

2023:PHHC:156572

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

Sr. No.140

CR-645-2023

Date of Decision: 07.12.2023

RACHNA RATHEE

...Petitioner

VERSUS

MANDEEP KUMAR

...Respondent

**CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr.Sanchit Punia, Advocate,  
for the petitioner.

Mr.Ankit Chahal and Mr. Rahul Singh, Advocates,  
for the respondent.

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**ARCHANA PURI, J.**

The petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India, for setting aside of the order dated 19.04.2022 (Annexure P-1) passed by learned Principal Judge, Family Court, whereby an application filed by the petitioner (mother) for seeking interim custody of the minor girl child was denied to her, though, visitation rights were given.

That, initially, petitioner-Rachna Rathee had filed a petition under Section 25 of the Guardians and Wards Act, for seeking custody of the minor daughter. Therein, an application for interim custody was disposed of vide the impugned order, wherein, it was held by learned Family Court that it would be in the interest of the child, if she continues to live with her father, but however, visitation rights were granted to the petitioner (mother) for three hours, as per date, time and place convenient to both the parties, keeping in view the period, for which, the child will be required for her treatment.

Feeling aggrieved by the order passed by learned Lower Court for not handing over the custody of the minor girl child to the mother and also for granting only visitation rights, the petitioner-Rachna Rathee, has filed the present revision petition.

In pursuance of notice issued, respondent made appearance.

Learned counsel for the parties heard.

The facts, as culled from the paperbook, are as follows:-

That, marriage between the petitioner and respondent was solemnized on 14.02.2013 and from the said wedlock, the girl child was born on 21.04.2014. However, matrimonial dispute arose between the parties, as a result whereof, the petitioner and the respondent parted ways and the petitioner left the matrimonial home on 20.05.2021. The girl child remained in the custody of the father. Now, amidst the matrimonial discord, there is unfortunate dispute between the petitioner (mother) and respondent (father), with regard to handing/taking over of the custody of the minor child.

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 various provisions 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. In a matter involving the question of custody of a child, it has to be borne in mind that the question '**what is the wish/desire of the child**' is different and distinct from the question '**what would be in the best interest of the child**'.

Certainly, the wish/desire of the child can be ascertained through interaction but then, the question as to '**what would be in the best interest of the child**', is a matter to be decided by the Court, while taking into account, all the relevant circumstances. 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. However, it is fact-dependent exercise to be conducted by the Courts, in the backdrop of the welfare of the child, while observing how the child's interest can be protected while custody being given to either parent.

Also, it is pertinent to note that when the couples are at loggerheads and want to part ways, they may level extreme allegations against each other, so as to depict the other unworthy, to have the custody of the child. In the circumstances, unless and until, there is proven bad conduct of one of the parent, which makes him/her unworthy to claim the custody of the child concerned, the question can and shall be decided, solely looking into the question as to, '**what would be the best interest of the child concerned**'.

Reverting back to the case in hand, it should be noted that in the pleadings, the parties to the lis have raised allegations and counter-allegations regarding bad behaviour and conduct of each other. However, at this stage, there is no need to dilate upon the same. At the same time, it should be kept in mind that the girl child in question was born in the year 2014 and at the time, when the petition was filed in the year 2021, the girl child was seven years of age and by now, the child is about nine-ten years

old. Welfare of the child is of utmost importance and consideration, but however, to work upon the well-being of the child, the aspect of age of the child also weighs in the mind of the Court. Not only this, there is also medical ailment of the child, as spelt out from the pleadings of the parties and the same finds mention in the impugned order also. It has been mentioned that, as per the medical record, the girl child has been diagnosed to have been suffering from Low risk Langerhans Cell Histiocytosis (Eosinophilic Granuloma) (Bone with soft tissue involvement) and she is undergoing treatment from 15.12.2021. Also, it is evident that treatment, which is being administered to the child, is VINBLASTINE based chemotherapy. This medical ailment of the child, as such, is not disputed, even by the petitioner.

However, on query by the Court, it has been disclosed that regular treatment, which was going on, as such, has come to an end, but however, the child is still on medication and goes to the hospital for the follow-up checkups.

Also, from the paperbook, it is evident that the treatment was extended to the girl child by the respondent (father) from Dr. B.L. Kapur Memorial Hospital, Pusa Road, New Delhi, which is one of the premier medical institution. It is of utmost importance not to make any such displacement, which causes physical and emotional stress to the child. No doubt, as pointed out, the child is of the growing age and mother can be a good friend, guide and mentor for the growing girl, but however, at the same time, the medical ailment of the child, as such, cannot be overlooked.

Besides the aforesaid, even though, there are allegations and counter-allegations, with regard to the bad conduct of the parents, but the same, as such, can only be proved through evidence and the same shall be considered by the Family Court, at the appropriate stage. Thus, without taking the aforesaid allegations and counter-allegations into consideration, at this stage, it cannot be said that which of the parent is in a better position to look after the child. No doubt, as pointed out, the respondent is in Merchant Navy and following, such avocation, he may be remaining away from the house for long periods, but however, it is not that in his absence, the child is not being looked after. On query by the Court, it is stated by learned counsel for the respondent that the respondent is staying in his home for the last one year. Even if, he is away, the child is looked after well by the mother of the respondent, who worked as ANM in Government Hospital and now is stated to have retired. There is also assistance availed of the cousin of the respondent.

Considering the same, it should not be overlooked that the Presiding Officer of the Family Court had personal interaction with the child and the detail of her conversation has been reproduced in paragraph No.12 of the order, which reveals about the child to be comfortable in the house of her father, though, there is mention made about the child to be not willing to live with her mother, due to her aggressive behaviour, however, such an observation, even though made, may be on account of child saying so, this *ipso facto*, at this stage, does not make the mother to be a bad person and no conclusive opinion, as such, can be given. It should also be noted that a man

or woman may be bad for some in a contextual relationship, but the same does not necessarily mean that the person is bad for his/her child.

However, in the light of the aforesaid observations, more particularly, when child is having medical ailment, wherein, lot of care is required and the entire treatment was taken, under the supervision of the respondent, it shall not be appropriate to displace the child or shuffle her custody. To do so, shall not be beneficial for the well-being of the child, who is having a medical ailment. Considering the aforesaid circumstances, appropriately, as held by learned Lower Court, the custody of the girl child, should continue to remain with the respondent, who is the father. However, at the same time, the child should not be deprived of the love and affection of her mother. In the light of the same, visitation rights ought to be given to the mother.

Though, in the impugned order, visitation rights have been given for a duration of three hours to the petitioner, as per the date, time and place, convenient to both the parties, keeping in view the period, during which the child will be required to take her treatment, but however, the frequency of the same, as such, has not been mentioned in the order. Considering the same, besides the duration of visitation rights and also stating about the arrangement to be made, while taking into consideration the convenience of parent, as well as the girl child, the parents shall facilitate availing of the visitation rights by the petitioner, twice a month, while keeping in view the treatment part of the girl child.

However, during the course of such meetings, it is expected and

desired from both the parties to extend cooperation to each other and create congenial atmosphere for the child to facilitate her having healthy interaction with the petitioner.

The revision petition is partly allowed and the impugned order stands modified to the extent, as observed aforesaid.

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

07.12.2023  
Himanshu

(ARCHANA PURI)  
JUDGE

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|---------------------------|--------|
| Whether speaking/reasoned | Yes    |
| Whether reportable        | Yes/No |