

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

117

CR-2110-2024 (O&M)
Decided on: 26.04.2024

CHANDA

...Petitioner

Versus

KRISHNA AND ANOTHER

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Nitin Salwan Advocate for
Mr. Vishal Singh, Advocate
for the petitioner.

RITU TAGORE, J.

1. The challenge in this revision petition is to the order dated 21.11.2023 (Annexure P-5) whereby learned Principal Judge, Family Court, Panipat (in short referred to as the learned trial Court) has struck off the defence of the petitioner and proforma respondent No.2 (respondents before the learned trial Court) in the petition captioned as ‘Krishna Vs. Suman and another’.
2. Considering the limited prayer made in this revision petition, notice to present respondents is dispensed with.
3. Learned counsel for the petitioner, submits that respondent No.1, the grandmother of the minor, has instituted a petition under Section 7, 10, 12, 17 and 25 of the Guardians and Wards Act, 1890 for her appointment as a legal guardian of minor child and for granting custody rights to her

regarding the minor child. The said petition (Annexure P-1) is pending before learned trial Court.

4. Learned counsel submitted that the learned trial Court, directed the petitioner to bring the minor child to the Court for meeting respondent No.1, his grand-mother, on 21.11.2023. It is stated that on 19.11.2023, petitioner's sister-in-law unfortunately sustained a severe injury on her hand and had to undergo immediate surgery. Due to the aforesaid unseen circumstance, the petitioner was unable to bring the minor child in the Court on scheduled date of hearing for the meeting of the child with respondent No.1.

5. The learned counsel stated that petitioner brought these facts to the notice of learned trial Court by moving an application along with medical record. It is stated that the learned trial Court, however, failed to consider the petitioner's submission and the medical record, and passed the impugned order by striking off the petitioner's defence. The learned counsel stated that order of striking off defence is harsh upon the petitioner, adversely impacting her statutory right to defend the petition. The learned counsel submits that the petitioner undertakes to bring the child to the Court for his meeting with the respondent No.1 as and when directed by the learned trial Court. The indulgence of this Court has been solicited, requesting an opportunity for the petitioner to lead her defence evidence by setting aside the impugned order dated 21.11.2023.

6. I have heard learned counsel for the petitioner and have gone through the paper book.

7. It is a matter of record that the grand-mother of the minor, respondent No.1, has filed a petition (Annexure P-1) requesting to be appointed as the legal guardian of the minor child and to be granted

permanent custody of the minor. This petition is pending adjudication before the learned Principal Judge, Family Court, Panipat.

8. Perusal of the order dated 09.11.2023 (Annexure P-2) indicates that respondent No.1 had moved an application before the learned trial Court, asking for directions to be given to the petitioner and respondent No. 2 to bring minor child for a meeting with her on the birthday of the minor and permit her to perform the birthday ceremony of the child. As gleaned from the order, the petitioner and respondent No.2 expressed their inability to bring the child on his birthday i.e., on 22.11.2023, stating they had already planned his birthday out of town, and as such, the child would not be available for the meeting with respondent No.1. Accordingly, the learned trial Court directed the petitioner and respondent No.2 to bring the child to the Court on 21.11.2023 for a meeting with the respondent No.1.

9. The impugned order (Annexure P-5) indicates that the learned trial Court after appraising the medical record produced by the petitioner, found same to be misleading, as a result ordered the striking off the defence of the petitioner and proforma respondent No.2 for not complying with Court's order.

10. Since, the counsel for the petitioner undertakes to produce the minor in the Court, as and when directed by the learned trial Court, the impugned order dated 21.11.2023 (Annexure P-5) is hereby, set aside subject to the condition that the petitioner and her mother (proforma respondent No.2) shall produce the minor child on the due date fixed by the learned trial Court for meeting with the respondent No. 1 and shall also pay Rs.2000/- as costs, to be deposited with the District Legal Services Authority, Panipat. Additionally, the petitioner and proforma respondent

No.2 shall undertake to produce the minor child as and when directed by the learned trial Court thereafter.

11. It is clarified that failure to comply with this order will result in automatic vacation of this order. It is needless to mention that if petitioner and proforma respondent No.2 fails to abide by their undertaking of producing the minor as and when directed by the learned trial Court, the Court may take any measures as available under the law, against them.

12. Accordingly, this revision petition is disposed of in above terms.

(RITU TAGORE)
JUDGE

26.04.2024
Rimpal

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