

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

CR-495-2024 (O&M)
Reserved on : 09.02.2024
Date of Decision : 12.02.2024

SHIVANI MANCHANDAPetitioner

VERSUS

VINEET ARORARespondent

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Gaurav Chopra, Senior Advocate with
Mr. Manish Soni, Advocate for the petitioner.

Mr. Uday Bedi, Advocate for the respondent.

ALKA SARIN, J.

1. The challenge in the present revision petition is to the order dated 20.12.2023 (Annexure P-8) passed by the Principal Judge, Family Court, Gurugram whereby the petitioner-mother has been restrained from taking the minor daughter to Dubai without the consent of the minor child as well as the Family Court.

2. The brief facts which are essential for determination of the issue in hand are that on 05.02.2007 the parties were married. A daughter was born to them on 16.02.2011. It is not in dispute that the parties separated on 24/25.10.2021 though different reasons have been put forth by both the parties for their separation. On 05.04.2022 the respondent-father filed a petition under Sections 7 and 25 of the Guardian and Wards Act, 1890 read with Section 6 of Hindu Minority and Guardianship Act. Prayer in the said petition was for seeking custody of the minor daughter. On 23.08.2023 the

respondent-father filed an application before the Family Court concerned for restraining the petitioner-mother from taking the minor daughter out of India. On 01.09.2023 the application for restraining the petitioner-mother from taking the minor daughter out of the country was listed, however, it is the case set up by the respondent-father that time was sought to file a reply to the application, however at 02:30pm on the same day an oral request was made to apprise the Court that the petitioner-mother had flown out of the country with the minor daughter. The case was adjourned to 04.09.2023 for verification of her flight tickets and boarding pass. It is further the case set up by the respondent-father that the petitioner-mother filed her tickets which showed that they were purchased on 01.09.2023 and her flight was at 16:15 hours and hence the case of the respondent-father was that the petitioner-mother had misled the Court.

3. On 09.10.2023 an order was passed by the Family Court which reads as under :

'Respondent has appeared in person but she has not brought the minor child despite the specific direction by the Court. Respondent has stated that yesterday minor child was with the petitioner, Petitioner has also admitted the same.

I have interacted with the parties in the chamber, After interaction, respondent has made a statement as under:-

Stated that when I visit India with my daughter, petitioner and my daughter they can meet with each other for as much time as they both decide and when

petitioner visits Dubai I have no objection for meeting with my daughter, When petitioner visit Dubai for visitation with minor child I undertake that I will not file any false complaint/case against the petitioner at Dubai. I have given the Dubai address to the petitioner today itself.

In view of the statement made by the respondent, petitioner has also made a statement as under:-

Stated that in view of the statement made by the respondent I have no objection for visitation rights with the minor child at Gurugram and Dubai. I undertake that I will not file any false complaint/case at Gurugram or Dubai regarding anything.

Both parties are bound by their statements. In view of the statement made by both the parties, application for interim visitation stands disposed of.

To come up on 02.02.2024 for evidence of the petitioner at own responsibility. Petitioner is directed to supply at least 7 days advance copy of affidavit of witnesses to the respondent/counsel so that cross-examination can be conducted on the same day failing which costs of Rs.1,000/- per witness shall be imposed upon the petitioner'.

4. On 11.10.2023 the petitioner-mother moved an application seeking direction to the respondent-father to provide a No-Objection Certificate (NOC) for UAE Citizenship/Emirates ID of the minor daughter

which was the requirement as per the rules and regulations. On 01.12.2023 a reply was filed by the respondent-father and the matter was fixed on 20.12.2023. It is apt to note that on 08.12.2023 the petitioner-mother had sent the minor daughter to India to meet the respondent-father. Thereafter, on 20.12.2023 the following order was passed by the Family Court :

'Today the case is fixed for consideration on the application moved by the respondent as well as for presence of both the parties. However, respondent is not present. Petitioner has stated that minor child has come to the Court today and she wants to speak to this Court. The minor child has met in the chamber and she stated that she is studying in Dubai in James Worlds Academic. Now her mother again wants to change her school and wants to admit her in North London Collegiate School. She also stated that she does not want to go to Dubai and wants to stay in Indian only as her relatives as well as friends also lives here. The present petition is for seeking of the custody of the minor child. During the pendency of the case the respondent has taken the minor child to Dubai and admitted her in a School. The minor child do not want to go to Dubai. In these circumstances, the respondent is restrained from taking the minor child to Dubai without the consent of the minor child as well as of the Court. Now to come up on 29.01.2024 for presence of petitioner as well as respondent'.

5. On 08/09.01.2024 an application for modification of the order dated 20.12.2023 was filed by the petitioner-mother which is now pending for 13.02.2024.

6. Learned senior counsel appearing on behalf of the petitioner-mother would contend that there was no occasion for the Court to have passed the order dated 20.12.2023 inasmuch as after the application filed by the respondent-father for restraining the petitioner-mother from taking the minor daughter out of the country, a consent order was passed on 09.10.2023 and on the date on which the application filed by the petitioner-mother for providing the NOC was listed, the order restraining the petitioner-mother from taking the minor daughter to Dubai was passed. Learned senior counsel appearing on behalf of the petitioner-mother has further pointed out to the manner in which the order dated 20.12.2023 has been passed wherein it is recorded that after noticing that the mother (petitioner) was not present, the Court has also noticed that the child has come to Court and stated she wanted to speak to the Court. It is further noticed that the child informed the Court that she does not want to go to Dubai and wants to stay in India only and hence the restraint order was passed. It is also submitted that the minor daughter had been in India since 08.12.2023 and there was a possibility of her having been tutored by the respondent-father. It is also contended that the impugned order virtually divests the custody of the minor daughter from the petitioner-mother.

7. *Per contra*, learned counsel for the respondent-father has contended that under Section 12 of the Guardian and Wards Act, 1890 the

Court can, at any stage, pass an order in the best interest of the child. Learned counsel for the respondent-father has further contended that the petitioner-mother has not been taking care of the child and that her conduct needs to be considered. It is further the contention that an application for modification of the order dated 20.12.2023 filed by the petitioner-mother is pending and hence the present revision petition would not be maintainable.

8. I have heard the learned counsel for the parties.

9. On the previous date the respondent-father was directed to be present in Court along with the child. Today though the respondent-father is present, however, the child has not been brought to the Court.

10. In the present case on an application filed by the respondent-father the Family Court on 09.10.2023 passed a consent order. A perusal of the consent order reveals that both the parties had agreed that they would have no objection to the respondent-father being given visitation rights in Gurugram as well as in Dubai. It is an admitted fact that the application is still pending. On 20.12.2023 it was the application filed by the petitioner-mother for providing the NOC for UAE Citizenship/Emirates ID for the minor daughter which was listed. Since the matter is pending before the Family Court, this Court refrains itself from commenting on the manner in which the order dated 20.12.2023 has been passed. Suffice it to say that in the absence of any application for modification of the order dated 09.10.2023 and on a day when no application regarding visitation rights was listed, the impugned order dated 20.12.2023 has been passed. The urgency in passing the order dated 20.12.2023 is beyond the comprehension of this

Court wherein even the counsel for the petitioner-mother was not called to comment on the statement made by the minor daughter. The minor daughter had been in India since 08.12.2023 and there was nothing holding the respondent-father back from approaching the Family Court for issuance of suitable directions and/or modification of the earlier order dated 09.10.2023.

11. Though the counsel for the petitioner-mother is unable to satisfy this Court as to how two Fora have been approached for the same relief, since an application for modification of the order dated 20.12.2023 is already pending before the Family Court and is listed for 13.02.2024, this Court deems it appropriate to dispose off the present revision petition with a direction to the Family Court to decide the said application for modification on the date fixed itself i.e. 13.02.2024. The Family Court shall not entertain any request for an adjournment from either side.

12. The revision petition stands disposed off in the above terms. Pending applications, if any, also stand disposed off. It is also made clear that any observations made herein shall not be treated as an expression of opinion on the merits of the case.

12.02.2024

Aman Jain

**(ALKA SARIN)
JUDGE**

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO