



CR-6336-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR-6336-2023 (O&M)

Reserved on:14.03.2024

Date of pronouncement:07.05.2024

Dinesh Kumar

... Petitioner

Vs.

Isha Rani

... Respondent

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Argued by petitioner in person.

Mr. Nikhil Sabherwal, Advocate for the respondent.

...

SUKHVINDER KAUR, J.

1. The instant revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 03.08.2023 (Annexure P-6) passed by the Principal Judge, Family Court, Bathinda in CIS No.GW-155-2019, whereby the application filed by the petitioner under Order XIV Rule 5 CPC read with Section 151 CPC for framing of additional issues was dismissed.

2. The brief facts as per revision petitioner are that marriage of the petitioner and respondent was solemnized on 06.09.2014 and out of their wedlock a male child, namely Priansh Mittal was born on 25.02.2016. The parties had various issues between them which could not be resolved and both the parties are taking the recourse available to them in law. It has been alleged that initially, the petitioner had the custody of minor child, namely, Priansh Mittal but respondent preferred a petition under Section 25 of the



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Guardians and Wards Act, 1890 (hereinafter to be referred to as 'the 1890 Act') i.e. GW/155/2019, which is pending before the Family Court, Bathinda. An interim measure, vide order dated 18.12.2020, the Family Court, Bathinda directed that child will remain with the respondent and at the relevant point of time child was below the age of 5 years on 18.12.2020.

The trial Court framed the following issues:

“1. Whether petitioner is entitled to the custody of minor son namely Prayansh u/s 25 of Guardian and Wards Act from the respondent? OPP

2. Whether the petitioner has got the locus standi or cause of action to file the present application? OPR

3. Whether the petitioner is estopped from filing the present petition by her own act and conduct? OPR

4. Relief.”

3. It has been alleged that some of the important issues were not framed by the trial Court. Hence, the petitioner filed an application under Order XIV Rule 5 CPC read with Section 151 CPC for framing of additional issues before the Family Court. The suggested issues are reproduced as under:

“a) Whether the Court has jurisdiction to entertain and decide the present application?

b) Whether the wife/petitioner has come with clean hands?

c) Whether the wife/petitioner has deserted and neglected the child?



d) Whether the residence of respondent as on dated 30.03.2019 is Bathinda?”

4. It has also been alleged that the trial Court without giving any due consideration to the application of the petitioner passed the impugned order dated 03.08.2023. Hence, aggrieved against the same, the revision petitioner has knocked the doors of this Court by way of filing of the present revision petition.

5. Petitioner has contended that the impugned order dated 03.08.2023 is illegal, arbitrary and unsustainable in the eyes of law. The very issue of jurisdiction of the Court needs to be decided by the concerned Court irrespective of the fact that the respondent is even present or not but the application of the petitioner has been dismissed in a mechanical manner without considering the genuine request to frame the issue of jurisdiction. He has further contended that escaping the issue regarding the very jurisdiction of the Court makes the whole proceedings futile, which may stretch over years, but in fact find their genesis in a petition which is a nullity in the eyes of law. He has argued that the respondent has manipulated all the facts and presented the same in a distorted and clever manner. So it is necessary to frame the issue regarding coming with clean hands. He has further argued that it is also settled law that someone who deserts a child, cannot claim custody of a child under Section 25 of the 1890 Act . So it is necessary to frame the issue regarding deserting/neglecting the child and it is also necessary to frame issue regarding residence of the petitioner as on 30.03.2019 as the specific stand had been taken by the respondent that



during the relevant time, the respondent was living all alone in a rented accommodation at Bathinda. He has urged that framing of all these issues is essential to decide the matter in a transparent and fair manner.

6. On the other hand, learned counsel for the respondent has contended that this frivolous application has been filed by the petitioner only to harass the respondent and to delay the Court proceedings of the present case and all the material issues have already been framed. He has urged that the parties were residing together in a rented house at Bathinda, from where respondent was deserted by the petitioner at the instigation of his family members, by keeping the custody of minor son with him forcibly. He has submitted that the issues already framed by the Court are sufficient to decide the controversy between the parties and the dispute regarding the jurisdiction of the trial Court has also already been decided vide order dated 12.02.2020 passed by the Principal Judge, Family Court, Bathinda.

7. I have heard the petitioner as well as learned counsel for the respondent at length and have gone through the records.

8. So far as the proposed issue regarding jurisdiction is concerned, the question regarding jurisdiction of the Family Court, Bathinda has already been decided vide order dated 12.02.2020. Thereafter, the review application filed by the petitioner under Section 114/Order 47 CPC for reviewing the said order dated 12.02.2020 has also been dismissed. The Principal Judge, Family Court, Bathinda has rightly held that since the controversy regarding the jurisdiction of such Court has already been decided vide the aforesaid order, so there was not any necessity to frame Issues Nos.A and D as prayed



for and the proposed Issues Nos.B and C are also not required to be framed as the issues that had already been framed vide order dated 18.12.2020 are sufficient to effectively adjudicate the controversy between the parties in the present suit.

- 9. In the light of the above, the impugned order is well reasoned order and does not suffer from any illegality or perversity and does not call for any interference.
- 10. The present revision petition sans any merits, stands dismissed.
- 11. Pending application(s), if any, shall also stand disposed of.

07.05.2024
harjeet

(SUKHVINDER KAUR)
JUDGE

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| 1.Whether speaking/reasoned? | Yes/No |
| 2.Whether reportable? | Yes/No |