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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.1454 of 2020
Date of Decision: September 9th, 2020

Laxmi Roy and another

...Petitioners

Versus

Deepa and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Krishan Singh Dadwal, Advocate
for the petitioners.

Mr. G.S. Punia, Senior Advocate
with Ms. Harveen Kaur, Advocate
for respondent No.1.

Mr. J.S. Dadwal, Advocate
for respondent No.2.

AUGUSTINE GEORGE MASIH, J.

This revision petition under Article 227 of the Constitution of India has been preferred by the paternal grandparents of a male child namely Utkarsh Roy born on 28.04.2017 challenging the order dated 06.02.2020 (Annexure P-7) passed by the Civil Judge (Senior Division), Chandigarh, wherein an application moved by the petitioners under Order 1 Rule 10 read with Section 151 CPC for impleading them as respondents to the petition preferred by Deepa-respondent No.1 herein (mother of the child) under Section 6 read with Section 13 of the Hindu Minority and Guardianship Act, 1956 (hereinafter referred to as '1956 Act') for permanent custody of Utkarsh Roy, who is presently residing with Sanjeev Roy-respondent No.2 (*pro forma*), father of the child, has been dismissed.

2. Briefly the facts are that respondent No.1-Deepa and

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respondent No.2-Sanjeev Roy got married on 10.05.2014. Out of the wedlock, Utkarsh Rai was born on 28.04.2017. Both the respondents are Advocates by profession. Allegation on the part of respondent No.2 was that after joining the profession, respondent No.1 not only started maltreating respondent No.2 but also did not care for the child. There was quarrel between them, because of which respondent No.1 abandoned the child and left the matrimonial home on 24.06.2018. Even during the period when the respondents were residing together, the petitioners, who are grandparents of the minor child, took care of the said minor as both the respondents remained busy with their practice. Claims and counter claims including complaints, both with the police as well as in the Courts, were filed including a petition under Section 6 read with Section 13 of the 1956 Act, which was preferred by respondent No.1 claiming the custody of the minor child Utkarsh Roy. Assertion of the petitioners is that the Women Cell, Sector-17, Chandigarh, made an effort to resolve the issue between the respondents. There respondent No.1 agreed to withdraw all litigations including the petition for custody of the minor, similarly, respondent No.2 also agreed to withdraw all the cases.

3. However, the said statement was not honoured. Respondent No.1, during the pendency of the custody case, filed Criminal Writ Petition No.406 of 2019 praying for a writ in the nature of habeas corpus for production of the minor child before the Court from the illegal custody of not only her husband-respondent No.2 but also the petitioners, who were arrayed as respondents No.2 and 3 along with their younger son Sanjay Roy. The said writ petition was decided by this Court

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vide order dated 30.05.2019 (Annexure P-3) by observing that the matter was already pending before the Guardian Judge, Chandigarh, and, therefore, direction was issued to the said Court to expedite the proceedings for custody of the child pending before the Court.

4. Application under Order I Rule 10 read with Section 151 CPC was preferred by the petitioners on 10.10.2019 (Annexure P-4), which was contested by respondent No.1. The learned Civil Judge (Senior Division), Chandigarh, exercising the powers of the Guardian Judge, dismissed the said application vide order dated 06.02.2020 (Annexure P-7) holding that the custody of the minor child was a matter between the wife and the husband and the applicants being parents of respondent No.2 are neither necessary nor proper parties for proper adjudication of the petition. Merely because they were respondents to the writ petition before the High Court does not mean that they should be impleaded as respondents in the petition.

5. This order dated 06.02.2020 (Annexure P-7) has been challenged by the petitioners on the grounds that the Court below has failed to take into consideration the provisions of Section 13 of the 1956 Act as well as Order I Rule 10 CPC in the right perspective. The child has been looked after by the petitioners/grandparents from the very beginning and are thus, entitled to be impleaded as party to the present dispute. Assertion has been made that the very language of Section 13 of the 1956 Act stipulates that the welfare of the child is of paramount consideration and since the minor is in need of utmost love and care, with respondent No.1 having abandoned the minor child at the age of one year, petitioners were necessary parties. The Court has ignored the welfare of the child as petitioners are the

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right persons to take care of the child and the Court was required to consider the said aspect and not decide the question of custody merely based upon the rights of the parties under the law. It has been stated that the intent and the interest shown by respondent No.1 in the custody of the child is apparent from her statement, which she had given before the police authorities, copy whereof has been appended as Annexure P-1, wherein she had agreed to withdraw all litigations including the one related to the custody of the child and to file a petition under Section 13-B of the Hindu Marriage Act for divorce with mutual consent. The interest of the child was, therefore, best protected by giving the custody of the child to the grandparents, especially when both the respondents are Advocates by profession and cannot devote time for the upbringing and the welfare of the child. The child not only requires financial support but also emotional and personal support, which would be lacking. Petitioners were, thus, not only necessary but essential parties to the lis between the husband and wife i.e. the respondents to ensure that the child does not suffer.

6. It is the contention of learned counsel for the petitioner, based upon the facts, that the Court below has failed to appreciate the real issue involved in the matter. The Court has proceeded to decide the application filed by the petitioners as if some adversarial dispute was being decided by the said Court, rather it is a case, where the life and upbringing of the minor child is at stake. Assertion has been made that delay alone, on the part of the applicants to be impleaded as a party, should not be an impediment for the Court to allow the said application as the provisions of Order I Rule 10 (2) enables the Court to implead the necessary party at any stage of the

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proceedings including deletion or adding any person as party to the suit. It is the discretion, thus, of the Court to add any such person as party to the suit at any stage of the proceeding. In support of this contention, he has placed reliance upon the judgment of this Court in *Rupesh Singh Versus Pitamber Singh and others 2013 (5) R.C.R. (Civil) 208*. Referring to the provisions of Section 6 read with Section 13 of the 1956 Act, it is asserted that the welfare of the child is the prime consideration for the Court. In case the Court comes to a conclusion that the welfare of the child would be best served in the hands of the grandparents, the Court can very well do so despite the parents being alive. By impleading the petitioners as party, nothing will be adversely affected. It is, therefore, asserted that the order impugned is not sustainable. In support of this contention, reliance has been placed upon judgment of Delhi High Court in *Aditi Goel Versus Rohit Goel and others 2017 (4) Civil Court Cases 751*. Reliance has also been placed upon the judgment of the Division Bench of this Court in *Kajal Versus Rajesh Rana 2015 (3) R.C.R. (Civil) 195* to contend that when the minor child is living with his father since the time of his birth, who has been taking care of him and the mother has not bothered to know about his welfare before filing the petition for custody, the welfare of the child has to be seen. The overall welfare includes moral and ethical welfare of the child, which has to be decided by the Court by giving it a widest rather than giving it a restrictive meaning. Welfare of the child is not to be restricted nor measured by money or by physical comfort alone and would include moral and religious welfare as well, which aspect has been overlooked by the learned trial Court while passing the impugned order. He, therefore,

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contends that the impugned order deserves to be set aside and the application of the petitioners allowed by impleading them as respondents No.2 and 3 to the petition preferred under Section 6 read with Section 13 of the 1956 Act.

7. On the other hand, learned senior counsel for respondent No.1 has asserted that the application has not been filed by the petitioners in a *bona fide* manner. At the time of filing of the application i.e. on 10.10.2019 (Annexure P-4) for impleading them as respondents to the petition, they were not residing with respondent No.2 or the child. Petitioners shifted to the house of respondent No.2 in December 2019 as is apparent from para 9 of the present petition. He, therefore, contends that at the time of filing of the application, they were not residing with their son or the minor and the said act on the part of the petitioners depicts that the effort on the part of the petitioners as well as respondent No.2 is to delay the proceedings before the Guardian Judge. Denying the allegations with regard to respondent No.1 having abandoned the child and moved out of the matrimonial home, it is asserted that respondent No.1 was shunted out of the house. It is under these circumstances that when pushed out of the house and being the mother of the child, all efforts were and are being made by her to get the custody of her child. Criminal Writ Petition No.406 of 2019 was preferred when the matter was being delayed before the Guardian Judge as the matter was not proceeding further. Respondent No.1 impleaded the petitioners as a party to the writ petition to save time so that she could get custody of the child at the earliest. Although she failed in the endeavour but the Court accepted her plea to the extent of expediting the proceedings before the Guardian Judge.

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Learned senior counsel for respondent No.1 asserts that the aim on the part of the petitioners is to harass and frustrate the mother of the child and it is with that endeavour and intention that the application for impleading them as party has been preferred. The plea, which has been taken for filing the application for impleadment is that respondent No.1 had impleaded them as respondents in the writ petition preferred by her in this Court, which cannot be a ground for them to be impleaded as a party to the lis for custody of the minor. As regards the assertion that respondent No.1 being a professional i.e. practising Advocate is unable to take care of the child in itself is a misconceived perception, which would mean that lady lawyers cannot be good mothers and are unable to look after the welfare of the child, which reflects upon the thinking of the petitioners. As regards the statement given by respondent No.1 before the police authorities, it is asserted by learned senior counsel for respondent No.1 that the statement was not merely of respondent No.1 but that of respondent No.2 as well and was in the spur of moment and since the said statement has not been adhered to by any of the parties, the same cannot be pressed against respondent No.1. Supporting the impugned order passed by the Court below, learned senior counsel for respondent No.1 submits that the trial Court has rightly understood the intention behind the moving of the said application by the petitioners and has rightly dismissed the same. Prayer has thus been made for dismissal of the present petition.

8. Having considered the submissions made by the counsel for the parties and on going through the pleadings and the documents on record, this Court does not find any merit in the present petition.

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9. The facts, as have been mentioned above, need not be referred to again as they are not disputed except for the aspect of respondent No.1 having moved out of the matrimonial home as asserted by the petitioners and *pro forma* respondent No.2, whereas the stand of respondent No.1 is that she was thrown out of the matrimonial home. The fact remains that there has been bitterness in the relationship between respondent No.1 and respondent No.2 as also the petitioners. There can be no dispute with regard to the position in law with regard to the powers of the Court to implead a necessary party in exercise of the provisions as contained under Order I Rule 10 CPC, which permits the Court to either delete or add any person as a party to the lis at any stage, where the Court is of the view that the said person is necessary in order to enable the Court to factually and completely adjudicate all the questions involved in the lis. The language itself does not put any fetter with regard to the time of moving such an application. There can also not be any dispute that the primary aim and object of the provisions of the 1956 Act relating to the custody of the minor is the welfare of the child, which is paramount and rest of the considerations fall in the oblivion. It can also not be disputed that where the father and the mother are found to be incapable of looking after the welfare of the minor, grandparents can be given the custody of the said child. The power, therefore, is with the Court to come to a conclusion with regard to the said aspect of the welfare of the child.

10. According to the judgments, on which reliance has been placed by the counsel for the petitioners, the intent and purpose of the statute has to be given primacy i.e. the welfare of the child and not the rights of the

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parents under a statute. Welfare as a word is not to be given a restrictive meaning but has to be read in the widest amplitude and the Court has to decide with regard to the welfare of the child as to who would better promote the same.

11. Keeping that in mind when the pleadings of the parties and facts are taken note of, this Court finds that the effort on the part of the petitioners in connivance with respondent No.2 is to delay the proceedings in the petition preferred by respondent No.1, the mother, who is making all efforts to get the custody of the child, who has been separated from her. Filing of the writ petition for habeas corpus by respondent No.1 was also a step in the said direction may be ill conceived but the Court while disposing of the said writ petition on 30.05.2019 (Annexure P-3), realised the delay in disposal of the petition preferred by respondent No.1, the mother for custody of her minor son and ordered expediting the said proceedings. Merely because the petitioners have been impleaded as party respondents to the writ petition, does not, in the considered view of this Court, give a right to the petitioners for moving an application for being impleaded as party to the lis, which shows the intent on the part of the petitioners to delay the proceedings. Had the petitioners been interested, as is asserted, in the welfare of the minor child, they should have, at the very outset, moved an application for being impleaded as a party to the lis at initial stage. It is only after the proceedings have been expedited by this Court vide order dated 30.05.2019 that the present application for impleading the petitioners as party has been filed on 10.10.2019. This leaves no manner of doubt that the application preferred by the petitioners for impleading them as a party is

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not a *bona fide* exercise on their part. The trial Court has seen through the hidden plan and has rightly dismissed the same. There is no doubt that as per the provisions of Order 1 Rule 10 CPC, the Court is competent to implead any person as a party at any time but while doing so, the intent and purpose for which such an application has been moved has also to be given due credence and weight, which this Court finds to be an exercise laced with *mala fides*. It is not a genuine and *bona fide* effort on the part of the petitioners to ensure the welfare of the child but to delay the proceedings as mentioned above.

12. As regards the stand of the petitioners that respondents No.1 and 2 are Advocates by profession and, therefore, cannot take care of child and would not be able to watch the welfare of their child, suffice it to say that the stand, which has been taken by the petitioners, is a fiction of a polluted mind, where a working woman is looked down upon as a careless and care free person ignoring the fact that she also is a mother of the child. Branding lady lawyers as a class as irresponsible is unacceptable and, therefore, the welfare of the child, which includes moral and ethical values, is least expected to be protected and secured by such grandparents, who have narrow outlook towards life and society. Women lawyers are not only successful in their professional endeavours but have proved to be bold, brave and successful mothers. The plea of the petitioners, therefore, with regard to the inability of respondent No.1 to look after the welfare of the child because she is an Advocate by profession, is unacceptable. It has been observed by the Division Bench of this Court in Kajal's case (supra) relaying upon the judgment of Hon'ble Supreme Court that in a case of custody of the

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minor, primary and dominant question before the Court is the welfare of the child, which cannot be measured by money or by physical comfort alone, which probably appears to be a consideration on the part of the petitioners overlooking the factum of the love and affection and the natural affinity of the parents to a child.

13. In view of the above, the present petition stands dismissed.

14. The trial Court is directed to make an endeavour to complete the pending proceedings within a period of three months from the next date of hearing fixed before the trial Court.

September 9th, 2020 **(AUGUSTINE GEORGE MASIH)**
Puneet **JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No

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