



347-A

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

CR-4017-2024 (O&M)

Date of decision: 05.12.2024

Rahul Gyanchandani

...Petitioner

Versus

Seema Gyanchandani

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Rakesh Kumar, Advocate and
Ms. Shubreet Kaur, Advocate for the petitioner

Ms. Shefali, Advocate
(Through Video Conferencing) and
Mr. Gaurav Pathak, Advocate for the respondent.

VIKAS BAHL, J. (ORAL)

1. This is a revision petition filed under Article 227 of the Constitution of India for setting aside the order dated 28.06.2024 (Annexure P-14) passed by the Vacation Judge/ADJ, Gurugram and order dated 02.07.2024 (Annexure P-15) passed by the Principal Judge, Family Court, Gurugram in case titled as “Rahul Gyanchandani Vs. Seema Gyanchandani” in I.A. No.2 of 2024 in GW-85-2023. Other prayers have also been made in the present revision petition.

2. Learned counsel for the petitioner has submitted that in the present case, the present petitioner, who is the father of the ward whose



custody is being sought, had filed a petition under Section 25 of the Guardians and Wards Act, 1890 (hereinafter to be referred as “the 1890 Act”) seeking permanent physical custody of his son, who was at that time 10 years of age. It is submitted that the Principal Judge, Family Court, Gurugram, vide order dated 02.04.2024, was pleased to grant visitation rights to the petitioner and that the said order was communicated by the petitioner to the respondent on 07.04.2024 vide an email (Annexure P-8). It is further submitted that since the respondent was to handover the child to the petitioner on every 2nd and 4th Sunday of every English calendar month for 5 hours, thus, on 14.04.2024, a request was made through email to the respondent to comply with the said order.

3. It is submitted that however, since there was repeated non-compliance of the said order, thus, the petitioner had filed an execution petition dated 22.04.2024. It is submitted that on 31.05.2024, the case was adjourned to 07.08.2024 i.e., after the summer vacations and that since the petitioner was also entitled to 10 days custody during the summer vacations, thus, the petitioner moved an application for urgent hearing during the summer vacations vide application dated 21.06.2024 (Annexure P-12). It is submitted that another application was filed on the said date in which a prayer was made for directing the concerned police to ensure compliance of the order dated 02.04.2024 passed by the Court so as to render assistance to the petitioner in terms of Section 25(2) of the 1890 Act. It is argued that notice was issued in the said application and on 28.06.2024, the respondent was directed to produce the child on



02.07.2024 but an illegal condition was imposed upon the petitioner directing him to bring a demand draft qua the entire arrears of maintenance on the date fixed. It is further submitted that on 02.07.2024, although the child was brought to the Court but on account of non-payment of entire arrears of maintenance, the petitioner was not permitted to meet the child and it was observed that there was no justification for entertaining the application with respect to the compliance of order dated 02.04.2024 and the file was ordered to be put up on 07.08.2024. It is submitted that the orders dated 28.06.2024 as well as 02.07.2024 requiring the petitioner to first pay the entire alleged arrears of maintenance before the petitioner is permitted to meet the child, in pursuance of the order dated 02.04.2024, are illegal and deserve to be set aside, inasmuch as, the Executing Court cannot go beyond the decree/order. In the said regard, reliance has been placed upon the judgment of the Division Bench of this Court in the case of ***Surender Vs. Vijay Singh and another passed in FAO-5265-2013 decided on 10.03.2014.***

4. It is further submitted that with respect to the maintenance which has been awarded to the respondent, the petitioner is pursuing his remedy and has already filed an appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter to be referred as “the Domestic Violence Act”) against the order dated 11.07.2023 granting the said maintenance. It is also submitted that even the respondent has filed an execution application, for executing the order dated 11.07.2023 and both the parties are pursuing their remedy under the



Domestic Violence Act, which is a separate remedy. It is submitted that in view of the same, the observations made by the Executing Court in the impugned order to the extent that the petitioner is directed to pay the entire arrears of maintenance, be set aside.

5. Learned counsel for the respondent, on the other hand, has submitted that the said order was passed on an application filed by the petitioner for early hearing of the case during the summer vacations and the petitioner is pursuing his remedy and the execution petition is still pending and thus, it would be open to the petitioner to raise all the pleas in the execution proceedings and there was no occasion for the petitioner to file the present revision petition. It is further argued that vide order dated 11.07.2023, an amount of Rs.18 lacs per month has been ordered to be paid as interim maintenance to the respondent and her minor son by the Judicial Magistrate 1st Class, Gurugram on an application filed by the respondent under Section 23 of the Domestic Violence Act. It is submitted that the respondent is pursuing her remedy for seeking maintenance and the respondent has filed an execution application for executing the order dated 11.07.2023, which is pending and has further filed an appeal under Section 29 of the Domestic Violence Act before the Sessions Court for seeking enhancement of the said amount. It is submitted that the right of the respondent to pursue the said remedy be not curtailed.

6. This Court has heard learned counsel for the parties and has perused the paperbook.

7. It is undisputed that the present petitioner, who is the father of



the minor child whose custody is being sought, had filed a petition under Section 25 of the 1890 Act seeking permanent physical custody of the minor child (son), who was aged 10 years at that time. Alongwith the said petition, an application was filed by the petitioner under Section 12 of the 1890 Act for seeking interim custody of the minor child during the pendency of the petition under Section 25 of the 1890 Act. It is not disputed that vide order dated 02.04.2024, interim directions were passed while disposing of the said application. The relevant portion of the said order is reproduced hereinbelow:-

*“18. Keeping in view the above facts and the observations made in various authorities, it is held that though the petitioner is not entitled for interim custody of the minor during the pendency of the case but certainly, **he is entitled to the visitation rights and to spend the summer as well as winter holidays with the minor child in the following manner.***

- 1. The **petitioner-father** shall be entitled to meet the **minor child on every 2nd and 4th Sunday of every English Calender Month for five hours between 11.00 am to 4.00 pm.** The respondent shall drop the child at the residence of petitioner and shall pick him back from the same place at the scheduled time.*
- 2. The **petitioner-father** is also entitled to meet the **minor child during summer vacations for ten days and half of the winter vacations.***
- 3. The petitioner-father is also allowed to meet the minor child on festivals i.e. Holi, Diwali, Birthday of petitioner and birthday of minor child for a period of two hours.*



4. The respondent-mother is also directed to allow the petitioner to speak with the minor child on mobile phone for once in a week atleast for 15 minutes.

19. Hence, the application filed by the applicant-petitioner stands disposed off.”

8. It is the case of the petitioner that the respondent had repeatedly not complied with the said directions in spite of several emails including the emails dated 07.04.2024 and 14.04.2024 and thus, the petitioner was left with no other remedy but to file an execution petition dated 22.04.2024 (Annexure P-10). A perusal of the said petition would show that it was specifically pleaded by the petitioner that the respondent had repeatedly not complied with the order dated 02.04.2024. Notice was issued in the said execution petition and on 31.05.2024, the case was adjourned to 07.08.2024 for arguments.

9. Since, the petitioner was also entitled to meet the minor child during the summer vacations for a period of 10 days vide order dated 02.04.2024, thus, the petitioner had moved two applications in June, 2024 i.e., Annexures P-12 for taking up the matter for urgent hearing during the summer vacations and for directing the concerned police to ensure the compliance of the order dated 02.04.2024. The said applications were filed in view of the fact that summer vacations of the minor child were to end on 02.07.2024 and the respondent had not complied with the order vide which 10 days custody was to be granted to the present petitioner during the summer vacations. In the said application, notice was issued on 21.06.2024 for 26.06.2024, on which date, the matter was adjourned to



28.06.2024.

10. On 28.06.2024, the Executing Court had passed the following order:-

*“Present: Applicant in person represented by Ms. Roshni, proxy counsel for Sh.Rakesh Kumar, Advocate
Respondent in person represented by Sh. Adab Singh, Advocate,*

Power of attorney on behalf of respondent filed by Sh. Adab Singh, Advocate. Notice sent for service upon the Protection Officer received back served through whatsapp, who has also sent an application in writing with a request for an adjournment on the ground that on account of death of mother-in-law, she is on leave till 02.07.2024.

Respondent is directed to produce the child on 02.07.2024 and petitioner is directed to bring DD qua the entire arrears of maintenance on the date fixed.

Sd/-

Roopam (UID No.HR0146)

Vacation Judge/ADJ, Gurugram 28.6.2024”

11. A perusal of the above order would show that the Executing Court apart from directing the production of minor child for 02.07.2024, had also directed the petitioner to bring a demand draft for the entire arrears of maintenance on the date fixed. On 02.07.2024, it was observed by the Executing Court that although, the respondent had brought the child to the Court however since the petitioner had not brought the demand draft and the earlier order was not complied with, thus, there was no justification for entertaining the application seeking compliance of order dated 02.04.2024 before the date fixed and the file was ordered to be put



up on 07.08.2024. The petitioner has challenged the abovesaid orders dated 28.06.2024 as well as 02.07.2024 on the ground that the petitioner's meeting with the child, in pursuance of order dated 02.04.2024, should not be made contingent upon the petitioner first paying the arrears of maintenance. It is submitted that with respect to maintenance which has been awarded under the Domestic Violence Act, both the parties are pursuing their independent remedies and thus, any order passed in the present execution proceedings would prejudice the rights of the petitioner in the said proceedings. It is further submitted that there was no occasion for the Executing Court to have given the said directions.

12. This Court is of the opinion that the direction given by the Executing Court directing the petitioner to bring the demand draft qua entire arrears of maintenance in the execution proceedings, emanating from the non-compliance of the order dated 02.04.2024 by the respondent, is in violation of the settled law. It is a matter of settled law that the Executing Court cannot go beyond the order/decreed while executing the same. In the present case, specific order which is sought to be executed is with respect to the right granted to the petitioner to meet the minor child on every 2nd and 4th Sunday of every English calendar month for 5 hours between 11 am to 4 pm and also to meet the child for a period of 10 days during the summer vacations and half of the winter vacations and further to meet him during various festivals and also to speak with the minor child on the mobile phone for once a week at least for 15 minutes. It was the duty of the Executing Court to ensure the compliance of the said order



instead of passing a conditional order or incorporating conditions which are not there in the order sought to be executed.

13. The Division Bench of this Court in the case of ***Surender*** (Supra), had observed that the Executing Court has no power to go beyond the decree and the order already passed by the competent Court, was simply to be executed by the Executing Court. Relevant portion of the said judgment is reproduced hereinbelow:-

“(9) We have given our thoughtful consideration to the matter. We are in agreement with the arguments advanced by learned counsel for the appellant that the executing Court had no power to go behind the decree and to decide whether or not custody of the children was to be given to the appellant or not. Since the order had already been passed by the competent Court that the custody was to be given to the appellant, the task of the executing Court was simply to execute the order and hand over the custody of the minor children to their father i.e. the present appellant. The executing Court, therefore, acted beyond jurisdiction and in an illegal manner in handing over the custody back to the respondent and in not executing the order which had already been passed in favour of the appellant and had attained finality. The custody of the minor children namely, Suksham and Simrati, was to be handed over to the appellant and executing Court had to limit itself to that and was not competent to refuse custody of the minors to the appellant and to grant him visiting rights.

(10) The appeal is, therefore, allowed and the order dated 04.10.2013 passed by the learned District Judge, Family Court, Sonapat, is set aside. The case is remanded with the



direction that the executing Court shall proceed in accordance with law.”

14. Thus, keeping in view the above settled proposition of law, the impugned orders to the effect that the petitioner has been directed to bring a demand draft qua entire arrears of maintenance, deserve to be set aside. It would be relevant to note that both the parties are seeking their remedies with respect to the interim maintenance awarded to the respondent and it would be open to both the parties to raise all the pleas which are available to them in the said proceedings and the passing of the present order would not affect their rights. Moreover, no further directions are called for in the present case, inasmuch as, the execution petition is still pending.

15. Keeping in view the abovesaid facts and circumstances, the present revision petition is partly allowed and the impugned orders dated 28.06.2024 as well as 02.07.2024 to the extent that the petitioner has been directed to bring a demand draft for entire arrears of maintenance are set aside and the Executing Court is directed to proceed in the matter in accordance with law.

16. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

05.12.2024

Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No