



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

CR-2207-2020(O&M)

Date of Decision: March 06, 2025

Gaurav Raheja

...Petitioner

Versus

Neha

...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Petitioner-in-person, along with
Mr.S.S.Behl and Mr.Gaurav Vir Singh Behl, Advocates.

Respondent-in-person, along with
Mr.Rajesh Sethi and Mr.Anshuman Sethi, Advocates

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 24.07.2020 (Annexure P-1) and order dated 28.08.2020 (Annexure P-2) passed by learned Guardian Court, thereby, granting visitation rights to the petitioner-father and subsequent application for clarification was dismissed.

The facts germane, to be noticed, as culled from the paper-book are as follows:-

That, the marriage between the petitioner and respondent had taken place on 12.12.2012 and thereafter, they started residing in a flat in Zirakpur, owned by father of the petitioner. A girl child was born on 16.05.2016, who unfortunately, is suffering from 'congenital tallipes



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equinovarus'. Thereafter, somewhere in the year 2019, the family shifted in a flat at Panchkula. After staying there for some time, the petitioner along with daughter had gone to Zirakpur flat. Though, there are assertions and counter assertions, with regard to the manner of going away of the petitioner along with the child, but however, there is no need to go into further details, in this regard, so far as, revision petition in hand, is concerned. Suffice only to notice that the petitioner along with daughter had gone away.

Subsequently, in the month of December 2019, petitioner Gaurav Raheja had filed a petition under Section 25 of the Guardian and Wards Act, 1890, for the custody of the minor child. However, in the month of February 2020, the respondent filed a complaint in Police Station Sector-20, Panchkula, but no action was allegedly taken by the police on the said complaint. Consequently, respondent-Neha filed **CRWP-3013-2020** before this Court.

Upon notice, present petitioner-Gaurav Raheja had also contested the same and the aforesaid petition was ultimately decided vide order dated 01.06.2020, copy whereof is Annexure P-3. While making certain observations, with regard to conduct of both the petitioner and the respondent, which need not to be taken into consideration by this Court, had issued various directions, which are reproduced, as herein given:-

“19. In the light of aforesaid discussion and the reasoning contained therein, following orders/ directions are passed:-

(i) respondent no.4 is directed to hand over the custody of minor daughter Trisha to petitioner between 5:30 p.m. to 6:30



p.m. on 02.06.2020 at the residence of her mother from where she was removed;

(ii) liberty is granted to respondent No.4 to file an appropriate interim custody application and till the same application is decided, the custody of the minor daughter shall remain with the mother;

(iii) during pendency of the custody petition before the Guardian Judge/ Civil Judge, respondent No.4-father shall be provided access to his minor daughter between 6:00 p.m. to 8:00 p.m. on every Saturday and Sunday and the petitioner shall ensure that respondent No.4 is properly treated and allowed to meet their minor daughter; the respondent no.4 shall intimate the petitioner in advance in the event he is unable to meet his daughter on certain days/weekends;

(iv) respondent no.4 shall continue to provide the medical care and treatment to the minor girl Trisha and bear the expenses as before and, as and when required, the petitioner shall by mutual co ordination hand over temporary custody to the respondent no.4 for the said medical purpose and after medical check up the respondent no.4 shall drop Trisha back at her mothers residence in Panchkula;

(v) the petitioner shall be at liberty to approach the Station House Officer, Police Station Sector-20 Panchkula before whom a complaint dated 22.02.2020(Annexure P-2) was filed, to seek help, if needed, for restoration of custody of the minor daughter. In view of inter-territorial State jurisdiction, the SHO concerned may take appropriate action, if required, by deputing police officials at border of Panchkula-Zirakpur with the appropriate request to Station House Officer, Zirakpur to likewise render appropriate help at his end to bring the child at the Panchkula—Zirakpur border from the paternal home of



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respondent No.4 in company of her father-respondent no.4 and to hand over the child to her mother, in the event respondent No.4 does not personally go to handover the custody of the minor child at the Panchkula residence of petitioner.

20. The writ petition stands disposed of in above terms.”

Being aggrieved by the aforesaid decision passed by the Coordinate Bench, the petitioner challenged the same by way of filing **SLP (Crl.) No.2553-2020**. However, the Hon’ble Supreme Court, was not inclined to entertain the said SLP and passed the following order, which is reproduced in verbatim, as herein given:-

“We are not inclined to entertain the Special Leave Petition under Article 136 of the Constitution of India. However, since the guardianship proceedings are still pending, we clarify that the observation in the impugned order of the High Court, which were in the context of disposing of the petition for habeas corpus, shall not come in the way of final disposal of the guardianship proceedings. The trial court shall deal with the guardianship proceeding uninfluenced by the observations. We leave it open to the petitioner to move the court for guardianship proceedings which are pending, for such further orders as may be warranted in regard to the visitation rights. We request the trial court to expeditiously dispose of the proceedings pending before it. Ms. Meenakshi Arora, learned senior counsel appearing on behalf of the petitioner states that in compliance with the order of the High Court, the custody of the child will be handed over to the mother during the course of the day.

Subject to the above observations, the Special Leave Petition is dismissed.



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Pending application(s), if any, stand disposed of.”

Thereupon, petitioner-Gaurav Raheja had filed an application dated 11.06.2020 (Annexure P-5), in the petition under the Guardian and Wards Act, for grant of interim custody/visitation rights, during the pendency of the said petition.

After contest, the said application was disposed of by learned trial Court, vide order dated 24.07.2020, which has been impugned in the present revision petition. In the said order, while making reference to the observations made by the Coordinate Bench of this Court in CRWP-3013-2020, the order was passed, *inter alia*, observing as herein given:-

“Thus, the visitation rights of the petitioner are to be decided. The Hon'ble Punjab & Haryana High Court has already granted 2 hours of visitation between 6:00 PM to 8:00 PM on every Saturday and Sunday. Meddling with the said visitation rights is not warranted keeping in view the welfare of the child & the Covid-19 Pandemic. However, it is argued by both the counsels that both the parties get at loggershead at the time of meeting. Thus, in order ward off of any such untoward incident; SHO concerned of Panchkula in whose jurisdiction Sector -20 of Panchkula falls; shall depute one police official who shall come in civil uniform so as to take the child from the mother for the purpose of visitation and shall hand over the child to the mother after the visitation is complete in a manner that the petitioner receives the child at 6:00 p.m & gives her back at 8.00 P.M of every Saturday and Sunday respectively. The mother respondent shall not interfere in or eavesdrop visitation by petitioner father. Both the parents shall not be made to be in direct contact with each other so as to avoid the



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tiff happening between the parties at the time of visitation. Now to come up on 24.08.2020 for further proceedings. File be sent back to concerned court immediately.”

However, another application was filed, seeking clarification of the order dated 24.07.2020 and the same was dismissed, while making the observation that the Court would not completely debar the petitioner from claiming and taking the child to his own place after Covid-19 pandemic situation would end.

Aggrieved, the petitioner has filed the revision petition in hand.

At the very outset, it is necessary to pin point that during the pendency of the revision petition, considering the sensitive issue involved, an attempt was made by this Court for amicable settlement and re-union of the family and this was with the sole purpose to vouchsafe the interest of the child. Unfortunately, the parents, who are educated professionals, did not re-unite and thus, revision petition has to be decided on merits.

During the course of arguments, learned counsel for the petitioner has placed reliance upon various case law, i.e. ‘***Yashita Sahu vs. State of Rajasthan & ors., AIR 2020 SC 577, Savita Seetharam vs. Rajiv Vijayasathary, AIR 2020 (4) Karnataka R 372, Jyoti Priya vs. Paul Goodwin, Tushar Vishnu Ubale vs. Archana Tushar Ubale, AIR 2016 BOM 88, Rajnish Sharma vs. Kamal Kumar & anr. and Aditi Bakht vs. Abhishek Ahuja***’.

Reference was made to the aforesaid case law, to lay emphasis upon the shared parenting, while taking into consideration the welfare of the



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child. There is no dispute about consistent view of the Courts to consider the welfare of the child, to be of paramount consideration, while making any order, with regard to the custody as well as the visitation rights.

During the course of arguments, reference has been emphatically made by learned counsel for the petitioner to the various guidelines laid down by Karnataka High Court in '**Smt.Jyoti Priya vs. Shri Paul Goodwin J.**', while adjudication on the question for interim custody by the Family Courts. In this regard, ready reference is made to paragraph No.12 of the aforesaid judgment, wherein, it was so observed:-

“12. The following legal principles have been enunciated in various cases before the Apex Court and other High Courts and shall serve as guidelines for interim custody orders by the family courts:

- 1. The separation of the minor from the parent during the pendency of the case is detrimental to the welfare of the child.*
- 2. Notwithstanding allegations made by either party, interim custody applications must be decided on the sole basis of the welfare of the child.*
- 3. There exists no infeasible right to deny custody of either parent of the minor.*
- 4. Whenever such interim custody applications are filed, the respective family courts must dispose of such cases within a reasonable time period of not more than thirty days.”*

However, it is pertinent to mention that there cannot be any straight jacket formula/cast iron formula, to deal with the custody cases. Each case has its own specific features. A decision is a precedent on its own facts. Further, sometimes difference of one circumstance or additional fact,

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can make the world of difference, in adjudicating the question of the custody or of the visitation rights. Thus, circumstantial flexibility ought to be there, while adjudicating on the question of final/interim custody of the child. Thus, the Courts, ought to remain cautious all the time, with the purpose to pass appropriate orders, as per the demand of the situation, while keeping in mind that the welfare and interest of the child, is the paramount consideration.

In this backdrop, it is pertinent to mention that there was, on the mind of the Presiding Officer, the lingering impact of the observations made by the Coordinate Bench of this Court in the order passed in CRWP-3013-2020, even though, it was observed by the Hon'ble Supreme Court that the observations in the impugned order of the High court, which were in the context of disposing of the petition for habeas corpus, shall not come in the way of final disposal of the guardianship proceedings. Furthermore, it was also observed that trial Court shall deal with the guardianship proceeding uninfluenced by the observations.

Considering the same, the observations made in the impugned order dated 24.07.2020, for the intervention of the police official, to take the child from the mother, for the purpose of visitation and to hand over the child to the mother, after visitation is complete, was uncalled for. Also the observation that both the parties, not to come in direct contact with each other, so as to avoid the tiff happening between the parties, at the time of visitation, was too harsh an order, which would work counter to the interest of the child in question and thus, would frustrate the very purpose of the



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provisions of interim custody and visitation rights.

Definitely, the requisite order warrants interference by this Court.

During the pendency of the revision petition, vide order dated 17.11.2020, this Court had made observations, with regard to the appointment of Dr.Bhavneet Bharti, Incharge Social Paediatrics and Dr.Prahbhjot Malhi, Child Psychologist, Advanced Paediatrics Centre PGIMER Chandigarh, to examine and study the child. For the convenience of discussion, the operative part of the order passed by the Court, is herein reproduced:-

“Keeping in mind the implication arising out of such a situation, this Court though does not feel inclined to express its opinion on the valiant efforts made by the Courts below by way of Annexure P-1 and P-2 and as a resolve that the child gets love and affection as well as care from both the parents so that she could grow up to be a normal human being, this Court feels it expedient by resorting to its inherent powers in appointing Dr. Bhavneet Bharti Incharge Social Paediatrics and Dr. Prahbhjot Malhi, Child Psychologist, Advanced Paediatrics Centre PGIMER Chandigarh to examine and study the child and if so necessitated the parents as well to advice the Court what would best subserve the interests of the minor and good for her welfare. The place of sittings would be as per the discretion of the experts to which the petitioner and respondent would comply. The Court had an interaction with these Experts and they are hereby appointed so. The expenses over the expert opinion would be borne by the High Court Legal Aid Services Committee as per Rules. Office to comply.



List for awaiting report on 27.11.2020.”

Thereupon, the report was received from the concerned doctors. In the said report, on the basis of the material coming forth and after having interaction with the parties concerned, it was observed by the authors of the report that the child is attached to both the parents and has appropriate bonding with the parents and she shows age related appropriate bonding, while relying upon parents for reassurance, love, playful engagement and instructions. Also, it was evident from the report that the child was having medical needs, as she was suffering from ‘congenital tallipes equinovarus’, also known as club foot, since birth and supracondylar fracture right arm on 30.10.2019. Also, it was stated therein that there was considerable differences between the parents, as to how best to address these medical needs.

Furthermore, a suggestion was also given to have more extensive parent time with both the parties to establish and maintain bonding.

Considering the report, further arrangement was made by this Court, thereby, granting visitation rights to the petitioner to visit the child on Saturday and Sunday, from 10.00 to 5.00 p.m., as per convenience on both the days, either at the house of wife-Neha or the wife would allow the father to take away the child on those days, during this time to his place, so that the child is able to interact with the family of her father as well. Various other instructions, with regard to extending of courtesy, behaviour and mannerism were also given by the Court. This process continued, but

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however, then an application was filed by the petitioner to issue directions to the respondent, to comply with the orders dated 08.02.2021 and 26.08.2021 and upon this, considering the requirement of the child, to attend the school on Saturday, except 2nd and 4th Saturdays, the modification was made and petitioner/father Gaurav Raheja, had agreed to visit the child on 2nd and 4th Saturdays from 11.00 a.m. to 9.00 p.m., besides on every Sunday from 10.00 to 5.00 p.m., as per convenience, either at the house of wife-Neha or the wife would allow the father to take away the child on those days, during this time to his place, so that the child is able to interact with the family of her father as well. This process continued further.

However, it is significant to point out that while efforts were made for the amicable settlement, both the parents together with the child had gone for outings. Some of the photographs have been placed on record. Seemingly, the child enjoyed the company of both the parents, as shown in the photographs. It reflects that the bonding shared by the child, with both the parents. This fact, as such, cannot be overlooked. However, at the same time, this Court should also remain conscious of the fact that making too much arrangement, with the purpose to expand visitation rights, the stress/fatigue could be caused to the child, which may be counter-productive. The child is staying with mother, even since handing over the child by the father to the mother on 02.06.2020, as per the decision rendered in CRWP-3013-2020.

There is no complaint qua the conduct of the mother, vis-a-vis, upbringing of the child, though, submissions are made, with regard to the time

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schedule not being followed or cribbing between the parents. The petitioner claims that he has an edge over the mother, while handling the child, as his family has medical background, his father being retired SMO and also, he is creating financial security for the child.

So far as, the financial security is concerned, it is good that father is doing so to secure the future of the child, but however, it is the fatherly duty. Now, at this age of the child, it is not going to have impact on the personality 'built-up' of the child. There are various other factors, which are more important for the age group of 9-10 years, which carry more weight, than the creating of financial security. The creation of the financial funds may give some peace to secure the future of the child, but however, a child, at this stage, has no concern with the financial corpus. The child is happily staying with the mother and the visitation rights are continued.

No doubt, when the family outings were there, the child seemingly, was more cheerful, but however, the arrangement, as per the order dated 21.11.2022, need not be disturbed as interim measure. Of course, the father also has his own importance in the growth and well-being of the child. Considering the same, various orders have been passed by the Court, during the pendency of the revision petition in hand. The last arrangement made on 21.11.2022 is still continuing.

This Court is of the view that this arrangement should continue, during the pendency of the guardianship petition. Thus, it is hereby ordered that petitioner-Gaurav Raheja shall continue to visit the child on 2nd and 4th Saturdays from 11.00 a.m. to 9.00 p.m. and also visit the child on every



Sunday from 10.00 a.m. to 5.00 p.m., as per convenience, either at the house of respondent-Neha or the respondent should allow the petitioner to take away the child, on the said days, during this time to his place, so as to enable the child to also interact with the family of her father.

Besides the aforesaid, taking into consideration the emotional needs of the child in question and also considering the happy interaction of the child with the parents, as evident, from the photographs brought on record, it is ordered that both the petitioner as well as the respondent, may consider an option of the family outing, after a period of about every four months, after giving due intimation to the Guardian Court.

Looking at the medical ailment of the child, it is also ordered that if need arises for the medical exigencies, the respondent-mother shall inform the petitioner-father and they should together address the ‘need’, keeping in view the primary necessity of the child.

In view of the observations aforesaid, the revision petition in hand, stands partly allowed.

However, the observations made aforesaid, are circumscribed, only for the purpose of disposal of the present revision petition and the same shall have no bearing on the merits of the case, to be adjudicated by the Guardian Court.

March 06, 2025
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No