4162-2022 (O&M)

Date of Decision: March 15, 2023

Sachin Kumar

...Petitioner

Versus

Rachna

...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

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

Mr.Arjun Dhingra, Advocate
for the respondent.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 19.09.2022 passed by learned Addl. Principal Judge, Family Court, thereby, allowing the application filed by the respondent qua interim custody of the minor son of the parties to the lis.

Initially, respondent-Rachna had filed the petition under Section 25 of the Guardians and Wards Act, for seeking custody of the minor son namely Divansh, from the petitioner-husband Sachin Kumar. Therein, an application for seeking interim custody was filed by respondent-Rachna.

The facts, as culled out, from the pleadings of the parties, are that petitioner-Sachin Kumar got married with respondent-Rachna (as

making appearance in the present petition) on 16.02.2021 and from their wedlock, a son, namely Divansh, was born on 15.11.2021. Although, there are allegations and counter allegations about bad behaviour and conduct of both the petitioner as well as the respondent, as spelt out from the pleadings, but it also reflects that parties are residing separate, due to matrimonial discord.

Thereupon, the petition under Section 25 of the Guardians and Wards Act, 1980 was filed by respondent-Rachna, for seeking custody of the minor son from her husband Sachin Kumar-petitioner. During the pendency of the aforesaid petition, interim custody was granted to the mother-Rachna vide impugned order. However, besides the same, visitation rights were also given to petitioner-father Sachin Kumar and detailed terms to facilitate the interaction of the child with the father, were also made by the Family Court.

Feeling aggrieved by the aforesaid order of interim custody, father-Sachin Kumar has filed the present petition.

In pursuance of the notice issued, respondent-mother Rachna had made appearance.

Counsel for the parties heard.

Amidst matrimonial discord, there is unfortunate dispute between petitioner-husband and respondent-wife, with regard to handing over the custody of minor child Divansh. In a custody tussle, the matter is to be decided, not on consideration of the legal rights of the parties, but on the sole and predominant criterion of what would be best to serve the interest and welfare of the child. The provisions of Sections 7, 9, 12, 13,

17 and 25 of the Guardians and Wards Act, makes it manifestly clear that the paramount consideration, is the welfare of the minor child and not the statutory rights of the parents.

What is '**welfare of the child**' depends upon several factors. It has to be measured not only in terms of money and physical comfort, but also in view of the age of the child and the manner, in which, '**needs**' can be fulfilled, more particularly, moral and ethical aspects of the shaping of the minor's personality. The welfare of the child depends upon the facts and circumstances of each particular case. The legal right or the financial affluence is not decisive, but the welfare of the minor is decisive for the claim of the custody.

A custody dispute involves human issues, which are always complex and complicated. There can never be a straight jacket formula, even to adjudicate the question of interim custody.

Parties to the lis have raised allegations and counter allegations regarding bad behaviour and conduct of each other. Suffice to consider the same, but there is no need to dilate it further, at this stage, lest it may have impact upon the final outcome of the case. Precisely on this account, though, emphasis has been laid upon the compromise, having effected between the parties on 19.06.2022, copy whereof, is Annexure P-5, wherein, there is no mention about the custody of the child, having been sought by the mother, but however, the terms of this compromise, if any, can be appraised, only at appropriate stage of decision by the Family Court.

The minor child Divansh is of tender age, as he was 10 months old, when the petition under Guardians and Wards Act, was filed.

However, he requires love, affection and proper care, which is normally expected from the mother. The role of a mother in the development of child's personality, can never be doubted. A child gets best protection from the mother. It is the most natural thing for any child to grow up in the company of one's mother. The company of the mother is the most natural thing. Of course, father also has a good role to play to fulfill physical and emotional needs of the minor child, but however, the age of the child has to be considered and ipso facto, the role of the mother, in handling the child, as such, cannot be doubted. The company of a mother is more valuable to a child of a tender age. Unless there are compelling and justifiable reasons, a child should not be deprived of company of the mother, more particularly, till the age of 5 years, as company of the mother is always in the welfare of the minor child.

The petitioner himself has asserted in reply to the petition filed before the Family Court, which is Annexure P-3 that respondent-mother Rachna is a Maths teacher in S.D.Model School and she is earning Rs.25,000/- per month. Besides this, it is also stated that she gives tuition to the children, meaning thereby, she is also having a financial source to take care of the minor child. Even though, in this reply, the petitioner has asserted his mother to be a retired official of Forest Department and also having pension of Rs.40,000/- per month, which is sufficient to maintain the minor child, but however, fact remains that when there is natural mother to take care of a minor child, who has independent source of earning also, then the grand-parents, as such, cannot be a substitute for a mother. There is no substitute for mother's love in this world, more

particularly, when the child is of tender age.

Considering the totality of facts and circumstances, the welfare of the child lies with the mother i.e. respondent, who is educated, working and earning a good salary and thus, she can take care of the child.

In view of the above, learned Addl. Principal Judge, has appropriately, as per the demand of the situation, given the interim custody to the respondent-mother and at the same time, also ensured that minor child has good interaction with the father/grand-parents and therefore, had granted visitation rights, while making arrangement, to facilitate the manner of interaction, to be so carried out.

Thus, the impugned order with regard to the handing over the interim custody to the mother (respondent), calls for no interference, by way of present petition and as such, the present revision petition, sans merit and is hereby dismissed.

However, the aforesaid observations are circumscribed only for the purpose of making purely temporary arrangement, considering the welfare of the child and therefore, learned Addl. Principal Judge, Family Court, shall proceed further to decide the main petition expeditiously, after parties adduce evidence, without being influenced by any observation, made herein above.

March 15, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No