

2024:PHHC:001088

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-4040-2023 (O&M)

Date of Decision: January 08, 2024

Jyoti Soni

...Petitioner

Versus

Sumit Verma and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.L.K.Gollen, Advocate
for the petitioner.

Mr.Ankur Lal, Advocate
for the respondents.

ARCHANA PURI, J.

The petitioner has invoked the jurisdiction of this court under Article 227 of the Constitution of India, for issuance of direction to learned Family Court, Rewari, for execution of the order dated 13.01.2023 passed in CR-231-2023 (Annexure P-4). Besides the same, also the petitioner sought direction to be issued to the Court concerned for proceeding further in the case.

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

That, marriage between the petitioner and respondent No.1 had taken place on 10.06.2019. One son, namely Viyansh was born from their

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wedlock on 25.04.2020. However, the relations between the parties are alleged to be not cordial and as a result thereof, one FIR No.39 dated 26.06.2020 under Sections 315, 354, 354-A, 406, 498-A, 506, 509 and 34 IPC, Police Station Women, Rewari was registered, in which, respondent No.1-husband is facing trial. However, respondent No.1 apologized and had taken the petitioner back to the matrimonial home, but however, his behaviour was never cordial with the petitioner. Again the petitioner got pregnant and gave birth to a child, in the hospital at Jind. The petitioner was subjected to merciless beatings for the purpose of not allowing her parents to meet her, as a result whereof, a complaint was filed with SHO, Civil Lines, Jind. Due to this, the respondents snatched away the minor elder son Viyansh from the custody of the petitioner in the hospital itself. At that time, Viyansh was 1 year 8 months old.

Subsequently, the petitioner had filed a petition before learned Family Court, Rewari, under Section 25 of the Guardianship and Wards Act, 1890, read with Section 6 of the Hindu Minority and Guardianship Act, thereby, seeking custody of the minor child Viyansh. Along with the same, an application for interim custody of the child was also filed. The respondent-husband made appearance and filed an application under Order 7 Rule 10 CPC, for seeking rejection of the plaint, on the ground that Family Court at Rewari had no jurisdiction. However, the same was dismissed.

After hearing both the parties, learned Family Court had allowed the application for interim custody filed by the petitioner and had directed the respondent-father to handover the interim custody of the minor

child Viyansh to the petitioner-mother, within 10 days.

Feeling aggrieved by the aforesaid order, the respondent-husband had filed the petition i.e. CR-231-2023 and this Court, also dismissed the said revision petition vide judgment dated 13.01.2023. While dismissing the said revision petition, this Court also directed the parties to make appearance before learned Family Court on 19.01.2023 and further that the Family Court would obtain the services of a Counsellor, who would ensure smooth transfer of the custody of the child to his mother. For the necessary compliance of the aforesaid order, the petitioner had appeared before the Family Court on 19.01.2023, but however, respondent-husband had not made appearance and thereupon, notice was ordered to be issued to the respondent. The various orders passed by learned Family Court to facilitate the transfer of interim custody were passed and the same, for the convenience of discussion, are reproduced, as herein given:-

19.01.2023

“Orders dated 13.01.2023 passed by the Hon’ble High Court of Punjab and Haryana received. Ld. Counsel for the petitioner moved application to put up the file as the directions were given by the Hon’ble High Court to the parties to appear before this court on today i.e. 19.01.2023.

The petitioner is present in the court in person. However, the respondent has not put in appearance. Notice be issued to the respondent for 24.01.2023 to explain as to why action should not be taken against him under Section 45 Guardianship and Wards Act, 1890.”

24.01.2023

“Notice issued to the respondent to explain his position as to why action should not be taken against him under section 45 of Guardianship and Wards Act, 1890 received back unexecuted with the report that the house of respondent Sumit

Verma was found under lock and key. The respondent Sumit Verma has not complied with the directions given by the Hon'ble High Court vide order dated 13.01.2023 whereby he was directed to appear before this Court. In view of the circumstances, District Child Welfare Officer is hereby appointed the temporary Guardian of the minor child Viyansh with the direction to take the custody of the minor child Viyansh from the respondent Sumit Verma. DSP, Head Quarter, Rewari is directed to ensure police help to the District Child Welfare Officer for execution of the process.

Now to come upon 02.02.2023 for awaiting Report.

Copy of this order be sent to District Child Welfare Officer and DSP Head Quarters, Rewari immediately for compliance.

Warrants of arrest against the respondent Sumit Verma be issued through Superintendent of Police Rewari immediately.”

02.02.2023

District Child Welfare Officer appeared in person and disclosed that the respondent Sumit Verma and the minor child Viyansh were not found present at the given address. The routine report received from the office of Superintendent of Police, Rewari that Sumit Verma and minor child Viyansh were not found at the given address. This court is satisfied that the custody of minor child would not be transferred to the petitioner-mother unless stringent of action is taken in the present matter. The respondents have not even bothered to follow the directions given by the Hon'ble High Court Punjab and Haryana.

Hence, warrants of arrest against both the respondents be issued through Director General of Police, Haryana with the direction to get the same executed by deputing some officer not below the rank of DSP.

Now to come upon 23.02.2023 for awaiting report.”

On 02.02.2023, as evident, the case was further adjourned for awaiting report for 23.02.2023.

However, in the meanwhile, CR-1204-2023 was filed by the

respondent-husband, whereby, the order passed with regard to rejection of the plaint was challenged and vide order dated 22.02.2023, while issuing notice, it was also ordered by this Court that learned Family Court shall adjourn the case, beyond the date fixed i.e. 27.03.2023 (in the aforesaid revision petition). The copy of the order is Annexure P-9.

The case was then further adjourned for awaiting order of the High Court for 11.05.2023 and then further, for multiple times, it was adjourned for awaiting order of this Court. However, CR-1204-2023 was dismissed by this Court vide order dated 11.05.2023. Furthermore, on 16.05.2023, an application was filed by the petitioner along with the order dated 11.05.2023, whereby, revision petition i.e. CR-1204-2023 was dismissed. Notice of the said application was issued to the respondent for 04.07.2023. Again, an application for review was filed on 17.05.2023. Notice of the same was also given for the date fixed. However, on 04.07.2023, an observation was made by learned Family Court, which is reproduced, in verbatim, as herein given:-

“The matter relating to point of jurisdiction of this court is already pending before the Hon’ble Supreme Court of India on 18.07.2023. If, Hon’ble Supreme Court comes to view that this court has no jurisdiction and consequently the matter is transferred to another court then the order of custody dated 03.01.2023 will seized its existence. If matter remains in this court, then the said order would be enforceable by law. So instead of passing any harsh order relating to the custody of the child, in these circumstances, this courts should wait for the order of Hon’ble Supreme Court of India. Accordingly, this petition is adjourned to 20.07.2023 for awaiting further orders from the Hon’ble Supreme court of India.”

In the meanwhile, an application i.e. CM-10436-CII-2023 in

CR-231-2023 was filed by the respondent (present petitioner) for seeking modification of the order dated 13.01.2023, with regard to the interim custody of the minor child. Upon the same, vide order dated 01.06.2023, this Court had observed, which is reproduced in verbatim, as herein given:-

“This application is for modification of the order dated 13.01.2023 passed by this Court whereby certain directions were issued with regard to interim custody of minor child.

Learned counsel for the applicant/respondent No.1 submits that despite the orders of this Court which had attained finality, the custody of the child has not been handed over to the applicant/respondent No.1. He also submits that he is confining the prayer in this application to direct the Family Court to decide the petition expeditiously.

Heard. In view of the limited prayer of the applicant/respondent No.1, the application is disposed of with a direction to the Family Court to decide the petition expeditiously.”

However, the case did not made any further progress. It is pertinent to mention that SLP No.11549/2023 was filed to challenge the order passed in CR-1204-2023, but however, it was observed by the Hon’ble Supreme Court that there is no reason to interfere with the impugned order and while leaving open all contentions to be urged in the proceedings before the Jurisdictional Court, the SLP was disposed of. Even, after the case was finally disposed of by the Hon’ble Supreme Court, the case before learned Family Court, with regard to handing over the interim custody of the minor child Viyansh, had not made further progress.

Thereupon, vide order dated 05.12.2023, this Court had called for the report from the concerned Court, with regard to the progress of the case, after disposal of the matter before Hon’ble Supreme Court. In the progress

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report, it was submitted that on 18.10.2023, the order passed by the Hon'ble Supreme Court was placed on record and the case was adjourned for 16.11.2023 for presence of the respondent. It was also directed by the Court concerned to the respondent to bring the child in the Court, on the next date of hearing. However, on 16.11.2023, the respondent failed to bring the child and consequently, the case was adjourned by the Family Court for 04.01.2024. However, on 05.01.2024, when the present revision petition was taken up by this Court, on query, it was informed that on 04.01.2024 also, the minor child Viyansh was not produced by the respondent-father, for compliance of the order, passed with regard to transfer of the interim custody of the child to the petitioner-mother.

In this backdrop, a query was put by this Court, as to whether, order passed by this Court in CR-231-2023, whereby, the revision petition filed by the respondent-father, to challenge the order passed by the Family Court on the interim custody of the minor child concerned, has been further challenged, it was disclosed that the same has not been challenged. In the given circumstances, it is evident that order of handing over the custody of the minor child Viyansh, who is less than 5 years of age, has attained finality till date. The order of handing over the custody of the child by the respondent-father to the petitioner-mother, has not been complied, till date, as already observed aforesaid.

Learned counsel for the parties heard.

As evident from the zimini orders reproduced aforesaid, do indicate that the respondent-father is intentionally evading the process of

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law by not obeying the order of the competent Court of law, with regard to transfer of the interim custody of the minor child Viyansh to the mother i.e. the petitioner. Perusal of the zimini orders aforesaid amply establish that despite specific direction given by this Court to the parties to make appearance before learned Family Court on 19.01.2023, as evident from the order passed in CR-231-2023, the petitioner-mother, though, had made appearance in person, but the respondent-father did not make appearance and thereupon, notice was issued to the respondent for 24.01.2023. The notice was received back with the report that the house of the respondent Sumit Verma was found to be under lock and key and the respondent did not comply with the directions given by this Court. In these circumstances, District Child Welfare Officer was appointed as temporary guardian of the minor child Viyansh, with the direction to take custody of the minor child from respondent-Sumit Verma. DSP, Head Quarter was also directed to ensure police help to the District Child Welfare Officer, for execution of the process and the case was further adjourned for 02.02.2023, for awaiting report. However, on the subsequent date, District Child Welfare Officer appeared in person and had disclosed about respondent Sumit Verma and minor child Viyansh having not found present at the given address and while recording its satisfaction about the custody of the minor child, would not be transferred to the petitioner-mother, unless stringent action is taken, warrant of arrest were issued through DGP, Haryana, with the direction to get the same executed by deputing some officer, not below the rank of DSP. In the given circumstances, the case was adjourned to 23.02.2023.

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No doubt, while not disclosing the aforesaid factual position, the order dated 02.11.2022 passed by learned Family Court, whereby, an application under Order 7 Rule 10 CPC, for seeking rejection of the plaint was dismissed, was challenged by way filing CR-1204-2023, and therein, the respondent was successful in obtaining the order dated 22.02.2023 from this Court, whereby, a direction was given to learned Family Court concerned, to adjourn the case beyond the date fixed by this Court and the case was further fixed for 27.03.2023. Thereafter, the case had not made any progress.

The order dated 11.05.2023 passed in CR-1204-2023 was challenged before the Hon'ble Supreme Court and the Hon'ble Apex Court, had observed that there is no reason to interfere with the impugned order. Even thereafter, the respondent, as such, has not be complied with the order of transfer of interim custody of the minor child.

Thus, from the aforesaid, it is evident that throughout, there had been an attempt, on the part of the respondent-father to evade the compliance of the order passed by this Court in CR-231-2023, which had since attained finality. However, evasive attitude of the respondent-father cannot stand in the way of the Court, to initiate coercive step that may be necessitated against the respondent-father, to ensure the compliance of transfer of the interim custody of the minor child Viyansh to the petitioner-mother. At the time of alleged snatching away of the minor child, he was 1 year 8 months old. At the time of filing of the present petition for issuing of directions, the child was about 3 years old.

In the given circumstances, the concerned child is not only deprived of the affection and warmth of the petitioner-mother, as already considered by the Courts concerned, while deciding the question of interim custody of the child, but however, considering the subsequent events, the child is also being deprived of sibling affection, as the petitioner has been blessed with another son, who is already in her custody.

Looking at the stubborn behaviour of the respondent-father, in not complying with the orders passed by the Courts concerned, the present revision petition is hereby allowed and the parties are directed to appear before learned lower Court, Rewari, on the date already fixed i.e. 11.01.2024 and the respondent-father is hereby directed to handover the interim custody of the minor child Viyansh to the petitioner-mother, within a maximum period of 7 days, w.e.f. 11.01.2024. In the eventuality of the respondent-father, not complying with the orders passed in CR-231-2023 and the directions, so given by this Court, learned Court concerned, shall be at liberty to adopt the coercive methods, including that of seeking police help with the intervention of Superintendent of Police, Rewari, so as to, ensure smooth transfer of interim custody of the minor child Viyansh from the respondent-father to the petitioner-mother.

The Registry is also directed to send a copy of this order to the Superintendent of Police, Rewari, for necessary intimation.

January 08, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No