

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

FAO-1282-2024 (O&M)
Date of decision: 19.03.2024

Deepika Singh

.....Appellant

Versus

Sandeep Yadav

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE HARSH BUNGER**

Present: Mr. Sanjeev Kumar Bawa, Advocate, for the appellant.

SUDHIR SINGH, J.

CM-5116-CII-2024

For the reasons mentioned in the application, same is allowed and delay of 83 days in filing of the appeal is condoned.

FAO-1282-2024 (O&M)

Present appeal is directed against the order dated 15.09.2023 passed by the Family Court, Gurugram, whereby the petition under Section 25 of the Guardians and Wards Act, 1890 read with Section 9 of the Act filed by the respondent-husband was dismissed, however he was granted the visiting rights as regards the minor child namely Prisha, as stipulated in para no.22 of the order.

2. The brief facts of the case are that the marriage between the parties was solemnized on 09.05.2015 according to Hindu rites at New Delhi. Out of this wedlock, one female child (Prisha) was born on 23.03.2016. Due to temperamental differences between the parties, they started living separately from 2017. The respondent-husband filed a petition under Section 25 of the Act in 2018

seeking the custody of minor child on the ground that he was very much concerned with the future, growth, upkeepment, welfare and education of the minor child; the future of the minor child was bleak and dark with the appellant-wife; the respondent-husband is able to take care of the child and bear her study expenses. It was further averred that the respondent-husband being the natural guardian of the child, should be given the custody of the child. It was further alleged that the appellant-wife was not allowing the respondent-husband to meet his own child.

3. Upon notice, the appellant-wife appeared and filed her written statement before the Family Court. The factum of birth of female child was admitted. However, it was stated that the respondent-husband had deliberately abandoned the minor child being a girl and also refused to even meet her for once. It was further stated that the respondent-husband had refused to continue the relationship with the appellant-wife considering the future and needs of the minor child. It was further averred that the mother-in-law of appellant-wife had asked her to get the sex determination test and if, it was baby boy, then only she could keep the pregnancy, otherwise, she was to abort the same. It was further stated that the appellant-wife and her minor child were forcefully ousted by the respondent-husband and his family members. All other allegations leveled in the petition were denied and a prayer for dismissal of the petition was made.

4. On the basis of the pleadings of the parties, the trial Court framed the following issues:-

“1. Whether the petitioner is entitled for the custody of the minor child namely Prisha as prayed for? OPP

2. Whether the petitioner is estopped by his own act and conduct from filing the present petition? OPR

3. Relief.

The parties led their respective evidence.

5. After hearing the rival contentions of the parties and considering the evidence on record, the trial Court dismissed the petition, but granted the visiting rights to the respondent-husband, as noticed above.

6. Learned counsel for the appellant has vehemently contended that once the learned Family Court did not find any merit in the petition filed by the respondent-husband and dismissed the same, there was no occasion for granting the visitation rights to him qua the minor child. It is further submitted that the learned Family Court has erred in law inasmuch as there was no prayer made by the respondent-husband for grant of visitation rights. It is settled law that the Court can only grant the relief prayed for by a party and cannot travel beyond the said prayer clause. While referring to the various cases pending between the parties, it is further submitted that till date, the respondent-husband has not paid any maintenance amount to the appellant and the minor child and that the respondent-husband has not even met the minor child for once in the last more than 06 years. Learned counsel for the appellant has further argued that the relief granted by the Family Court qua the visitation rights as also allowing the child to stay with the respondent-husband for at least 10 days during the summer vacations, cannot be said to be a

just and equitable relief due to the reason that the respondent-husband is a commercial pilot and he remains busy for his work for 05 days a week. This being the situation, the respondent-husband would not be in a position to take care of the child and give fatherly love and affection to her.

7. Having heard the learned counsel for the appellant and after perusing the impugned order, we are of the considered view that the findings recorded by the trial Court do not suffer from any illegality and perversity. It is well settled that the child requires care and protection of both the parents. The husband and wife may be at warring ends, but the child should not be dragged into such antipathy and should be given a chance to grow under the care, protection, love and affection of both the parents. There are umpteen number of cases, where the parents have been living separately for years together, but the children are having cordial relations with both the parents and this is only possible if the child is allowed to meet and interact with both the parents on regular basis. Merely because the respondent-husband has not allegedly paid the maintenance amount to the appellant-wife and various other litigations are also pending between them, cannot be said to be a ground to deny visiting rights to the respondent-husband. It is not the case of the appellant that the respondent is not possessed of means and resources to take care of the child. Still further, no reason, whatsoever, has come on record that if, exposed to the company of the respondent-husband, the child will not be in a good atmosphere and surroundings of the respondent-husband are as such that the visiting rights should be denied to him.

8. The factum that the respondent-husband being a commercial pilot remains busy for 05 days in a week, is again a question that has to be answered by the respondent himself by his conduct, as to how he manages the things while visiting the child or spending time with her. If, he is not able to comply with the directions issued by the Family Court, it will be open for the appellant to seek review of such directions from the Court concerned, but she cannot be allowed to plead that the directions issued by the learned Family Court are perverse, irrational or unjustified.

9. We may also deal with the arguments raised by the appellant-wife that the respondent-husband, in his petition before the Family Court, did not pray for the grant of visitation rights. There is no doubt and debate qua the issue that the Court does not ordinarily grant the relief not sought for by a litigant. However, in the given facts and circumstances of the case, there lies a discretion with the Court to mould the relief, as the case may be. In the instant case, the petition filed by the respondent-husband has been dismissed by the Family Court. The respondent-husband has not challenged the said finding. It is the appellant-wife, who has come against that part of the order of the Family Court, whereby the visiting rights have been granted to the respondent-husband. It would be just and appropriate to reproduce the concluding extract from the impugned order:-

“21. Before parting, although no prayer for visitation right has been made by the petitioner in the prayer clause of the petition, but keeping in view the fact that a child needs the love and affection of both the father and the mother, petitioner is given visitation rights for meeting his daughter Prisha. There is no difficulty for

the respondent to allow the petitioner to meet the minor child Prisha as it is in the benefit of the child. The child of tender years requires the love, affection, company, protection of both parents. This is not only the requirement of the child, but her basic human right. Just because the parents are at war with each other, does not mean that child should be denied the care, affection, loved or protection of any one of the two parents. By giving the visitation rights to the petitioner will help in maintaining and improving the bond between the child and the parent who is denied custody. If that bond is maintained, the child will have no difficulty in moving from one home to another during vacations or holidays. Similar view has also been taken by the Hon'ble Apex Court in **Yashita Sahu vs. State of Rajasthan and others 2020) 3 Supreme Court cases 67.**

22. For this purpose, petitioner shall be at liberty to visit the child Prisha twice in a month i.e. 2nd and 4th Sunday from 12.00 noon to 5.00 p.m. at the place mutually agreed between the parties in consultation with the child so as not to disturb her study schedule and the respondent shall not object to him meeting with the child and the respondent will also allow the child to stay with the father for at least 10 days during Summer vacations of the school. Further, the petitioner shall have right to speak with the minor child over WhatsApp video call or ordinary call for 15-20 minutes once in a week at the convenience of the minor child. The respondent shall provide the phone number so as to facilitate such chatting etc. Memo of cost be prepared accordingly. Fine be consigned to record room after due compliance.”

10. A perusal of the aforesaid findings would show that the Family Court has given just and proper reasons for granting the relief beyond the prayer made by the respondent-husband. We may

further notice that the relief granted is not as such, which might

cause any prejudice to the rights of the appellant-wife or it might seem foreign to the proceedings initiated before the trial Court. It is a matter of common knowledge that in the custody proceedings before the Court, the Court ordinarily grants the visiting rights to the parents, as per their prayer/entitlement. The Family Court, while granting the visitation rights, has only granted ancillary relief, which cannot be said to be not connected or beyond the facts and circumstances of the case.

13. No other point has been urged by learned counsel for the appellant.

14. In view of the above, we do not find any merits in the present appeal and the same is hereby, dismissed.

15. As the main appeal has been dismissed, we find no reason to entertain CM-5118-CII-2024 for leading additional evidence, especially when no reasons have been given as to why the documents sought to be produced, could not be produced before the trial Court. Accordingly, the said application is also dismissed.

16. All pending applications (if any), shall also stand disposed of.

(SUDHIR SINGH)
JUDGE

(HARSH BUNGER)
JUDGE

19.03.2024
Ajay Prasher

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