

**In the Court of Dr Gurpreet Kaur,
Principal Judge, Family Court, Camp Court at Bholath,
Bholath.(UID No.PB00221)**

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CNR No. PBKPF40000522022

Case No. GW/11/2022



Presented on : 06-04-2022

Registered on : 06-04-2022

Decided on : 23-11-2022

Navneet Kaur, aged 40 years wife of Gurwinder Singh, d/o Man Singh r/o villge Raipur Peerbuxwala, Tehsil Bholath, District Kapurthala.

Petitioner.

Versus

1. General Public.
2. Gurwinder Singh son of Balwinder Singh, resident of H.No.L-105, Upkar Nagar, Chak Hussaina, Lammapiind, Tehsil and District Jalandhar.

Respondents.

Petition under Section 7/25 of the Guardian and Wards Act, 1890 read with Section 6 of The Hindu Minority and Guardianship Act 1956, for appointment of petitioner as guardian of minors Manpreet Kaur and Mandeep Kaur born on 14.03.2005, Rajneet Kaur born on 16.01.2007 and Harsimranjit Singh born on 15.01.2012 out of wedlock of the petitioner and respondent No.2, which has been dissolved by Principal Judge, Family Court vide decree of divorce dated 23.03.2022.

Present:- Sh.K.S.Sehgal, Adv. counsel for petitioner.
Respondents exparte.

ORDER

1. Petitioner Navennt Kaur has filed this petition under Section 7/25 of the Guardian and Wards Act, 1890 read with Section 6 of The Hindu Minority and Guardianship Act 1956, for appointment of petitioner as guardian of minors Manpreet Kaur and Mandeep Kaur born on 14.03.2005, Rajneet Kaur born on 16.01.2007 and Harsimranjit Singh born on 15.01.2012 out of wedlock of the petitioner and respondent No.2.

2. As per the available factual matrix, marriage between the petitioner and respondent No.2 was solemnized as per Sikh Religious Rites on 29-12-2002 and out of this wedlock, four children namely Manpreet Kaur, Mandeep Kaur, Rajneet Kaur and Harsimranjit Singh have born, who are in the care and custody of petitioner for petitioner being their mother. Petitioner further averred due to matrimonial discord, she and respondent could not pull in together and got divorce by mutual consent vide judgment and decree dated 23.03.2022 and thus, the marriage between the parties was dissolved. Minors are in the care and custody of the petitiner for she being his mother. She further averred that she is looking after the minors and is providing them education and all the amenities for their well being while Respondent No.2 never bothered to know about the well being of minors. Being the natural mother, petitioner is having no adverse interest to that of minors and is the best person to be appointed as the guardian of minors. Petitioner further

averred that she has great love and affection for minors who are totally dependent on her for the petitioner being their natural mother. Moreover, she needs to be appointed as the guardian of minors to complete all the formalities and documentation qua their higher studies and preparation of other. Hence, present petition.

3. Notice of the petition was given to the respondents, but no one appeared on behalf of respondent No. 1 General Public to object this petition despite proper service by way of publication and thus, were proceeded against exparte. Even Respondent No.2 did not turn up despite service to contest this petition and was proceeded against as ex-parte.

4. In the ex-parte evidence, petitioner herself stepped into witness box and furnished her duly sworn affidavit vide Ex. PW1/A. She also examined her father Man Singh as PW-2 in addition to Surinder Singh and Jaswinder Singh being known to the parties as PW-3 and PW-4, who supported the claim of the petitioner vide their duly sworn affidavits vide Ex. PW2/A to Ex. PW4/A. Petitioner has also placed on record documents i.e. copy of birth certificate of Manpreet Kaur as Ex.P1, copy of birth certificate of Mandeep Kaur as Ex.P2, copy of birth certificate of Rajneet Kaur as Ex.P3, copy of birth certificate of Harsimranjit Singh as Ex.P4, certified copy of judgment and decree sheet of Navneet Kaur and Gurwinder Singh as Ex.P5 and Ex.P6, School certificate of Manpreet Kaur, Mandeep Kaur, Rajneet Kaur and Harsimranjit Singh as Ex.P7 to Ex.P10, copy of Adhar cards of Manpreet Kaur, Mandeep Kaur, Rajneet Kaur and Harsimranjit Singh as Ex.P11 to Ex.P14. Thereafter, learned

counsel for the petitioner closed the evidence on behalf of the petitioner.

5. Ld. Counsel for the parties argued that admittedly marriage between the petitioner and respondent no.2 had taken place but the same has been ended by the decree of divorce by mutual consent. They have four children from their lawful wedlock, who are in the care and custody of petitioner for she being their mother. Since, the best interest of the minor lies in appointing petitioner as the guardian of minor, thus they prayed for allowing this petition.

6. After hearing the learned counsel for the parties in due consonance to the evidence available on record, this Court is of the considered view that present petition has been filed by the petitioner, being the natural mother of minors namely Manpreet Kaur, Mandeep Kaur, Rajneet Kaur and Harsimranjit Singh. Perusal of the file reflect that admittedly, the petitioner is taking care of minors and is providing them all the necessary amenities and education. Respondent No.2, father of minors did not appear despite service and did not contest this petition. Thus, entire evidence led by the petitioner has remained unrebutted, uncontested and unchallenged for the respondents being ex-parte.

7. It is the settled preposition of law that paramount consideration while deciding the custody and guardianship of minor child is the welfare of the child and when the Court has to see welfare, then all the aspects including the material and emotional aspects have to be taken care of together. In the present case, petitioner and respondent No.2 were married on 29.12.2002 and have four children from their lawful wedlock,

who are in the care and custody of their mother. Admittedly, divorce has taken place between the petitioner and respondent No.2 and minors are in the care and custody of his mother since and she is bearing all their expenses and providing them with education and all other amenities necessary for his betterment. Father of minor did not contest this petition despite service. Even minors Manpreet Kaur and Mandeep Kaur aged about 17 years and Rajneet Kaur aged about 15 years appeared in the court and their statements have been recorded separately for they being of the age of understanding whereby they stated that they are four brother and sisters and are being taken care of their mother and she is bearing all their expenses.

8. It is pertinent to mention here that the guardianship matter being sensitive one, require special adjudication with emotional touch with a co-relative factor that the welfare of the minor is the paramount consideration. Reliance to this effect can be placed on the land mark judgment of Hon'ble Apex Court titled as '**Rozy Jacob V Jacob A. Chakramakkal, AIR 1973 SC, 2090**' wherein, it has been settled that the golden principle eloquent as the luminous pole star in the entire gamut of the laws relating to custody and Guardianship of children in India is the rule that welfare of the child is the paramount consideration.

9. Petitioner being the natural mother and having the better financial resources and capacity, is the best person for being appointed as their guardian especially when father of minors did not contest this petition for he being exparte and entire evidence led be the petitioner has

remained un rebutted, uncontested and unchallenged. His non appearance itself indicates that he has nothing to say with regard to the contentions of the petitioner. Rather, indirectly, he has admitted all the said contentions and allegations. Had it not been so, he must have contested this petition. There is nothing on record that the witnesses examined by petitioner are telling lie, rather their statements recorded on solemn affirmation indicate that they deserve to be believed.

10. It is pertinent to mention here that this case being of civil nature, needs to be proved as per preponderance of probabilities and the petitioner has led sufficient evidence to prove her case. For the sake of brevity, nothing has come from the side of the respondent to rebut the contention or evidence of the petitioner. thus present petition stands allowed and petitioner is declared as guardian of person of minors namely Manpreet Kaur, Mandeep Kaur, Rajneet Kaur and Harsimranjit Singh. Memo of costs be prepared and file be consigned to the Judicial Record Room, Kapurthala.

Pronounced in open Court.
Dated:23.11.2022

(Dr Gurpreet Kaur)
Principal Judge, Family Court
Camp Court, at Bholath.
(UID No.PB0221)