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2024:PHHC:060228

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

Civil Revision No.7338 of 2023 (O&M)

Date of decision: 01.05.2024

Jogeshwar Singh Likhari

.... Petitioner

Versus

Shikha

.... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Kushagra Mahajan, Advocate, for the petitioner.

Mr. Naveen Batra, Advocate, for the respondent.

GURBIR SINGH, J.

1. Challenge in this revision petition filed under Article 227 of the Constitution of India is to the order dated 20.04.2023 passed by learned Principal Judge, Family Court, Amritsar whereby in an application filed by the petitioner seeking interim custody of the minor child, namely, Sifat Kaur, in a petition filed under Section 25 of the Guardians and Wards Act, only visitation rights has been granted.

2. The brief facts necessary for the disposal of present revision petition are that the marriage of the son of the petitioner was solemnized with the respondent on 16.02.2015 and out of said wedlock, a female child was born on 04.01.2016, who is in custody of the respondent. On account of continuous cruel acts and ill behavior of respondent, the son of petitioner unfortunately developed multiple problems and he was also detected with cancer in 2019 and ultimately died in May, 2021 due to Covid-2019.

2.1 The respondent contested the petition and filed written statement that she, being mother, has got all the love and affection towards the minor child and the minor child too is emotionally attached with her. She is looking after the minor child and providing her all the necessities of life and best education.

2.2 During the pendency of petition, an application for interim custody of the minor child was filed by the petitioner and the same was disposed of vide order dated 20.04.2023 whereby instead of interim custody, petitioner has been granted visitation rights on every first Saturday at 3:00 PM to 4:00 PM in the Court till final decision of the main petition. Aggrieved against the said order, petitioner has approached this Court by way of present revision petition.

3. Learned counsel for the petitioner has argued that welfare of the child is paramount consideration while deciding the custody issue. Vide impugned order, learned Family Court has ordered the respondent to produce the minor child in the Court only for the purpose of meeting with the petitioner on every 1st Saturday of each month at 3:00 PM to 4:00 PM till the disposal of main petition. The repeated visitation rights in the court premises is not in the interest of the child as the environment during the visitation rights is not in the best interest of the child. It is submitted that except the court premises, the best suited place would be the residence of the petitioner or any other place. The petitioner has prayed that he may be allowed to meet the minor child on every Saturday from 11:00

AM to 4:00 PM. He even undertakes to pick the minor child from the residence of the respondent and to drop her back.

4. Learned counsel for the respondent has submitted that after the death of the husband of respondent, she and her minor daughter were thrown out of their matrimonial house. She is making her both ends meet with great difficulty. She has joined service in Delhi and it is very difficult to come to Amritsar for the visitation of the minor child in the court on every Saturday. The learned Family Court failed to take into consideration that the petitioner had no love and affection for the minor child. Many cases are pending between the parties, and respondent is unnecessarily being harassed.

5. I have heard the submissions of learned counsel for the parties and have gone through the file.

6. Para No.3 of the impugned order reads as under:-

“Averments made in the application has been denied and it has been contended that the applicant has no love and affection for the minor child. Perusal of the file shows that applicant has filed the instant petition u/s.25 of Guardian and Wards Act for custody of minor Sifat Kaur. At present, child is in the custody of her mother. Child is of tender age however given the fact that petitioner is also one of the grand-parents being grand-father, it would be in the fitness of things and even for the betterment of the minor as well, if the minor is allowed to be seen by the applicant as that way the minor will not be deprived of love and affection of his grand-father. So, in these circumstances, the application is disposed off with the observations that respondent would be producing the minor child in the court only for the purpose of meeting with his grand-father on every 1st Saturday of each month at 3.00 PM to 4.00 PM in the court till the final decision. Now case stands adjourned to 01.07.2023 for consideration.”

The petitioner, being grandfather, has every right to meet his granddaughter during the pendency of the case. The order of interim custody is never a final order. The respondent if has started serving in Delhi and now residing in Delhi with the minor child, then she can very well move an application before the concerned Family Court, which can take the said fact into consideration and accordingly pass the order, but in the absence of any such plea before the learned Family Court that she is serving in Delhi, same cannot be taken into consideration in this revision petition. The learned Family Court, after considering that minor child is not deprived of love and affection of grandfather, has ordered that he be allowed to meet the minor child on first Saturday from 3:00 PM to 4:00 PM in the Court but it is well known that in the court, atmosphere is not conducive. So, the impugned order is modified that instead of court, the respondent would produce the minor child in the ADR Centre at Amritsar only for the purpose of meeting with her grandfather on first Saturday of each month at 3:00 PM to 4:00 PM till the disposal of the main petition.

7. With the above modification in the impugned order, present revision petition stands disposed of accordingly.

8. Pending application, if any, shall also stand disposed of.

(GURBIR SINGH)
JUDGE

May 01, 2024

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