



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-2655-2023 (O&M)
Reserved on: 20.09.2024
Date of Pronouncement: 04.10.2024

MANOJ DHANKAR
Versus
NEEHARIKA & OTHERS
....Appellant
...Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Siddhant Shankar, Advocate for
Mr. Harinder Deep Singh Bains, Advocate
for the appellant.

Mr. Vishal Sharma, Advocate with
Mr. Karanveer Singh, Advocate and
Mr. S.S. Avirat, Advocate, for the respondents.

JASJIT SINGH BEDI, J.

Though CM-12671-CII-2023 is listed for hearing, yet we have taken up the main case for final disposal.

2. The present appeal has been filed against the order dated 27.03.2023 passed by the Principal Judge, Family Court, Rohtak (for short `the Family Court`) whereby the petition filed by the appellant under Section 25 of the Guardianship and Wards Act, 1980 (for short `the Act`) seeking custody of his minor son Lavyansh, has been dismissed.

2. The brief facts of the case are that appellant-Manoj Dhankar married respondent No.1 on 26.11.2012. A male child, namely, Lavyansh was born to the couple on 18.01.2016. However, differences arose

between the parties because of which a petition under Section 13-B of the Hindu Marriage Act, 1955 was filed. However, after the first motion statement on 28.08.2019, the compromise fell through and the said petition came to be withdrawn.

3. Thereafter, the appellant filed a petition under Section 25 of the Act seeking custody of the minor son. The said petition came to be dismissed vide order dated 27.03.2023 passed by the learned Family Court. As noticed above, the said order has been under challenge in the present appeal.

4. In the present appeal, notice of motion was issued vide order dated 25.05.2023. During the pendency of the appeal, CM-12131-CII-2023 was filed by the appellant, seeking disclosure of the itinerary of the child. The said application came to be withdrawn on 19.07.2023.

5. Thereafter, another application bearing No.CM-12671-CII-2023 was filed seeking; (i) disclosure of the itinerary of the minor child; ii) arranging video calls of the appellant with the minor child and; iii) Seeking return of the child from Ireland to India.

6. On 25.07.2023, in the aforementioned application No.CM-12671-CII-2023, this Court passed the following order:-

“Notice in the application only to the extent of asking the respondent No.1 to disclose the itinerary of minor child for the date fixed i.e. 26.09.2023.”

7. The matter was adjourned from time to time and the counsel for respondent No.1 was to seek instructions so that video conferencing

could be arranged between the appellant on the one hand and the child on the other.

8. On 01.03.2024, a reply to CM-12671-CII-2023 was filed and taken on record. In the said reply, it was pointed out that against the order dated 25.07.2023, the appellant had already approached the Hon'ble Supreme Court and the said Court vide its order/judgment dated 29.01.2024 had rejected all the prayers made by the appellant in CM-12671-CII-2023. Copy of the order of the Hon'ble Supreme Court was brought on record as Annexure R1/1.

9. Thereafter, CM-15450-CII-2024 had been filed seeking early hearing of the application No.CM-12671-CII-2023. Vide order dated 13.09.2024 passed by this Court, the date of hearing in CM-12671-CII-2023 was preponed to 20.09.2024 i.e. today. As noticed above, we have taken up the main case for final hearing today itself.

10. We have heard the learned counsel for the parties and gone through the record.

11. As noticed above, the present appeal is directed against the order dated 27.03.2023 passed by the Family Court, whereby the appellant has been denied the custody of the minor child. During the pendency of these proceedings, he had moved application No.CM-12671-CII-2023. Notice in the application had been issued on 25.07.2023 only to the extent that respondent No.1-wife was to disclose the itinerary of the child. As against that very order, he filed an SLP (Civil) Diary No.(s) 2506/2024, wherein the following prayers were made:-

“7. MAIN PRAYER:-

It is, therefore, most respectfully prayed that this Hon’ble Court may graciously be pleased to:-

a) Grant Special Leave to Appeal against the impugned Order dated 25.07.2023 passed by the Hon’ble High Court of Punjab & Haryana at Chandigarh in CM No.12671-CII-2023 in FAO No.2655 of 2023; and

b) Pass any such other and further orders as this Hon’ble Court may deem fit and proper, in the facts and circumstances of the case and in the interest of justice.

8. INTERIM RELIEF:

It is, therefore, most respectfully prayed that this Hon’ble Court may graciously be pleased to:

A) Grant arrangement of video conferencing of the Petitioner on daily basis with the minor child;

B) Direct the Respondent No.1 to bring the minor child back from ireland to Rohtak, Haryana, India; and

C) Pass such other and further order/orders as this Hon’ble Court may deed fit and proper in the interest of justice.”

12. In the aforementioned Special Leave Petition, the Hon’ble Supreme Court passed the following order:-

“Delay condoned.

We are not inclined to interfere with the impugned judgment and order. The Special Leave Petition is, accordingly, dismissed.

Pending application(s) shall stand disposed of.”

From the aforesaid order passed by the Hon’ble Apex Court, it is apparent that the Hon’ble Supreme Court has declined to interfere with the impugned judgment dated 27.03.2023 passed by the Principal

Judge, Family Court, Rohtak as well as the order dated 25.07.2023 passed by this Court.

13. Even on merits, we find that no case is made for any interference in the impugned order. As noticed above, it was found by the learned Family Court that the appellant had been granted interim custody visitation rights vide order dated 03.02.2022 subject to the condition that he shall not take the minor child out of Rohtak without permission of the Court. However, the appellant took the minor child outside Rohtak on 25.08.2022 without permission of the Court and the child remained in custody till 06.09.2022. The relevant extracts from the order of the Family Court, read as under:-

“23. It is further pertinent to note that petitioner has averred in para no.ix of the petition that on 18.08.2017 respondent no.1 left the house of petitioner alongwith minor son and went to her parental home. The same implies that the minor is continuously living with the respondents at least from 18.08.2017. It is further worthwhile to note that as per his own case, petitioner is in service. In given circumstances, the onus to explain as to who will take care of the minor when respondent will be busy in his work was upon the petitioner. However, petitioner has not examined any person who will take care of minor child in his absence. In given scenario, it appears that uprooting the minor, who is of his very tender age from family atmosphere where he has been living from 18.08.2017, will not be in the best interest of the minor.

24. At this juncture it may also be observed that during pendency of the case on application of petitioner for interim custody, visitation rights were granted in his favour vide order dated 3.2.2022 learned Predecessor of this Court subject to condition that he shall not take the minor child out of Rohtak without permission of the Court. However, undisputedly the petitioner took the minor child outside Rohtak on 25.08.2022 without permission of the

Court and the child remained in his custody till at least 6.9.2022 as per photographs relied upon by petitioner himself which are placed on record.

25. In view of above-said peculiar facts and circumstances of the case, I am of the considered opinion that it would not be in the interest of minor, if his custody is handed over to petitioner. Moreover, in view of act and conduct of the petitioner in violating the Court order of visitation rights, visitation rights also cannot be granted in favour of petitioner.”

16. The minor is aged about 8 years and he has been living with his mother since 18.8.2017 when, according to the appellant, the respondent No.1-wife left the house of the appellant. It is settled law that while deciding the custody of the minor children, the sole consideration is the paramount welfare of such children. In **Sheoli Hati v. Somnath Das**, (2019) 7 SCC 490, while laying emphasis on the paramount welfare of the child in the custody matters, it was held by the Hon’ble Supreme Court as under:-

“17. It is well settled that while taking a decision regarding custody or other issues pertaining to a child, welfare of the child is of paramount consideration. This Court in *Gaurav Nagpal v. Sumedha Nagpal*, (2009) 1 SCC 42 : (2009) 1 SCC (Civ) 1, had the occasion to consider the parameters while determining the issues of child custody and visitation rights, entire law on the subject was reviewed. This Court referred to English Law, American Law, the statutory provisions of the Guardians and Wards Act, 1890 and provisions of the Hindu Minority and Guardianship Act, 1956, this Court laid down following in paras 43, 44, 45, 46 and 51 (SCC pp. 55-57):-

“43. The principles in relation to the custody of a minor child are well settled. In determining the question as to who should be given custody of a minor child, the paramount consideration is

the “welfare of the child” and not rights of the parents under a statute for the time being in force.

44. The aforesaid statutory provisions came up for consideration before courts in India in several cases. Let us deal with few decisions wherein the courts have applied the principles relating to grant of custody of minor children by taking into account their interest and well-being as paramount consideration.

45. In *Saraswatibai Shripad Vad v. Shripad Vasanji Vad* [*Saraswatibai Shripad Vad v. Shripad Vasanji Vad*, 1940 SCC OnLine Bom 77 : ILR 1941 Bom 455 : AIR 1941 Bom 103, the High Court of Bombay stated :

‘... It is not the welfare of the father, nor the welfare of the mother, that is the paramount consideration for the court. *It is the welfare of the minor and of the minor alone which is the paramount consideration ...*’

46. In *Rosy Jacob v. Jacob A. Chakramakkal*, (1973) 1 SCC 840 , this Court held that object and purpose of the 1890 Act is not merely physical custody of the minor but due protection of the rights of ward's health, maintenance and education. The *power* and *duty* of the court under the Act is the welfare of minor. In considering the question of welfare of minor, due regard has of course to be given to the right of the father as natural guardian but if the custody of the father cannot promote the welfare of the children, he may be refused such guardianship.

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51. The word “welfare” used in Section 13 of the Act has to be construed literally and must be taken in its widest sense. The moral and ethical welfare of the child must also weigh with the court as well as its physical well-being. Though the provisions of the special statutes which govern the rights of the parents or guardians may be taken into consideration, there is nothing which can stand in the way of the court exercising its *parents patriae* jurisdiction arising in such cases”.

16. Nothing could be shown that respondent No.1-mother is not capable of taking care of the minor child or that while in her custody, the child is not safe. Apart from that, learned counsel for the appellant has not been able to counter the observations made by the learned Family Court as regards the appellant's having taken the minor child outside Rohtak on 25.08.2022 without permission of the Court and the child having remained in his custody till 06.09.2022. We find that in view of the conduct of the appellant, the Family Court has rightly found him not entitled to the custody of the minor child.

17. In view of the above, finding no merit in the present appeal, the same is hereby dismissed.

18. Pending application(s), if any, shall also stand dismissed.

(JASJIT SINGH BEDI)
JUDGE

(SUDHIR SINGH)
JUDGE

04.10.2024

JITESH

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