

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****117****CR-819-2025 (O&M)****Date of decision: 07.02.2025****Shubhra Rani****...Petitioner(s)****Vs.****Manish Arora****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Vipul Babuta, Advocate for the petitioner.

*********NIDHI GUPTA, J.**

The present civil revision petition under Article 227 of the Constitution of India has been filed for setting aside the impugned order dated 22.07.2019 (Annexure P-6) passed by Id. Additional Principal Judge Family Court, Ludhiana in Case No. GW/419/2019 dated 22.07.2019 titled as "*Manish Arora Vs Shubra Rani*", whereby the petitioner was summoned under section 10 and section 25 of the Guardians and Wards Act 1890; **and** further for setting aside the impugned order dated 10.10.2024 (Annexure P-15) whereby the petitioner was directed to furnish an affidavit regarding name and address of the School of the minor child as well as to furnish the affidavit regarding her matrimonial status, job and present address; **and** for setting aside the order dated 19.12.2024 (Annexure P-16) whereby the application of the petitioner, for review of the order dated 10.10.2024 (P-15) has been dismissed.



2. Learned counsel for the petitioner submits that admittedly the petitioner and respondent had been granted divorce by way of a mutual consent under Section 13-B of the Hindu Marriage Act vide decree dated 17.05.2017 (Annexure P-1). It was a categorical condition of the said decree that the minor child will remain in the custody of the petitioner/wife. It is contended that as such, the respondent-husband could not have filed the present petition under the Guardians and Wards Act to seek custody of the minor child. It is argued that the only recourse available as per law to the respondent was to challenge the decree dated 17.05.2017; and the respondent could not have filed a petition under the Guardians and Wards Act to seek custody of the minor child, the same being in violation of the terms and conditions of the decree dated 17.05.2017. In support, learned counsel for the petitioner relies upon a judgment passed by a Coordinate Bench of this Court in '**Lalit Ahuja vs. Shikha Malhotra**' **Neutral Citation No. 2018:PHHC: 063536** decided on 29.05.2018 (Annexure P-17) wherein in similar facts and circumstances, this Court has held as follows:-

".....A joint statement was made by the parties that the minor child namely Shreya Ahuja who is in custody of the petitioner will remain with him and respondent will be having no concern with the minor whatsoever. At the same time, filing of petition under Guardians and Wards Act is not maintainable inasmuch as that under Order 23 Rule 3A CPC, the consenting order is not amenable to appeal or independent suit. The only remedy available to the respondent is to file an application in the same case. A consent decree operates as an estoppel and is valid and binding unless the same is set aside by the Court



which passed the consent decree, by an order on an application under proviso to Rule 3 of Order 23 CPC. Having not done so, in my considered opinion, petition filed by the respondent under Guardians and Wards Act for taking custody of the minor is not maintainable and the impugned order dated 14.08.2015 passed by Guardian Judge, Ludhiana deserves to be set aside.....”

3. It is accordingly submitted that the very petition filed by the respondent under the Guardian and Wards Act was not maintainable. Therefore, the orders passed by the learned Family Court in the said proceeding are not sustainable. It is accordingly prayed that the present petition be allowed.

4. No other argument is raised on behalf of the petitioner.

5. I have heard learned counsel for the petitioner and perused the case file in great detail.

6. The brief facts of the case are that the petitioner was married to the respondent on 22.05.2011. One child was born out of their wedlock on 22.09.2012. Due to the temperamental differences, the parties had sought divorce by way of a mutual consent under Section 13-B of the Hindu Marriage Act, which was allowed vide decree dated 17.05.2017 (Annexure P-1). It is the case of the petitioner that in violation of the terms and conditions of the divorce decree as set out in Annexure P-1, the respondent/husband has filed a petition (Annexure P-5) under the Guardians and Wards Act on 20.07.2019 seeking custody of the minor child.

It has been canvassed that as per the judgement of ***Lalit Ahuja's case***



(supra) (Annexure P-17), it was not open for the respondent to file a fresh petition; and that the respondent ought to have laid challenge to the decree dated 17.05.2017. The said argument of the petitioner is misleading on account of the fact that in the petition filed by the respondent under the Guardians and Wards Act (Annexure P-5) especially in para 4 thereof, comprehensive reasons have been cited by the respondent for seeking custody of the minor child.

7. Even otherwise, no ground is made out to grant the prayer of the petitioner as vide the first impugned Zimni order dated 22.07.2019 (Annexure P-6), the petition filed by the respondent under Section 10 and Section 25 of the Guardian and Wards Act has only been registered. Vide the second impugned order dated 10.10.2024 (Annexure P-15), the petitioner has been directed to furnish the affidavit before the Family Court regarding the name and address of the school where the minor child is presently studying. And vide the third impugned order dated 19.12.2024 (Annexure P-16), the application of the petitioner for review of order dated 10.10.2024, has been dismissed by the learned Family Court.

8. No argument has been advanced by learned counsel for the petitioner before this Court as to why the order dated 10.10.2024 (Annexure P-15) directing the petitioner to furnish affidavit regarding the name and address of the school where minor child is studying, was bad in law. All that has been repeatedly stated is that the petition filed by the respondent under the Guardians and Wards Act was not maintainable.

Needless to say that the said question regarding the maintainability of the



respondent’s petition under the Guardians and Wards Act would be considered and adjudicated upon by the learned Family Court in accordance with law at the appropriate time subject to such pleadings/objections, if any, raised by the petitioner before the learned Family Court.

9. As such, I find no ground is made out to interfere in the impugned orders.

10. The present civil revision petition is hereby **dismissed**.

11. Pending application, if any, stands disposed of.

07.02.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

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