

2025:PHHC:075082-DB



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

119

FAO-3218-2025 (O&M)
Reserved on: 20.05.2025
Pronounced on: 29.05.2025

Krishan

...Appellant

Versus

Anita Nara

...Respondent

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. Mahavir Singh Sharma, Advocate and
Ms. Sudiksha Surabhi, Advocate for the appellant.

VIKAS SURI, J.

1. Appellant-Krishan has filed this appeal under Section 47 of the Guardians and Wards Act, 1890 read with Section 19 of the Family Courts Act, 1984, impugning the order dated 20.02.2025 passed by learned Principal Judge, Family Court, Rohtak, whereby his petition under Section 7 of the Guardians and Wards Act, 1890 (for short 'the GW Act') for custody of the minor son 'V' has been dismissed.

2. The facts in brief, sans unnecessary details, are that marriage of the parties was solemnized on 20.04.2014 and from the said wedlock a male child 'V' was born on 20.10.2016. The child in question is under the care and custody of his mother, i.e., the respondent herein and is now



about 8 years of age. The case set up by the petitioner before the Family Court is that there is total incompatibility in marital relationship as the respondent-wife quarrels with him on every petty issue and finds faults in his lifestyle, routine, likes and dislikes etc. The respondent has been alleged to be ill mannered and rude from the very beginning of the relationship. It is further alleged that she is disrespectful towards the petitioner and his family members and never cared about household work. Since the marriage of the parties, the respondent was not willing to live with the petitioner. The respondent left the company of the petitioner in May 2016, when she was on the family way and the child in question was born thereafter, on 20.10.2016. The petitioner made many attempts to persuade the respondent to join his company and to meet the child, but in vain. The petitioner thereafter filed a divorce petition before the Family Court at Kurukshetra. It is further averred in the petition under Section 7 of the GW Act that the respondent being hot tempered cannot provide good moral education to the child, moreover, she is working in a bank and can be transferred anywhere in India. Currently, she is posted at Jhajjar which is at a distance of about 50 kms from Rohtak and hence, she cannot properly look after the child. The petitioner is in a better position to look after the minor and he has sufficient financial means.

3. Upon notice of the petition, the same was opposed by filing reply. It is pleaded by the respondent-wife that the petitioner had not come to the Court with clean hands and had suppressed true and material facts. The allegations made in the petition were denied. It has been pleaded that the appellant has filed the petition for custody just to harass



the respondent and to take benefit of his own wrong. The appellant and his family members are greedy persons and had demanded dowry for continuance of the wedlock between the parties. The criminal case filed against the petitioner is still pending. The interest of the minor child is being looked after by the respondent and he is being raised carefully and properly. It is further pleaded that the respondent gave birth to the minor 'V' at the house of her parents and the appellant never came to inquire about the health of the respondent or the minor child before and after the birth. The appellant does not care about the child and did not come forward with any financial help and hence, she had to approach the Court against the appellant, whereby maintenance has been awarded. The present petition has been filed by the appellant to avoid payment of maintenance. Thus, it was prayed that the application for custody be dismissed.

4. Both the parties have led their respective evidence in support of their pleadings.

5. Upon consideration of the respective pleadings and evidence adduced on record as well as the submissions on both sides, learned Principal Judge, Family Court, Rohtak, after detailed discussion upon the aforesaid material, dismissed the claim of the petitioner for custody of minor 'V', however, granted him visitation rights. The operative part of the said order reads as thus:

“33. Therefore, in the light of aforesaid observations, this court is of the considered opinion that the welfare of minor V requires that he should remain in the custody of the respondent as she is the only parent he has ever known since



his birth and it would not be right to suddenly deprive him of her love and affection and hand over his custody to the petitioner however, the petitioner who is the father of the child can also not be denied access to his child and if not allowed to meet him he would become a complete stranger in his life making any possibility of their interaction in future impossible. Therefore, though the petitioner is not being granted the full custody of minor V, he is being given his custody during his vacations alongwith visitation rights as per schedule mentioned below to keep a healthy interaction between him and minor V:

1. Petitioner will have custody of minor V for one week during winter vacations and for 15 days during summer vacations.
 2. Petitioner will have custody of minor V for the entire day i.e. from 10:00 am till 6:00 pm on festival of Dussehra and Holi.
 3. Petitioner can meet minor V from 10:00 am to 12:00 noon on his birthday and can take him out to the market or restaurant for celebration.
 4. Petitioner can meet minor V on any two Sundays of the month from 12:00 noon till 02:00 PM and can take him out to the market or restaurant etc.
 5. Petitioner can talk to minor V telephonically or through video call on the other two Sundays for half an hour between 10:00 am till 12:00 noon and during such conversations neither the respondent nor her family members will remain present in room with minor V.”
6. Learned counsel for the appellant has contended that the appellant lives in a joint family and has sufficient financial means including agricultural land, to care for the child. It is further submitted that the respondent, due to her transferable job and currently having to travel about 100 kms to and fro in a day, cannot provide stable care to the



minor. It is, hence, argued that the welfare of the minor would be best served under the guardianship of the appellant.

7. *Per contra*, learned counsel for the respondent has refuted the submissions advanced by learned counsel for the appellant. It is submitted on her behalf that she has provided a stable and nurturing environment for the child and while she is at work, the minor is under constant vigil and care of his maternal grandmother, i.e. mother of the respondent. It is further submitted that to financially secure the future of the minor 'V' and for his education, the respondent has already made investments in his name. The appellant has not voluntarily contributed towards the minor's welfare. On the contrary, the respondent had to seek recourse to the Court for recovering the arrears of maintenance.

8. We have heard learned counsel for the appellant and perused the paper-book with his able assistance. Having given our profound consideration to the matter, we are not persuaded to accept this appeal.

9. Admittedly, the marriage was solemnized on 20.04.2014 and the parties have been living separately since May 2016. It is not disputed that the minor 'V' was born on 20.10.2016, i.e., after the parties were separated. The learned Principal Judge, Family Court, Rohtak, after having given thorough consideration to the contentions and submissions made by both sides, has formed the opinion that the interest of the minor would be better served in the custody and care of the mother, i.e. the respondent herein. The principles of law laid down by the Apex Court in *Nil Ratan Kundu vs. Abhijit Kundu*, AIR 2009 SC 732, *Rosy Jacob vs. Jacob A. Chakramakkal*, AIR 1973 SC 2090, *Thrity Hoshie Dolikuka*



vs. Hoshiam Shavaksha Dolikuka, (1982) 2 SCC 544 and the observations made in the decision rendered on 13.02.2017 in Civil Appeal No.3962 of 2016 titled as *Vivek Singh vs. Romani Singh* have been followed. The judgments rendered in *Mousmi Moitra Ganguli vs. Jayant Ganguli*, 2008(4) RCR (Civil) 551 and *Sheila B.Das vs. P.R.Sugasree*, 2006(1) RCR (Civil) 758, have also been taken note of.

10. It is trite law that in custody proceedings, welfare and interest of the child is paramount and not the rights of the parties, which is the determining factor. It is well settled that better financial position of a parent is not the factor to be considered for deciding the question of custody, as the welfare of the child cannot be measured merely by money or physical comfort. The child's welfare is the dominant consideration. The general principles culled out from a plethora of binding decisions are as under:

- (i) **Paramountcy of Child's Welfare:** The child's best interests overrides legal rights of parents and statutory provisions.
- (ii) **Stability and Continuity:** Maintaining the child's current stable environment is crucial, especially if they have been in that setting for a significant period.
- (iii) **Holistic Development:** Courts consider the child's physical, emotional, psychological, and educational needs.
- (iv) **Disregard for Parental Disputes:** Custody decisions should not be influenced by inter-parental conflicts or allegations unless they directly impact the child's welfare.

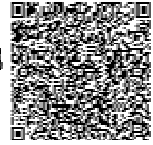


- (v) **Child's Preference:** When the child is mature enough, their preference is a significant factor in custody decisions.

11. In child custody matters, each case has to be considered on its own facts keeping in view the general principles, elucidated by precedents and the child's welfare remains the central focus. In the present case, though the appellant deposed that he is paying maintenance to the respondent and minor 'V' but he has admitted in his cross-examination that he remained in arrears of maintenance of ten months. It has also come on record that there has never been any endowment by the appellant, in favour of his child.

12. The appellant has not been able to demonstrate to the contrary, before this Court, that he has not done much for the child since his birth, except to have paid some amounts towards maintenance under Court orders. On a query of the Court to learned counsel for the appellant, it is fairly conceded that even after passing of the impugned order dated 20.02.2025, the appellant has not availed of the visitation rights granted to him or made an endeavour to talk to the minor 'V'. It is also not disputed that the child is now about 8 years of age and on none of his birthdays, any celebration or gift has been bestowed upon the child by the appellant.

13. In the light of the above, we are of the considered opinion that the impugned order is a balanced order and the key consideration exercised by the learned Principal Judge, Family Court, is the welfare of the minor child. We approve of the opinion formed by the learned Family Court that as the child has been living with the respondent since birth, and



a sudden shift may cause physiological distress. It is apparent from the record that the recent interest for custody of the child does not appear to be out of natural love and affection. Had there been any emotional attachment involved, the appellant would have availed of the visitation rights granted to him, without fail. It would be extremely stressful for the child to be suddenly left alone in the custody of a parent with whom he has not been with since birth. Such a recourse, does meet the approval of the Court exercising its *parens patriae* jurisdiction.

14. Accordingly, the present appeal being bereft of merit is dismissed, in *limine*.

15. No order as to costs.

(ANIL KSHETARPAL)
JUDGE

(VIKAS SURI)
JUDGE

May 29, 2025
sumit.k

Whether speaking/reasoned : Yes / No

Whether Reportable : Yes / No