

**In the Court of Dr. Deepti Gupta, Additional Principal Judge,
Family Court (Camp Court), Malerkotla .
(UID No. PB0219)**

Registration No.GW-50- 2021.
CNR NO.PBSGF4-002126-2021
Decided on: 11.03.2024.

Suman aged about 50 years widow of Satish Kumar C/o Multani Hotel and Restaurant, Malerkotla District Sangrur real grandmother of minor namely Jaisleen DOB: 21.10.2015 daughter of Late Sushant Grover (minor at present under the care and custody of Suman)

... Petitioner.

Versus.

General Public.

.....Respondent

Petition under Section 10 of Guardian and Wards Act 1890 for declaring / appointing the applicant Suman as lawful guardian of minor namely Jaisleen DOB: 21.10.2015 daughter of Late Sushant Grover of her person, property or any other relief.

Present: Sh. G.S.Tiwana, Counsel for the petitioner.
Respondent exparte.

JUDGMENT:

1. Suman (hereinafter referred to as the Petitioner) has preferred the instant petition under section 10 of The Guardian and Wards Act against General Public (hereinafter referred to as the respondent) as detailed in head note of the petition and judgment.

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2. Laconic recapitulation of the facts envisages that Sushant Grover was real son of petitioner, who was married with Summey Rani daughter of Ramesh Kumar resident of Chandi Wala Chonk, Camp, Near Krishna Mandir, Malout. From the wedlock of parties, a female child namely Jaisleen was born on 21.10.2015, who is grand daughter of the petitioner. Sushant Grover had died on 24.12.2017. After the death of Sushant Grover, Summey Rani, his widow, has left the house of petitioner while leaving the minor and started residing at her parental house. At that time, Summey Rani settled all the accounts with the petitioner and her family with the intervention of respectable persons while breaking all ties and relationships with the petitioner, minor Jaisleen and the family of petitioner. Summey Rani has no concern / relationship with the minor. Since then the minor is residing under the care and custody of petitioner. The petitioner is bringing up the minor Jaisleen properly by providing basic amenities of life. At present, minor is studying in D.A.V Cent. Senior Secondary School, Malerkotla in UKG. The natural mother of minor has already converted to 'Islam' and has changed her name to Sumaiya. She has performed 'Nikah' with one Shehbaz son of Khushi Mohammad resident of Sirhandi Gate, Malerkotla and as such she has no love and affection for the minor. The petitioner has natural love and affection for minor Jaisleen being her grandmother having no adverse

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interest towards the minor. The minor is residing happily with the petitioner. It is obligatory on the part of petitioner to look for the welfare of minor being her natural grand mother and further to educate her, to manage affairs of minor, which she has inherited after death of her father for her better future. As such, the petitioner be appointed / declared as lawful guardian of the minor. Hence, the present petition.

3. Having been put to notice of the present petition, respondent General Public was proceeded against exparte vide order dated 30.11.2021 by learned Predecessor of this Court.

4. In support of her petition, petitioner has examined Sachin Kumar, M.C, who tendered his duly sworn affidavit Ex.AW1/A. He has proved copies of birth certificate and 'Adhar' card of minor Jaisleen as Ex.A1 and Ex.A2, copy of death certificate of Sushant Grover Ex.A3, copy of school record Ex.A4. The petitioner Suman herself stepped into witness box as AW-2 and tendered into evidence her duly sworn affidavit Ex.AW2/A, affidavit Ex.A5 and affidavit Mark X. Thereafter, the petitioner closed the evidence.

5. The judicial record has been perused with due circumspection and interaction with the minor child has also been conducted.

6. The law relating to the custody of the minor child under the

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Guardian and Wards Act, 1890 in relation to Section 7, 12 and 25 has been summed up by the Hon'ble Apex Court in case **NILRATAN KUNDU & ANR. VERSUS ABHIJIT KUNDU 2008(3) R.C.R. (Civil) 936**. The relevant portion of the above stated judgment is very important for the purpose of this case which is reproduced as under:-

- (1) *Object of Guardian and Wards Act, 1890 is not merely physical custody of the minor but due protection of the rights of the ward's health, maintenance and education.*
- (2) *Due regard of course is 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. 1973(1) SCC 840 relied.*
- (3) *Simply because the father loves his children and is not shown to be otherwise undesirable does not necessarily lead to the conclusion that the welfare of the children would be better promoted by granting their custody to him.*
- (4) *First and the paramount consideration is the welfare of the child and not the right of the parent. JT 2008(6) SC 634 relied.*
- (5) *Custody of child cannot be given merely on ground of financial soundness of the party- Paramount consideration should be welfare of minor.*
- (6) *The moral and ethical welfare of the child must also weigh with the Court as well as its physical well being.*
- (7) *Father is natural guardian of minor, but paramount consideration is the welfare of the minor and not the legal right of a particular party.*
- (8) *Keeping in mind the welfare of the child as the sole consideration, it would be proper to find out wishes of the child as to with whom he or she wants to live.*
- (9) *Custody cases cannot be decided on documents, oral*

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evidence or precedents without reference to 'human touch'- The human touch is the primary one for the welfare of the minor since the other materials may be created either by the parties themselves or on the advice of counsel to suit their convenience. AIR 2003 Mad 315 relied.

- (10) *A court while dealing with custody cases, is neither bound by the statutes nor by strict rules of evidence or procedure nor by precedents- In selecting proper guardian of a minor , the paramount consideration should be the welfare and well-being of the child.*
- (11) *If the minor is old enough to form an intelligent preference or judgment, the Court must consider such preference as well, though the final decision should rest with the Court as to what is conducive to the welfare of the minor.*
- (12) *Controlling consideration governing the custody of children is the welfare of children and not the right of their parents.*
- (13) *One of the matters which is required to be considered by a Court of law is the 'character' of the proposed guardian.*

7. Hon'ble Supreme Court of India in case titled as **JAVID GHORASHIAN VS. STATE OF MAHARASHTRA A.I.R. 2002 Bombay** 1, had observed that in case where a person has expressed his/her desire to get himself/herself appointed as guardian of a person and property, the Court should keep in mind that the minor's interest is of paramount consideration.

8. In the instant case petitioner being grand mother of minor child Jaisleen has filed the present petition. As per the unrebutted evidence and pleadings on file the child's father namely Sushant Grover

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had died on 24.12.2017 and after his death , Summey Rani, mother of the child has left the house of petitioner while leaving the minor and started residing at her parental house. From the un rebutted evidence on file it convincingly emerges that Summey Rani settled all the accounts with the petitioner and her family with the intervention of respectable persons while breaking all ties and relationships with the petitioner, minor Jaisleen and the family of petitioner. Summey Rani has no concern / relationship with the minor and since then the minor is residing under the care and custody of petitioner. The natural mother of minor has already converted to 'Islam' and has changed her name to Sumaiya. She has performed 'Nikah' with one Shehbaz son of Khushi Mohammad resident of Sirhandi Gate, Malerkotla. The minor child has been living with the petitioner since the date her mother left the matrimonial house. The petitioner is educating the minor child and providing her all the required amenities of life.

9. Through the un rebutted evidence, petitioner has been able to prove that it is in the best interest & welfare of the minor child that petitioner be declared as the guardian of minor child. Taking into consideration the interest & welfare of the minor child, oral as well as documentary evidence on record, this Court is of the considered opinion that the appointment of the petitioner as guardian of the child would be

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beneficial for the future prospects of the child in all respects especially, when her biological mother has never claimed her custody .

10. As an upshot of the reasons cited supra, the petition under deliberation is allowed ex-parte to the effect that the petitioner is declared/appointed to be the guardian of minor child Jaisleen. Copy of the order be supplied to the petitioner free of costs. File be consigned to the Record Room after due compliance.

Pronounced in open Court.

Dated : 11.03.2024.

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Veena Saluja

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