2025:PHHC:033572-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5971-2024 (O&M)
Date of decision: 03.03.2025

DEEPAK BANSAL ...Appellant

Versus

RUPALI ...Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present:- Mr. Bhavnik Mehta, Advocate for appellant.

SUDHIR SINGH, J.

Challenge in the present appeal is to the order dated 25.09.2024, passed by the learned Principal Judge, Family Court, Panchkula (for short 'the Family Court'), whereby the petition under Section 25 of Guardians and Wards Act, 1890 (for short 'the Act'), filed by the appellant was dismissed, but he was granted visiting rights qua the minor children as stipulated in para No.22 of the impugned order.

2. The aforesaid, petition had been filed by the appellant, *inter alia,* pleading therein that her marriage with the respondent was solemnized on 27.04.2008, and out of the said wedlock, two children were born, who were in the custody of respondent. It was alleged that the respondent was a spendthrift lady and in 2009, she compelled the appellant to shift to Panchkula. On 20.03.2011, the appellant shifted to Hyderabad, but due to the acts and conduct of the respondent, he

could not join his job at Hyderabad. Father of the appellant retired on 31.01.2011 and the respondent had pressurized him to ask for money from his father for starting the business. In July, 2012, the respondent got the appellant separated from his parents and respondent stopped maintaining any relation with the parents of the appellant. In May, 2013, the respondent left the rented accommodation without the consent of the appellant and started residing with her parents. A Panchayat was convened, wherein it was decided that the appellant would not meet his parents and bring back the respondent. On the request of the respondent, the parties shifted to Sector 10, Panchkula. On 04.12.2016, the appellant woke up in the midnight and saw the respondent chatting on her mobile and when she was confronted, she shouted at him and had also misbehaved with him. He found the respondent to be in extramarital affairs. The respondent had intentionally not mentioned the name of the appellant in the School record of the children and had only mentioned herself to be a single parent of the children. It was further alleged that the respondent had deserted him since 09.12.2016 and had deprived the minor children of the fatherly love and affection and that she was living in adultery with one Shivam Bhatnagar. She had also filed a suit for permanent injunction against the appellant and his family members, which was dismissed vide order dated 31.08.2018. She had filed a petition under Section 125 Cr.P.C., wherein the appellant was directed to pay a sum of Rs.10,000/- per month as maintenance. The appellant had filed a petition under Section 13 of the Act and an application under Section 26 of the Act, was allowed by the Court vide order dated 20.10.2018

and the appellant was permitted to meet the children. It was further alleged that the respondent was working as a Bank Manager in the Oriental Bank of Commerce, Kalka and the minor children were not able to take care of them and the respondent was not in a position to devote time for their proper care and welfare. Thus, the appellant had sought custody of the minor children.

3. Upon notice, the respondent entered appearance and filed her written statement, admitting the factum of marriage and birth of the children. It was alleged that in order to get rid of the respondent, the appellant had filed a petition under Section 13 of the Act and when an application under Section 26 of the Act, was filed for maintenance of the minor children, the same had been strongly opposed by the appellant. It was further asserted that the appellant had no love and affection for the minor children and he had deserted them and their mother i.e., respondent since 09.12.2016. It was further alleged that the respondent along with the minor children was residing in a rented accommodation at Panchkula. It was further alleged that the appellant and his father in connivance with the Police, had exerted pressure upon her to give her consent for the divorce. It was, thus, pleaded that the appellant, who had willfully and intentionally deserted the respondent and the minor children, was not entitled to the custody of the children.

4. On the basis of pleadings of the parties, the following issues were framed by learned Family Court:-

"1. Whether the petitioner is entitled to the custody of the minor children Aarush and Aayansh? OPP

2. Whether the petition is not maintainable in the present form nor the petitioner has any cause of action to file the same? OPR

3. Relief."

5. In evidence, the appellant examined himself as PW-1. On the other hand, respondent examined herself as RW1, besides tendering evidence Ex.R1 to R5; Ex.RA; Mark-A to Mark-E and Mark-R1 to Mark-R22.

6. The learned Family Court, after taking into consideration the rival contentions of the parties and the evidence on record, dismissed the petition filed by the appellant, but granted visiting rights, as noticed above.

7. Learned counsel for the appellant has vehemently argued that the reliance of the learned Family Court on the documents Mark-A to Mark-22 is not tenable as it is settled law that the mark documents cannot be read into evidence. It is further argued that the finding of the learned Family Court that the appellant is unfit for the custody of his own children is contrary to the settled law and a father cannot be deprived of the love of the children particularly during their tender age. It is further argued that the respondent-wife is a working lady and she had no time to take care of the minor children properly.

8. We have heard the learned counsel for the appellant and have also gone through the impugned order.

9. The only question that arises for consideration by this Court is whether the impugned order passed by learned Family Court, requires any interference.

10. Learned Family Court has found that the marriage between the parties was solemnized on 27.04.2008; the minor children were born on 06.01.2010 and 24.01.2014, respectively, and that both the parties had been in matrimonial dispute. It was further found that since 09.12.2016, the minor children had been in the exclusive care and custody of the respondent. It was also noticed that the appellant had filed a divorce petition and vide judgment Ex.R1, the same had already been dismissed. It was further found that the appellant himself had left the respondent and the children and the divorce petition filed by him as noticed above, was dismissed. It was further found that the respondent had filed her salary slip Ex.RA indicating her income, whereas no such details had been placed on record by the appellant. It was also observed that the documents Mark-A to Mark-D and Mark R-1 to Mark R-22 showed that the children had been doing good in their education and despite her hectic job profile, the respondent was taking proper care of both the children. The Family Court, on the basis of its interaction with the minor children, found that they were staying with their mother happily.

11. While deciding the case of the custody of the children, the Court is to take into consideration the paramount welfare of the children. In ***Sheoli Hati* v. *Somnath Das*, (2019) 7 SCC 490,** while laying emphasis on the paramount welfare of the child in the custody matter, it was held by the Hon'ble Supreme Court as under:-

"17. It is well settled that while taking a decision regarding custody or other issues pertaining to a child, welfare of the child is of paramount consideration. This Court in *Gaurav Nagpal* v. *Sumedha Nagpal* , (2009) 1 SCC 42 : (2009) 1 SCC (Civ) 1, had the occasion to consider the parameters while determining the issues of child custody and visitation rights, entire law on the subject was reviewed. This Court referred to English Law, American Law, the statutory provisions of the Guardians and Wards Act, 1890 and provisions of the Hindu Minority and Guardianship Act, 1956, this Court laid down following in paras 43, 44, 45, 46 and 51 (SCC pp. 55-57):-

> "*43*. The principles in relation to the custody of a minor child are well settled. In determining the question as to who should be given custody of a minor child, the paramount consideration is the "welfare of the child" and not rights of the parents under a statute for the time being in force.
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> *44*. The aforesaid statutory provisions came up for consideration before courts in India in several cases. Let us deal with few decisions wherein the courts have applied the principles relating to grant of custody of minor children by taking into account their interest and well-being as paramount consideration.
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> *45*. In *Saraswatibai Shripad Vad* v. *Shripad Vasanji Vad* [*Saraswatibai Shripad Vad* v. *Shripad Vasanji Vad*, 1940 SCC OnLine Bom 77 : ILR 1941 Bom 455 : AIR 1941 Bom 103, the High Court of Bombay stated :
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> > '… It is not the welfare of the father, nor the welfare of the mother, that is the paramount consideration for the court. *It is the welfare of the minor and of the minor alone which is the paramount consideration* …'

> *46*. In *Rosy Jacob* v. *Jacob A. Chakramakkal,* (1973) 1 SCC 840 , this Court held that object and purpose of the 1890 Act is not merely physical custody of the minor but due protection of the rights of ward's health, maintenance and education. The *power* and *duty* of the court under the Act is the welfare of minor. In considering the question of welfare of minor, due regard has of course to be given to the right of the father as natural guardian but if the custody of the father cannot promote the welfare of the children, he may be refused such guardianship.
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> *51*. The word "welfare" used in Section 13 of the Act has to be construed literally and must be taken in its widest sense. The moral and ethical welfare of the child must also weigh with the court as well as its physical well-being. Though the provisions of the special statutes which govern the rights of the parents or guardians may be taken into consideration, there is nothing which can stand in the way of the court exercising its *parents patriae* jurisdiction arising in such cases".

12. We find that the order passed by the learned Family Court does not call for any interference. The custody of the children is not required to be disturbed when they are residing in the company of their mother happily. While passing the impugned order, the learned Family Court has granted visiting rights to the appellant. The appellant, if so advised, can provide fatherly love and take care of their basic necessities, while visiting them in terms of the directions of the learned Family Court.

13. No other point has been urged.

14. In view of the above, we do not find any merit in the present appeal and the same is hereby, dismissed.

15. Pending application(s), if any, shall also stand disposed of.

[SUDHIR SINGH]
JUDGE

[SUKHVINDER KAUR]
JUDGE

03.03.2025
Himanshu

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