

***Before Rajan Gupta & Manjari Nehru Kaul, JJ.***

**SANGEETA—Appellant(s)**

*versus*

**SARWAN SINGH AND ANOTHER—Respondent(s)**

**FAO No. 1075 of 2019**

September 13, 2019

***A. Guardians And Wards Act, 1890, S.25—Custody of minor child—Financial condition of mother—Mother of minor child sought custody of child from grandparents—Affluence and superior financial condition of grandparents cannot be ground to deny custody of minor child to mother, who is natural guardian of child—What has to be considered is, who out of two would have better care and better consideration for welfare of child—Mother working as lab technician and drawing salary of Rs.10,000/—per month—Though, mother may not be financially at par with grandparents but at same time, is not financially unstable either, for not being able to care of child—Maternal love cannot be weighed in terms of materialistic comforts and money—Custody of minor child to mother.***

***B. Guardians And Wards Act, 1890, S.25—Custody of minor child—Both parents of minor child very much alive through estranged and not legally divorced—Grandparents cannot claim custody of minor child as matter of legal right—Father of child conveniently dodged his duty towards child by proceeding abroad leaving child at mercy of his parents—Parents getting older day by day—Mother willingly wanting to take over custody of her child and would be giving child her undivided attention—No reason as to why same should be denied to mother, who plays vital role of nurturer in child's life—Right of grandparents to custody of minor cannot override and supersede his welfare.***

***Held,*** Undisputedly, as per the mandate of law the welfare of the ward is of paramount consideration. A great deal of stress has been laid by the learned counsel for the respondents that the financial condition of the appellant-mother is much inferior to that of the respondents and hence on this ground, the custody of the minor child should not be given to her and the respondents should be allowed to retain the same. Even the Court below has completely erred in denying the appellant-mother the custody of the minor child on the same ground

by going on to even observe that no proof of income had been adduced by her during evidence. It need not be over-emphasised that affluence and superior financial condition of the respondents-grandparents cannot be a ground to deny the custody of a minor child to a mother, who is the natural guardian of a child. What has to be considered is, who out of the two would have better care and better consideration for the welfare of the child. As per the appellant, she is working as a lab technician and drawing a salary of Rs.10,000/- per month. She may not be financially at par with the respondents but at the same time, is not financially unstable either, for not being able to care of the child. Even assuming for the sake of arguments that what she is drawing as a salary is a pittance compared to what the respondents can afford, it would be traversity of justice and unfair to deprive a mother the custody of her minor child just because of her limited and inferior means. The maternal love, which a mother showers on her child, cannot be weighed in terms of materialistic comforts and money. Undoubtedly, we have no hesitation that it is a mother, who would steal a march over the others in matters of custody of her minor child when there is nothing forthcoming on record, which could suggest that the custody of the child with such mother would be injurious to his upbringing and emotional health.

(Para 12)

*Further held that,* In the case in hand, both the parents of the minor child i.e. the father and the mother are very much alive though estranged and not legally divorced. Respondents grandparents cannot claim custody of the minor child as a matter of legal right. In fact, their son i.e. the father of the child has conveniently dodged his duty towards the child by proceeding abroad to work, by leaving the child at the mercy of his parents, who admittedly are not getting any younger by the day. It is natural that the attention of the respondents grandparents would be divided between other children and grandchildren in the family whereas the mother on the other hand is willingly wanting to take over the custody of her child and would be giving the child her undivided attention. We see no reason as to why the same should be denied to her because without a doubt it is the mother, who plays a vital role of a nurturer in a child's life. The right of the grandparents to the custody of the minor cannot over ride and supersede his welfare.

(Para 13)

Sumati Jund, Advocate  
*for the appellant.*

M.S.Atwal, Advocate  
for respondents.

**MANJARI NEHRU KAUL, J.**

(1) The instant appeal has been preferred by Sangeeta, the mother of the minor child Dhanveer Singh, impugning the order dated 19.11.2018 vide which petition filed by her under Section 25 of Guardian and Wards Act, 1890 (for short 'the Act') for getting the custody of her minor child was dismissed by the trial Court.

(2) Few facts necessary for adjudication of the instant appeal as pleaded in the petition filed by the appellant-mother before the learned Court below may be noticed.

(3) Marriage between the appellant and Amandeep Singh, son of the respondents, was solemnized on 13.04.2013 and out of the wedlock one son namely Dhanveer Singh was born on 01.10.2014. Soon after the marriage, husband of the appellant went abroad leaving her behind at her matrimonial home. During his absence, the appellant-wife was ill treated by respondents No.1 and 2 and her sisters-in-law as they were dissatisfied with the dowry given to her at the time of marriage. The appellant-wife tolerated and kept up with the cruel and abusive behaviour of the respondents with a hope that good sense would prevail upon them some day but in vain. The husband of the appellant came to India on 16.05.2017. At the instigation of the respondents and his sisters, he demanded that the appellant-wife get Rs.10 lakhs for financing the construction of his sister's house. However, she expressed her inability as her father had already expired. On 06.06.2017 on being physically assaulted by her husband and the respondents, she submitted a representation before the Deputy Superintendent of Police giving details of the incident. A compromise was subsequently arrived at on 14.06.2017 between the parties at Women's Police Station where the husband as well as the respondents assured that they would not repeat their inhuman behaviour towards the appellant-wife. The same was however, short lived. On 27.06.2017, after being subjected to physical and mental torture, the appellant was thrown out of her matrimonial home on 28.06.2017 but not before forcibly taking her minor son Dhanveer Singh, away from her. Even though the appellant-wife and her family continuously and persistently made efforts for reconciliation with her husband and the respondents,

as well as, made efforts to meet her infant child but the same met with no success. It was in this background that the appellant was left with no other option but to file a petition under Section 25 of the Act for obtaining the custody of the minor child.

(4) Upon notice, respondents filed their written statement before the learned Court below wherein they refuted and denied all the allegations of the appellant. They submitted that the appellant in fact was estopped by her own act and conduct to seek the custody of the minor son. It was submitted that the minor child Dhanveer Singh was being very well looked after by the respondents, who were showering him with all the love and affection and also taking care of his education. They rather alleged that on 28.06.2017, the appellant-wife after creating nuisance left her matrimonial home without any reasonable cause. A panchayat, which was subsequently convened to bring about an amicable settlement failed on account of the unbecoming behaviour of the appellant and her parents. It was submitted that in fact the appellant herself had abandoned her infant child in the matrimonial home. It was also submitted that an application containing false allegations was moved by the appellant-wife before Sub Divisional Magistrate (SDM), Dasuya in pursuance to which the minor child was produced before SDM, Dasuya wherein the minor child himself stated before the SDM that he would want to go with his grandmother. Thereafter vide order dated 11.08.2017, SDM Dasuya ordered that the custody of the minor son Dhanveer Singh be allowed to continue with the grandparents i.e. respondents.

(5) The controversy between the parties led to framing of the following issues by the learned trial Court:

1. Whether the petitioner is entitled for custody of minor Dhanveer Singh? OPA
2. Whether the petition is not maintainable? OPR
3. Whether petitioner has not come to the Court with clean hands and has suppressed the material facts? OPD
4. Whether petition has no cause of action to file present petition? OPR
5. Whether petitioner is estopped by her act and conduct to file present petition? OPR
6. Relief.

(6) Both the parties adduced evidence in support of their case. Appellant-Sangeeta herself stepped into the witness box as PW-1 and tendered her affidavit as PW-1/A. Besides herself, she also examined Avinash Kumar as PW-2. On the other hand, respondent No.2 stepped into the witness box as RW-1 and tendered her affidavit as RW-1/A. Besides herself, she examined two other witnesses.

(7) After analyzing the evidence led by the parties, the trial Court dismissed the petition by holding the appellant-mother not entitled to the custody of her minor son. However, the appellant was given visitation rights to meet her minor son Dhanveer Singh. Feeling aggrieved with the order passed by the Court below, the present appeal has thus, been preferred by the appellant-mother.

(8) It has been urged by learned counsel for the appellant that the learned trial Court has completely erred in not taking into account that in matters of custody of minor child, the paramount consideration has to be the welfare of the child and not the financial condition of the guardian. It was further urged that the appellant was living with her parents and brothers in their house and was working as a lab technician in a private dispensary. She was drawing a salary of Rs.10,000/- per month. Therefore, she had sufficient means to provide for the basic comforts necessary for the upbringing of a child, his education besides showering him with all the love and affection, which only a mother could provide.

(9) Learned counsel for the respondents, on the contrary, while supporting the order passed by the learned Court below has reiterated the submissions made before the Court below and gone on to submit that the child, who is about 4 years and 11 months old is very attached to his grandparents, who are taking good care of him whereas the mother on the other hand does not even have enough means at her disposal to provide the comforts which the child is enjoying in the house of his grandparents. Learned counsel has admitted to the fact that the father of the minor child (husband of the appellant-wife) is not living in India and is working in Qatar. It has been urged by the learned counsel for the respondents that the father visits India every two years and hence, the child gets to meet and bond with the father during his visits to India.

(10) During the pendency of the instant appeal, the parties were referred to Mediation and Conciliation Centre of this Court to explore the possibility of an amicable settlement, however, it failed to yield any positive result.

(11) After hearing learned counsel for the parties and giving our thoughtful consideration, we are of the considered opinion that the instant appeal deserves to be allowed.

(12) Undisputedly, as per the mandate of law the welfare of the ward is of paramount consideration. A great deal of stress has been laid by the learned counsel for the respondents that the financial condition of the appellant-mother is much inferior to that of the respondents and hence on this ground, the custody of the minor child should not be given to her and the respondents should be allowed to retain the same. Even the Court below has completely erred in denying the appellant-mother the custody of the minor child on the same ground by going on to even observe that no proof of income had been adduced by her during evidence. It need not be over-emphasised that affluence and superior financial condition of the respondents-grandparents cannot be a ground to deny the custody of a minor child to a mother, who is the natural guardian of a child. What has to be considered is, who out of the two would have better care and better consideration for the welfare of the child. As per the appellant, she is working as a lab technician and drawing a salary of Rs.10,000/- per month. She may not be financially at par with the respondents but at the same time, is not financially unstable either, for not being able to care of the child. Even assuming for the sake of arguments that what she is drawing as a salary is a pittance compared to what the respondents can afford, it would be traversity of justice and unfair to deprive a mother the custody of her minor child just because of her limited and inferior means. The maternal love, which a mother showers on her child, cannot be weighed in terms of materialistic comforts and money. Undoubtedly, we have no hesitation that it is a mother, who would steal a march over the others in matters of custody of her minor child when there is nothing forthcoming on record, which could suggest that the custody of the child with such mother would be injurious to his upbringing and emotional health.

(13) In the case in hand, both the parents of the minor child i.e. the father and the mother are very much alive though estranged and not legally divorced. Respondents grandparents cannot claim custody of the minor child as a matter of legal right. In fact, their son i.e. the father of the child has conveniently dodged his duty towards the child by proceeding abroad to work, by leaving the child at the mercy of his parents, who admittedly are not getting any younger by the day. It is natural that the attention of the respondents grandparents would be

divided between other children and grandchildren in the family whereas the mother on the other hand is willingly wanting to take over the custody of her child and would be giving the child her undivided attention. We see no reason as to why the same should be denied to her because without a doubt it is the mother, who plays a vital role of a nurturer in a child's life. The right of the grandparents to the custody of the minor cannot over ride and supersede his welfare.

(14) However, we cannot be oblivious to the fact that it may be a little trying emotionally for the child as well as the respondent grandparents when his custody is handed over to the mother but when seen in the long run, it would definitely contribute to his healthy growth and all round development. The respondents grandparents should endeavour to iron out and work out their differences with the appellant-mother for the sake of the minor child as they seem to be reluctant to hand over the custody of the child to the mother in view of her financial condition. Their concern could be justified being grandparents. If they indeed are so much interested in the welfare of their grandson, there is nothing, which would prevent them from compensating the child from their own resources so that he is not deprived of any comfort.

(15) Hence, as a sequel to the above, the appeal is allowed and the order dated 19.11.2018 passed by the Court below is set aside. We direct that the custody of the minor child be handed over forthwith to the appellant-mother, who is his natural guardian.

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*Ritambhra Rishi*