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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(1)

CR-2656-2021
Date of Decision: 10.01.2024

Mrs. Renu

Versus

...Petitioner

Amit Kumar

and

...Respondent

(2)

CR-2979-2021

Amit Kumar

Versus

...Petitioner

Renu

...Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Samarth Sagar, Advocate
for the petitioner in CR-2656-2021 and
for the respondent in CR-2979-2021.

Mr. Akashdeep Singh, Advocate
for the petitioner in CR-2979-2021 and
for the respondent in CR-2656-2021.

GURBIR SINGH, J.

1. This order will dispose of two petitions i.e. CR-2656-2021 (filed by Mrs. Renu/wife) and CR-2979-2021 (filed by Amit Kumar/husband) as both petitions have been filed against the same order and for the sake of brevity, facts have been taken from CR-2656-2021.
2. The present revision petitions have been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 13.10.2021 (Annexure P-1) passed by the Ld. Principal Judge, Family Court, Jind whereby two separate applications under Section 25 of the Guardians and Wards Act, 1890 (hereinafter to be referred as ‘the Act’) filed by the mother and sister of the respondent/husband as well as respondent/husband seeking visitation rights and custody of minor child has been allowed to the extent that respondent/husband is allowed to have

custody of the minor child for every second and fourth Saturday.

3. The brief facts as culled out from the present petition are that the marriage between the petitioner and the respondent was solemnized on 25.11.2016 as per Hindu rites and ceremonies and out of the wedlock, minor son namely Shauryaveer was born on 23.11.2017. The petitioner/wife is serving as a Lecturer and respondent/husband is a bank employee. As both husband and wife are at loggerheads with each other, the Family Court vide interim order dated 23.12.2020 (Annexure P-5) had handed over the custody of the child to the petitioner/wife. Thereafter, respondent/husband along with his mother and sister filed two separate applications, first for visitation rights by his mother and sister and second by the petitioner for custody of the minor child for weekends i.e. Saturday and Sunday. The learned Family Court allowed the application of respondent vide order dated 13.10.2021 (Annexure P-1) to the extent that respondent/husband would have the custody of the minor child for every second and fourth Saturday and would return the child on Sunday. Aggrieved by the said order, the petitioner/wife and respondent/husband both filed separate revision petitions before this Court.

4. Learned counsel for the petitioner submits that petitioner/wife is more educated as compared to the respondent/husband and petitioner is residing independently at Urban Estate, Jind whereas respondent/husband is living in a rural area and is serving in Rohtak and he has no sufficient time to keep and maintain the minor child. He further submits that the Family Court wrongly held that petitioner/wife is residing along with her parents whereas she is living separately, economically and independently till date. The applications filed by the respondents for visitation rights and custody of minor child have been filed in order to frustrate and harass the

petitioner/wife.

5. On the other hand, learned counsel for the respondent/husband contends that the Family Court just passed the interim relief and final order is yet to be passed and he further contends that the Family Court has rightly observed that the father of the petitioner/wife was convicted for such a serious offence like rape therefore, the conduct of the father of the petitioner/wife certainly casts a shadow over as to how they would bring up the child in a safe and healthy atmosphere and the child certainly needs more quality time with his father. He further submits that trial Court just has given interim relief just for two days visitation.

6. I have heard the learned counsel for the parties and thoroughly perused the paper-book.

7. The child cannot be treated as a property of the parents. While considering the cases pertaining to custody of child, the principle is “handle with care”. No doubt, the provisions of special statutes which govern the rights of the parents or guardians are required consideration but there is nothing which can stand in the way of the Court exercising jurisdiction keeping in mind welfare and interest of child and not the rights of the parents under the statute.

8. Vide order dated 23.12.2020, custody of the minor child was given to the mother by the Family Court. Said order reads as under:-

“Reply to application for interim custody filed. Meeting between both spouse and minor child has been held in presence of counsels for both parties. After due discussion, it has been resolved that custody of minor son will remain with petitioner (mother) till age of five years and respondent (father) will convene meeting with minor child on every Sunday at Harbal Park, Jind between 10:00 AM to 5:00 PM and both parents along-with minor son will took lunch together on that date.

Joint statement of parties in this regard is recorded separately. Custody of minor child has been handed over to his mother (petitioner) by father (respondent), who has also taken over custody of minor child. Both parties shall be bound by their statement in letter and spirit. Accordingly, present application for interim custody of minor son is hereby disposed off. Adjourned to 15.02.2021 for filing written statement to the main petition.”

9. Both parents of the minor are working. Mother is working as Lecturer. It cannot be said that none of the parties have any financial limitations to bring up the child. The child was born on 23.11.2017. He is now more than 06 years old. The child cannot be deprived of love and care of his father. For the healthy development of the mind of the child, it is necessary that child must have access to his both parents. The learned Family Court has given custody of the child on every 2nd and 4th Saturday at 04:00 pm to the father and child would be handed over to the mother on next day i.e. Sunday at about 04:00 pm. The learned Family Court has passed the order consciously keeping in view that final assessment is yet to be made. In case an occasion arises in future where the Court might need to have an opinion of the child, then the child would be able to put his views only if the child had an opportunity to spend time with both the parents. The father seeks custody of 2 days in a week which is not in the interest of the minor at this tender age since minor is to now attend school and to do other things so, this Court is of the view that Family Court has passed a well reasoned order keeping in the view the welfare of the child. No ground for interference is made out.

10. In case **Dr. Ashish Ranjan Vs. Dr. Anupama Tandon and another, 2011(4) SCC (Civil) 948**, the learned Apex Court has held

doctrine of res-judicata is not applicable in the matters of child custody. The extract of said judgment is as under:-

15. In *Rosy Jacob v. Jacob A. Chakramakkal*, AIR 1973 SC 2090, this Court (Three-Judge Bench) considered the nature of custody of a minor under the provisions of Guardians and Wards Act, 1890 and application of doctrine of res-judicata/estoppel in respect of the same and held as under:

"The appellant's argument based on estoppel and on the orders made by the court under the Indian Divorce Act with respect to the custody of the children did not appeal to us. All orders relating to the custody of the minor wards from their very nature must be considered to be temporary orders made in the existing circumstances. With the changed conditions and circumstances, including the passage of time, the Court is entitled to vary such orders if such variation is considered to be in the interest of the welfare of the wards. It is unnecessary to refer to some of the decided cases relating to estoppel based on consent decrees, cited at the bar. Orders relating to custody of wards even when based on consent are liable to be varied by the Court, if the welfare of the wards demands variation."

16. The aforesaid judgment was re-considered by this Court (Two-Judge Bench) in ***Dhanwanti Joshi v. Madhav Unde*, 1998(1) RCR (Civil) 190: (1998) 1 SCC 112**, and after quoting the ratio of the said judgment, held as under:

"21.....However, we may state that in respect of orders as to custody already passed in favour of the appellant the doctrine of res judicata applies and the Family Court in the present proceedings cannot re-examine the facts which were formerly adjudicated between the parties on the issue of custody or are deemed to have been adjudicated. There must be proof of substantial change in the circumstances presenting a new case before the court. It must be established that the previous arrangement was not conducive to the child's welfare or that it has produced unsatisfactory results....."

17. In *Jai Prakash Khadria v. Shyam Sunder Agarwalla & Anr.*, AIR 2000 (3) RCR (Civil) 143; and *Mausami Moitra Ganguli v. Jayant Ganguli*, 2008(4) RCR (Civil) 551 : 2008(5) RAJ, 614, this court held that it is always permissible for the wards to apply for the modification of the order of the court regarding the custody of the child at any stage if there is any change in the circumstances.

(See also ***Vikram Vir Vohra Vs. Shalini Bhalla*, 2010(2) RCR (Civil) 521: 2010(2) R.A.J. 401: (2010) 4 SCC 409**)."

11. Since there is no bar for the Family Court to change its order regarding custody and visitation rights and such order is not final so a party

who wants that Family Court should change the order should move before that Court as successive application for such order are not barred by res-judicata. Both the revision petitions are without merit and the same are accordingly dismissed.

10.01.2024
Parveen kumar

(GURBIR SINGH)
JUDGE

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