



CR-3348-2022

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(290)

CR-3348-2022

Date of decision: - 16.01.2025

Parminder Kaur

....Petitioner

Versus

Jarnail Singh

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Sandeep Punchhi, Advocate,
for the petitioner.

None for the respondent.

VIKAS BAHL, J. (ORAL)

1. Present civil revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 04.07.2022 passed by the Principal Judge, Family Court, Amritsar in HMA case No.1095 of 2019 declining the application for making correction in the judgment and decree dated 30.10.2019 (Annexure P-4) wherein the word 'petitioner No.1' was wrongly typed as 'petitioner No.2' in the judgment.

2. Learned counsel for the petitioner has submitted that in the present case, in the judgment dated 30.10.2019 (Annexure P-4) in paragraph 2, the word 'petitioner No.2' has been wrongly mentioned instead of 'petitioner No.1' and it was the petitioner No.1 who had given



no objection in any matter of immigration relating to the minor child, the custody of whom has been given to petitioner No.2 as it is the said petitioner No.2 who has the sole authority to sign all the documents of immigration. It is further submitted that for the rectification of the said judgment dated 30.10.2019, an application dated 13.05.2022 (Annexure P-5) was filed and in the said application, it was stated that the same was an inadvertent error, inasmuch as, the word 'petitioner No.2' had been typed instead of word 'petitioner No.1', however the said application was dismissed vide impugned order dated 04.07.2022 passed by the Principal Judge, Family Court, Amritsar by perversely observing that in the joint petition under Section 13-B of the Hindu Marriage Act, word 'petitioner No.2' was written and since there was no patent error or typographical mistake in the said order dated 30.10.2019, thus, the application was not maintainable.

3. It is further submitted that a perusal of the said joint petition under Section 13-B of the HMA (Annexure P-1) as well as the statement (Annexure P-2) given by the respondent-husband would show that it is the present petitioner/wife who is the sole guardian of the minor child and is solely responsible for making all types of foreign and Indian government documents of the minor child including her passport and documents relating to immigration/school admission. It is stated that the said correction was within the purview of Section 152 of the Code of Civil Procedure and as per Section 10 of the Family Courts Act, 1984, the Family Court is deemed to be a Civil Court and has all the powers of the



Civil Court except with respect to the proceedings which have been mentioned therein. It is further submitted that the proceedings under Section 13-B of the HMA are not within the excluded provisions. It is submitted that on account of the said error, irreparable loss is being caused to the present petitioner and the minor child, as the future of the minor child has been put in jeopardy.

4. Notice was issued in the present revision petition by a Co-ordinate Bench of this Court. On 07.12.2022, it was observed by the Co-ordinate Bench that father of the respondent had been telephonically informed. On 10.03.2023, a Co-ordinate Bench of this Court had passed the following order: -

Present: Mr. Sandeep Punchhi, Advocate for the petitioner.

The counsel for the petitioner submits that the respondent is evading service. The same is apparent from the service reports on record so far.

The counsel for the petitioner seeks permission to effect the service upon respondent through publication.

Ordered accordingly.

On deposit of necessary fees by counsel for the petitioner for publication, notice to the respondent be issued through publication in any leading newspaper of the area.

Adjourned to 28.04.2023.

10th MARCH, 2023”

5. In pursuance of the same, the petitioner had carried out the necessary publication in two newspapers, one being 'The Pioneer' (English) and the other being 'Desh Sewak' (Punjabi), however, in spite of



due publication, no one has appeared on behalf of the respondent to contest the present revision petition.

6. This Court has heard learned counsel for the petitioner and has perused the paper-book and is of the opinion that the present revision petition is meritorious and deserves to be allowed and the impugned order deserves to be set aside and the application filed by the present petitioner also deserves to be allowed for the reasons stated hereinafter.

7. The petition under Section 13-B of the HMA dated 20.04.2019 was jointly filed by the present petitioner (stated to be petitioner No.2 therein) and by her ex-husband Jarnail Singh (stated to be petitioner No.1 therein) for dissolution of marriage by decree of divorce by mutual consent. The head note and the averments made in paragraph 5(v) the said petition, which are relevant, are reproduced herein below: -

“Jarnail Singh aged 28 years S/o Hardeep Singh R/o 86, A-Block, Sandhu Colony, GT Road, Chheharta, Amritsar.

Petitioner No.1

AND

Parminder Kaur aged 27 years W/o Jarnail Singh D/o S. Kulwant Singh R/o Azad Nagar, Sarhali Road, Tarn Taran, at present residing at 119, Power St.albans- 3021, Melbourne, Australia, through her Special Power of attorney holder/ her mother. Smt. Daljit Kaur W/o late S. Kulwant Singh R/o Azad Nagar, Sarhali Road, Tarn Taran.

Petitioner No.2

PETITION UNDER SECTION 13-B OF HINDU MARRIAGE ACT, 1955 AMENDED UPTO DATE FOR DISSOLUTION OF MARRIAGE BY DECREE OF DIVORCE BY MUTUAL CONSENT

xxx xxx xxx xxx



v) *That the custody of minor Sargun Kaur will remain with petitioner no.2 and petitioner no.1 will never claim the custody of minor. The petitioner no.2 will be sole guardian of the minor in future and she shall have all rights and be solely responsible for making her all types of foreign and Indian Govt. documents, including passport, any documents relating to foreign immigration/ embassy and Indian immigration/ embassy including lodging visa, school admission etc. The consent of petitioner no.1 shall not be required for any of the purpose.”*

A perusal of the above joint petition would show that the custody of the minor child was to be given to the mother and it was she, who was going to be responsible for preparing all kinds of documents of the minor child including the documents of foreign immigration and the consent of the ex-husband Jarnail Singh was not required.

8. On 20.04.2019, a statement of the said Jarnail Singh was recorded in Court. The relevant part of the said statement is as under:-

*“**Petitioner No.1:** Statement of Jarnail Singh aged about 28 Years S/o Hardeep Singh R/o 86 A-Block, Sandhu Colony, G. T. Road, Chheharta, Amritsar.*

ON SA

xxx xxx xxx

Out of this wedlock, one female child namely Sargun Kaur aged about 1 year and 4 months was born on who will remain under the care and custody of the petitioner no.2 and I shall never claim the custody of the said minor child in future in any Court of law. The petitioner no.2 will be sole guardian of the said minor child. And she shall have all the rights and she shall be solely responsible for making all types of foreign and Indian Govt. Documents for the minor child including her passport and documents relating to foreign immigration/Embassy and Indian Immigration/Embassy including



lodging of visa, school admission etc, and the consent of mine shall not be required for any of the above said purposes.”

The said statement was also to the similar effect as the averments in the joint petition.

9. However, in paragraph 2 of the judgment dated 30.10.2019, a typographical error was made, which is apparent from a bare reading of the following lines: -

*“2..... **Petitioner no.2** has no objection in any matter of immigration relating to minor child and petitioner no.2 shall have sole authority to sign all the documents of immigration.”*

A perusal of the above would show that it has been wrongly stated that petitioner No.2-wife would have no objection in any matter of immigration relating to minor child, whereas, apparently instead of 'petitioner No.2' it should have been typed/mentioned as 'petitioner No.1' as it is the petitioner No.2 therein i.e. the wife, who had the sole authority to sign all the documents and thus, necessarily it is the husband i.e., petitioner No.1 therein who was not going to object in any matter of immigration.

10. The present petitioner had filed an application for rectification of the said error, which had been illegally rejected by the Court vide impugned order dated 04.07.2022 primarily on the ground that even in the petition under Section 13-B of the HMA, the word 'petitioner No.2' had been written. The same was an apparent misreading of the joint petition under Section 13-B of the HMA as well as the statement of the husband and as far as the point of no objection is concerned, the same was



necessarily required to be of the husband i.e. petitioner No.1 therein.

11. From the above-said facts, it is apparent that there was a clerical mistake in the judgment and decree dated 30.10.2019, which was on account of an accidental slip and the Court has the power to amend/rectify the same, under the provisions of Section 152 of the CPC. Section 152 of the CPC is reproduced as under: -

“152. Amendment of judgments, decrees or orders .-

Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.

12. Furthermore, as far as the provision of Section 10 of the Family Courts Act, 1984 is concerned, the Family Court is deemed to be a Civil Court and has the power of a Civil Court. Section 10(1) of the Family Courts Act, which is relevant in the present case, is reproduced as under: -

“10. Procedure generally. -(1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings [other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)] before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil court and shall have all the powers of such court.

13. Keeping in view the above-said facts and circumstances, the present revision petition is allowed and the impugned order dated 04.07.2022 is set aside and the application dated 13.05.2022 (Annexure P-5) filed by the petitioner for the rectification is allowed and instead of

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'petitioner No.2', as mentioned in sixth line of paragraph No.2 of the judgment dated 30.10.2019, the same would be read as 'petitioner No.1'.

January 16, 2025
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes