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Before J.S. Narang, J

SURINDER KAUR & ANOTHER,—*Appellants*

versus

HARBANS SINGH,—*Respondents*

C.M.Nos. 7438-CII of 2001, 15754-55-CII of  
2001, 2972-CII of 2002 and FAO No. 2057 OF 1996

20th May, 2002

*Guardians & Wards Act, 1890—S.25—Fight between the father & the mother over the custody of their 16 ½ years old child—Both the parents well placed in life fit to be the guardian of the child—Power of the Court to grant custody u/s 25 of the Act—Object & purpose—Welfare of the child—Paramount consideration—Wishes of the child should also be taken into consideration—Child remained in the custody of the mother for almost entire of the substantial period and going to attain majority soon—Appeal allowed while ordering the custody of the child to the mother upto the age of majority—However, after the age of majority the child shall have the absolute freedom and choice to live with any of the parents.*

Held, that the medical science has positively indicated as to in what manner the intelligent quotient of the child develops. The environments around the child is the major contribution in this episode. The contribution of the parents is also no less. According to the old school of thoughts and the philosophy which has developed, the mother has always been accepted and treated as the “first teacher” of the child. The child starts becoming aware of the world under the aegis of the mother. The love and affection develops during this period. It is the accepted fact that according to Hindu mythology and Hindu Law, father is accepted as head of the family and is responsible for meeting day to day needs and the materialistic characterisation of the family. This also contributes a major factor for the development of the psychology of the child. The child takes the first step the shelter is provided by the mother and father. The laughters have positive indication in the comfortable development of various horizons in the psyche of the child. We cannot forget the first teacher i.e. “the mother”. The first four years of the child make the child acquire the maximum

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of intelligent quotient. No doubt the father figure adds considerably to it because the child starts looking towards father as an "ideal man" because till then he may not have come across any man in whose arms he could play and cuddle and enjoy the coziness in his lap. Happy are the parents who are together with the child in these years and blessed is the child who grows in such surroundings.

(Para 4)

Further held, that the parents are intelligent, educated, well placed in life, which opportunity is available to a few persons in this country, yet they have fought and they have acted worst than the children, if I may say to the derogation of interest of the child. The substantial fight has been over the custody of the child as if they had produced a toy to be played with.

(Para 13)

Further held, that the paramount consideration in the facts of this case is - where the welfare of the child would lay ? This child is of the age of sixteen and a half years and is of course aware of the surroundings around himself and the facts of life under which he has grown. We have experience of the elders over the years that while granting custody of the child the "welfare of the child" should be the paramount consideration with the court. The sensitivities of the relationship should not weigh with the Court. The circumstances which are befitting for the growth and welfare of the child should always weigh in the mind of the Court.

(Paras 15 & 16)

Further held, that the wishes of the child should also be taken into consideration by the Court especially when the child is able to deliver intelligible reasons for his own welfare. In the case at hand, after having talked to the child and hearing his own wishes which is tainted with intelligible reasons that it shall be necessary for him to remain in the same college for appearing in pre-engineering final examination scheduled to be held in April, 2003 and that it may not be possible for him, if he wishes to stay with his father at Chandigarh, to commute every day for attending his classes and that the environment would change, which may prejudicially affect his effort to get admitted

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in an Engineering College or institution. I am quite impressed by this reason and I find that the mother being an educationist, she would prove to be the guiding figure in helping the child to take a decision, which may fall in the correct and right perspective.

(Para 17)

J.K. Sibal, Sr. Advocate with Kumar Sethi, Advocate—*for the petitioner.*

Raman Mahajan, Advocate and Madan Lal Advocate,—*for the respondent.*

### JUDGMENT

*J.S. NARANG, J*

(1) The natural phenomena provides the birth of a child. Be it a man child or siblings of the animal. Scientifically the blood of the parents flows in the veins of the child. I pose a question to myself. Can such a wonderful thing coming into existence by virtue of the act of God/Nature by providing the machinery i.e. the male and female be treated as a chattel ? We can always buy a property jointly, individually and claim the ownership in respect thereof. If the property is obtained jointly, the co-owners raise a dispute to share it equally. The inanimate things can be divided by measure of scale or by way of weights and measures. Can an animate thing be divided in the same fashion, the answer is no. The animate things must go to one person as a whole. However, there are certain animate things which can be weighed and measured in terms of money. Can the man child be measured and weighed in the same manner and be bought and retained by an individual, especially when the division has to take place between the two persons who were responsible for production of the child ?

(2) Over the year, this question has posed problems in the society and of course in some circumstances brought before the courts. Sometimes the solutions are found by the producers themselves but the difficulty arises when each one of them wants to own and retain the child. Are we right in saying that child can be owned by any of

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the parents ? By becoming father one does not get the right to own and control the child. Similarly, the mother keeping the child in the womb for nine months and ultimately delivering the child to the world, does not become entitled to own and control the child. Though in the general terms both are entitled to use the word that "the child is mine". How long can you say that the child is mine ? The child grows under the shadow of the parents and when the child starts running, he tries to find the shadow of the nature and ultimately men and women and children in the world he may meet. After growing up he also becomes the shelter for the younger generation.

(3) The question arises as to what extent can we say that the custody of the child should be retained by the parents. Can the child be treated as an inanimate thing or a chattel or a toy to be played with ? The birth of a child is biological process provided by Almighty. It is blissful happening in a family as the birth of a child creates positive indications of the reflection of the parents and the addition in the family of the human race. The process of up-bringing of the child starts at "home".

(4) The medical science has positively indicated as to in what manner the intelligent quotient of the child develops. The environments around the child is the major contribution in this episode. The contribution of the parents is also no less. According to the old school of thoughts and the philosophy which has developed, the mother has always been accepted and treated as the "first teacher" of the child. The child starts becoming aware of the world under the aegis of the mother. Certainly protective growth is given to the child by the mother. The love and affection develops during this period. It is the accepted fact that according to Hindu mythology and Hindu law, father is accepted as head of the family and is responsible for meeting day to day needs and the materialistic characterisation of the family. This also contributes a major factor for the development of the psychology of the child. The child takes the first step the shelter is provided by the mother and father. The laughters have positive indication in the comfortable development of various horizons in the psyche of the child. We cannot forget the first teacher i.e. "the mother". The first four years of the child make the child acquire the maximum of intelligent quotient. No doubt the father figure adds considerably to it because the child starts looking towards father as an "ideal man" because till then he

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may not have come across any man in whose arms he could play and cuddle and enjoy the cozziness in his lap. Happy are the parents who are together with the child in these years and blessed is the child who grows in such surroundings.

(5) Then comes third person i.e. "teacher in school", who is responsible for making up the shortcomings in the field of education which the mother and father may not be able to contribute for one reason or the other, may be lack of education of the mother, lack of time with the father and so on and so forth. It is for this reason that there is always close affinity of the child with the school teacher. The teacher in those years plays a pivotal role in shaping up the character, the personality and widening of the horizons of the child. It is at this stage, the child steps in the materialistic world as well. He starts learning what is two plus two and what is five minus three.

(6) Dehors of this, in the present world, the parents who are educated make substantial contributions as well in the development of the child. It is at this time the child needs both the mother and the father. The confidence may not develop under the stern eyes of the school teacher but it grows under the soft and encouraging eyes of the parents. Thus, we cannot forget that a major role has to be played by the parents in the growth, development, knowledge, confidence and delving to various horizons in life, by the child. These are some of the facets of the life which prove positive and negative by the contributions of the parents in respect of the affairs of the child.

(7) It always pains me whenever I have come across the situation that the man child is born by virtue of the biology provided by His Almighty but the difference between a child and a child is due to the shortcomings of the mother, father and the school teacher. No child, be rich or poor, is born with a different intelligent quotient. The environments and circumstances which include the parents and the school teacher, a child is placed in he becomes a man to be judged by the society at large. The marriage is one of the phenomena provided by the society for a man and a woman to live together to share the thoughts and make a home which has now come to be known as matrimonial home. It is in this home, the child is allowed to be born. Different from the animals, the thought in the society developed and allowed a man and a woman to produce a child, to be kept by them with themselves. Allowing the child to grow under their own wisdom.

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(8) No religion provides freedom to the human beings for dissolving the marriage except under the Muslim religion. It has been provided only under the man made law that two human beings may decide to live separately after having been brought together in pious relationship promulgated by their respective religions. They may be permitted to dissolve the marriage. The saying is that the marriages are made in heaven but where they are broken, is it in the hell? If it is hell, it can be seen only in a broken matrimonial home, which certainly affects the children born out of this wedlock. How unfortunate it is for the child to grow minus one or both the protections.

(9) It is under the unsavoury circumstances that the courts are given the jurisdiction to decide the affairs and matters which were earlier kept in the matrimonial home but when they are exposed to the world, the final decision to be rendered is given upto the Courts. The fate of life which has been lived by the human beings and the children born therefrom, is left to the courts. It is at this stage the onerous duty of the court commences. It is easy to ask for justice but it is another story to impart justice. The passage of time brings in the precedents of the courts gathered in the reference books. The fact is that each case is different from the other, the circumstances, the behaviours, the documents and so on and so forth, are absolutely different in each case like the psychology of every human being. The precedents are no doubt the guiding elements in arriving at a conclusion but not the ultimate answer in each case to be followed in respect of decision required to be rendered.

(10) The matter pertains to the custody of the child to be given either to the husband or to wife. An effort has been made by the trial court while determining the aforesaid question and resultantly a judgment, dated 14th June, 1996 has been rendered, granting the custody of the child to the husband with the right of visitation to the wife for all the 24 hours of the day in months and years i.e. during the life time. The husband has been directed to hand over one key of the duplicate keys of the front door of the house of the husband and that if she wishes to stay in the house, she shall be provided the boarding and lodging accordingly. She has also been entitled to take out the child out of the house in the city on working days and even for outings on vacations as per the wishes of the child. She has also been given the opportunity to take the child to her parents house, to

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her brothers' house, keeping in view the study schedule of the child. The trial court has expressed the desire that the husband and wife should improve their relationship amongst themselves and the adjustment should be made accordingly and if possible the wife may get herself transferred to Chandigarh on deputation. The advice and word of caution has also been spelt out in the aforesaid judgment.

(11) This Court is also faced with the situation where the appellant and the respondent got married, produced the child and the child started growing. It is from here that the parents were expected to look after the child with the thoughts noticed above but failed at one point or the other. Both of them were unable to contain within themselves or keep the differences unto themselves and sought out the matters within the four corners of the matrimonial home. Their differences and their opinions which led to the opening of the door of the matrimonial home for the world to see as to what was happening inside the home. Once they stepped out of the matrimonial home, when the door had been opened, he or she opened the door of the Court. Resultantly, various litigations were initiated amongst themselves, such as restitution of conjugal rights which was ultimately withdrawn in the year 1990, a petition for divorce upon the grounds as contained in the petition, filed by the husband, which was dismissed on 26th February, 1993. Being dis-satisfied, he filed an appeal which was ultimately disposed of by way of a compromise. Prior to this, a petition for seeking custody of the child was also filed.

(12) It shall be appropriate to notice that the marriage of the appellant and the respondent was performed on 2nd December, 1984 and the child Kulpreet Singh was born on 13th November, 1985. It is strange that they did not allow the child to grow under their combined supervision at the time when he was in the process of acquisition of maximum of the intelligent quotient. The petition for seeking custody of the child was filed which was again compromised in the year 1987. From the facts which are not required to be noticed, mathematically, the child remained in the custody of the mother for almost entire of the substantial period up to date. On one occasion the child was taken to Shimla and perhaps in violation of some order of the Court, a habeas corpus petition was filled by the wife for seeking corpus which was granted *vide* order dated 3rd April, 1996.

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(13) The parents are intelligent, educated, well placed in life, which opportunity is available to a few persons in this country, yet they have fought and they have acted worst than the children, if I may say to the derogation of interest of the child. The substantial fight has been over the custody of the child as if they had produced a toy to be played with. The impression which I have gathered from the facts disclosed in the petition that there has been no derth of love and affection shown by the parents, but perhaps in the court only. Had it been at home, the ugly situtation would not have arisen as it has reached today. One feels sad that both the parents who had been brought up by their respective parents in the right and correct perspective and settled themselves in the educational field and also in their vocational fields, could not educate themselves in the field of upkeep of the child and acquiring what the child needed the most at the relevant time.

(14) I had the opportunity to meet the husband and the wife and also the child, I talked to them in my chamber in the presence of the respective counsel for the parties. The impression is that both are egoistic. Ego for what, to deny what was the rightful due of the child at the relevant time. I talked to the child alone also in the chamber. He has acquired the feminine qualities which obviously have come from the mother. He has been living all along with the mother during his education at school. It is due to mistake of both the parents that the image of father was denied at the time when it could have developed the child with the appropriate image and his confedence could have been built in a different persepective. Our society is such that a woman gets very less opportunity to assimilate the seas of confident while growing. It is nice for a woman to become a confident woman but the mother in her should not be lost ever because that is one thing which the childhood needs for developing the softness in a human being. After talking to the child, I found that the confidence which could have been inculcated in him by the father is much less. I would not express any opinion as to in whom the fault lay, as I am called upon to decide the question of custody of the child.

(15) The paramount consideration in the facts of this case is-where the welfare of the child would lay? This child is of the age of sixteen and a half years and is of course aware of the surroundings



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around himself and the facts of life under which he has grown. He has secured 90% marks in the ICSE examination and has been educated in Yadvindra Public School, Patiala under the guidance of the mother. Presently he has joined Mohindra College, Patiala and wishes to become an Engineer. Resultantly, passed the first year examination in the College (pre-university) by securing 55% marks. Presently, he has joined the second year i.e. pre-engineering and is scheduled to appear in the final examination in April, 2003.

(16) The father has contributed monetarily for the upkeep of the child alongwith the mother under the orders of the Court. The mother is also earning and is educationally sound being a Lecturer in Government college, Patiala. Both the parents are Post Graduate whereas the wife has obtained Post Graduate in three subjects i.e. Political Science, Philosophy and English and the husband acquired Post Graduate in English language. The husband is working as Chief Sub Editor in the newspaper known as "The Tribune" at Chandigarh. I have no doubt that both of them would like to look after the child to the best of their ability, best of knowledge and also the means at their command. It would have been happiest circumstances if both of them had looked after the child together. Allas ! wishes could be horses ! But the fate of life must be faced. We have experience of the elders over the years that while granting custody of the child the "welfare of the child" should be the paramount consideration with the Court. The sensitivities of the relationship should not weigh with the Court. The circumstances which are befitting for the growth and welfare of the child should always weigh in the mind of the Court. I am guided in this regard by judicial pronouncement of the Apex Court in re : **Rosy Jacob** versus **A. Chakramakkal** (1). The guidance is contained in para No. 14 of the aforesaid judgment which reads as under :—

"14. In our opinion, S. 25 of the Guardians and Wards Act contemplates not only actual physical custody but also constructive custody of the guardian which term includes all categories of guardians. The object and purpose of this provision being ex facie to ensure the welfare of the minor ward, which necessarily involves due protection of the right of his guardian to properly

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(1) AIR 1973 SC 2090

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look after the ward's health, maintenance and education, this section demands reasonably liberal interpretation so as to effectuate that object. Hyper-technicalities should not be allowed to deprive the guardian of the necessary assistance from the Court in effectively discharging his duties and obligations towards his ward so as to promote the latter's welfare. If the Court under the divorce Act cannot make any order with respect to the custody of Ajit alias Andrew and Maya alias Mary and it is not open to the Court under the Guardians and Wards act to appoint or declare guardian of the person of his children under S. 19 during his lifetime, if the Court does not consider him unfit, then, the only provision to which the father can have resort for his children's custody is S. 25. Without, therefore, laying down exhaustively the circumstances in which S. 25 can be invoked, in our opinion, on the facts and circumstances of this case the husband's application under S. 25 was competent with respect to the two elder children. The Court was entitled to consider all the disputed questions of fact or law properly raised before it relating to Mahesh alias thomas, however, the Court under the Divorce Act is at present empowered to make custody, maintenance and education. It is, therefore, somewhat difficult to impute to the Legislature an intention to set up another parallel court to deal with the question of the custody of a minor which is within the power of a competent Court under the Divorce Act. We are unable to accede to the respondent's suggestion that his application should be considered to have been preferred for appointing or declaring him as a guardian. But whether the respondent's prayer for custody of the minor children be considered under the Guardians and Wards Act or under the Indian Divorce Act, as observed by Maharajan, J., with which observation we entirely agree, "the controlling consideration governing the custody of the children is the welfare of the children concerned and not the right of their parents". It was not disputed that under the Indian Divorce Act this is

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also, in our opinion, to be governed primarily by the consideration of the welfare of the minors concerned. The discretion vested in the Court is, as is the case with all judicial discretions to be exercised judiciously in the background of all the relevant facts and circumstances. Each case has to be decided on its own facts and other cases can hardly serve as binding precedents, the facts of two cases in this respect, being seldom—if ever—identical. The contention that if the husband is not unfit to be the guardian of his minor children, then the question of their welfare does not at all arise is to state the proposition a bit too broadly and may at times be somewhat misleading. It does not take full notice of the real core of the statutory purpose. In our opinion, the dominant consideration in making orders under S. 25 is the welfare of the minor children and in considering this question due regard has of course to be paid to the right of the father to be the guardian and also to all other relevant factors having a bearing on the minor's welfare. There is a presumption that a minor's parents would do their very best to promote their children's welfare and, if necessary, would not grudge and sacrifice of their own personal interest and pleasure. This presumption arises because of the natural, selfless affection normally expected from the parents for their children. From this point of view, in case of conflict or dispute between the mother and the father about the custody of their children, the approach has to be somewhat different from that adopted by the Letters Patent Bench of the High Court in this case. There is no dichotomy between the fitness of the father to be entrusted with the custody of his minor children and considerations of their welfare. The father's fitness has to be considered, determined and weighed predominantly in terms of the welfare of his minor children in the context of all the relevant circumstances. If the custody of the father cannot promote their welfare equally or better than the custody of the mother, then he cannot claim indefeasible right to their custody

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under S. 25 merely because there is no defect in his personal character and he has attachment for his children - which every normal parent has. These are the only two aspects pressed before us, apart from the stress laid by the husband on the allegations of immorality against the wife which, in our firm opinion, he was not at all justified in contending. Such allegations, in view of earlier decisions, had to be completely ignored in considering the question of custody of the children in the present case. The father's fitness from the point of view just mentioned cannot override considerations of the welfare of the minor children. No doubt, the father has been presumed by the statute generally to be better fitted to look after the children - being normally the earning member and head of the family - but the Court has in each case to see primarily to the welfare of the children in determining the question of their custody ; in the background of all the relevant facts having a bearing on their health, maintenance and education. The family is normally the heart of our society and for a balanced and healthy growth of children it is highly desirable that they get their due share of affection and care from both the parents in their normal parental home. Where, however, family dissolution due to the some unavoidable circumstances becomes necessary the Court has to come to a judicial decision on the question of the welfare of the children in a full consideration of all the relevant circumstances. Merely because the father loves his children and is not shown to be otherwise undesirable cannot necessarily lead to the conclusion that the welfare of the children would be better promoted by granting their custody to him as against the wife who may also be equally affectionate towards her children and otherwise equally free from blemish, and, who, in addition, because of her profession and financial resources, may be in a position to guarantee better health, education and maintenance for them. The children are not mere chattels ; nor are they mere play-

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things for their parents. Absolute right of parents over the destinies and the lives of their children has, in the modern changed social conditions, yielded to the considerations of their welfare as human beings so that they may grow up in a normal balanced manner to be useful members of the society and the guardian court in case of a dispute between the mother and the father, is expected to strike a just and proper balance between the requirements of welfare of the minor children and the rights of their respective parents over them. The approach of the learned Single Judge, in our view, was correct and we agree with him. The Letters Patent Bench on appeal seems to us to have erred in reversing him on grounds which we are unable to appreciate.”

(17) Apart from this I have also noticed that there are judicial pronouncements which are applicable to the given facts in those cases. However, substantially it is held that the wishes of the child should also be taken into consideration by the Court especially when the child is able to deliver intelligible reasons for his own welfare. In the case at hand, after having talked to the child and hearing his own wishes which is tainted with intelligible reasons that it shall be necessary for him to remain in the same college for appearing in pre-engineering final examination scheduled to be held in April, 2003 and that it may not be possible for him, if he wishes to stay with his father at Chandigarh, to commute every day for attending his classes and that the environment would change, which may prejudicially affect his effort to get admitted in an Engineering College or institution. I am quite impressed by this reason and I find that the mother being an educationist, she would prove to be the guiding figure in helping the child to take a decision, which may fall in the correct and right perspective.

(18) The trial court has not taken this aspect into consideration. Perhaps at the time of taking decision, the present situation had not arisen. The impugned order is dated 14th June, 1996, meaning thereby the child was studying in school at that time. By allowing the custody with the mother during the pendency of this appeal has contributed substantially and has helped the child in achieving good commendable result by appearing in ICSE examination. The result

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is quite obvious. The child obtained 90% marks in the said examination. The contribution of the mother cannot be lost sight of.

(19) It shall be apposite to notice some of the interim orders which have been passed by this Court from time to time by the Hon'ble Judges, whenever the Misc. applications were placed before their Lordships for the purpose of deciding monetary considerations with which the father and the mother should be burdened with for the welfare of the child. Some of the orders are reproduced as hereunder :—

*Present*:—Mr. J.K. Sibal, Senior Advocate with Mrs. Vandna Malhotra, Advocate for *appellant*.

Miss. Hemani Sarin, Advocate, for *respondent*.

Record is not yet received. In the absence of the record, respondent's counsel is not in a position to make her submissions. She insists upon the lower Court's record, which is required to be looked into in order to appreciate the arguments.

Petitioner's learned counsel submits that only two month's time is given to hand over the custody of child to the respondent. Impugned order is dated 14th June, 1996. Two month's time expires on 14th August, 1996. He submits that in case record is summoned, this period be extended.

Considering the above facts, that above mentioned two month's time is extended till 2nd October, 1996.

Miss Sarin submits that the visitation right be given to the father to see the child. Respondent is allowed to see the child on every Saturday and Sunday between 10.10 A.M. to 5.00 P.M. at the following places :—

- i) Polo ground ;
- ii) Mini zoo ;
- iii) NIT ; and
- iv) Shish Mehal.

This order will be effective from this Saturday i.e. 3rd August, 1996 till it is modified.

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To come up on 3rd October, 1996 for arguments.

Registry is directed to requisition the lower Court's record by deputing a special messenger before the adjourned date. Copy of the order be given dasti on payment of usual charges.

Sd/-

2nd August, 1996

(Dr. Sarojnei Saksena)  
Judge"

*Present ;—* Mr. J.K. Sibal, Senior Advocate with Mrs. Vandna Malhotra, Advocate with the appellant.

Mr. M.L. Sarin, Sr. Advocate, with Miss. Hemani Sarin, Advocate, with the respondent.

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The appellant has also brought the child. I talked to the parties in the chambers as well as to the child separately. Husband is willing to go to Patiala and live with his wife and child on an experimental basis. He is also willing to contribute Rs. 5000.00 per month towards the household expenses. Wife is also agreeable to live in the company of the husband.

On an experimental basis, parties are given one month's time to live together in Patiala in the Government quarter occupied by the wife with the direction that either of them will not lock the house. They should have a lock with double keys ; one to be kept by the wife and the other by the husband. The child will live in the company of the parents.

To come up on 22nd January, 1997.

Sd/-

18th December, 1996

(Dr. Sarojnei Saksena)  
Judge"

Mr. J.K. Sibal, Sr. Advocate with Mr. Kumar Sethi, Advocate.

Mr. M.L. Sarin, Sr. Advocate, with Mr. Hemant Sarin, Advocate.

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Learned counsel state that pursuant to the order dated 18th December, 1996, the parties are staying together. On instructions from appellant, Mr. Sibal states that she would spend two weekends in a months with the respondent at Chandigarh in his house. learned counsel pray for an adjournment.

Adjourned to 4th March, 1997.

Sd/-

29th January, 1996

(Jawahar Lal Gupta)  
Judge”

*Present* ;—Mr. J.K. Sibal, Sr. Advocate with Mr. Kumar Sethi, Advocate,  
for the appellants.

Ms. Himani Sarin, Advocate, for the respondent.

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The learned counsel state that the interim arrangement made *vide* order dated 18th December, 1996 as modified in the order dated 29th January, 1996 is continuing satisfactory and should be allowed to continue till end of March, 1997. Miss Himani Sarin, learned counsel appearing for the respondent has urged that the amount of Rs. 5000.00 p.m. which had been determined and payable to the appellants in the order dated 18th December, 1996, was excessive as the total carry home salary of the respondent was Rs. 5775.00. I have considered this argument of the learned counsel and find that at this stage, no modification is called for in the order dated 18th December, 1996 as the same was passed in the presence of the learned counsel as also the parties. Moreover, the claim of the respondent in the pleadings before the Tribunal was that he was, in addition to his salary, earning Rs. 30,000.00—40,000.00 per annum by way of royalty. On the request of the parties, adjourned to 31st March, 1997.

Sd/-

4th March, 1996

(H.S. Bedi)  
Judge”



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*Present* ;— Mr. J.K. Sibal, Sr. Advocate with Mr. Arun Bakshi,  
Advocate.

Mr. V.K. Jindal Advocate.

Parties have been heard at some length. at their joint request  
adjourned to 26th February, 1999.

Meanwhile, it is ordered that respondent Harbans Singh would  
be permitted to visit his minor son, Kulpreet Singh on every Saturday  
starting from 23rd January, 1999 at 2.30 P.M. till 6-30 P.M. During  
this time, he would be at liberty to take the child within the area of  
Patiala and would ensure that the child is dropped back at the house  
of his mother by 7-00 P.M.

Respondent has undertaken to open an account in the name  
of his minor son, Kulpreet Singh in any nationalised bank and deposit  
a sum of Rs. 20,000.00 (Rupees twenty thousand) in the first instance.  
He has further undertaken to deposit a sum of Rs. 2,000.00 (Rupees  
Two thousand) every month with effect from 1st February, 1999. The  
amount so deposited in the account of minor, Kulpreet Singh would  
not be withdrawan either by the respondent or the appellat.”

Sd/-

20th January, 1996

(V.K. Jhanji)  
Judge”

*Present* :— Mr. J.K. Sibal, Sr. Advocate with Mr. Kumar Sethi,  
Advocate.

Mr. Raman Mahajan, Advocate.

This shall dispose of Civil Misc. Nos. 965-CII-1999, 3643-CII-  
1999 and 3793-CII-1999.

On 20th January, 1999, an order was passed permitting  
respondent-Harbans Singh to visit his minor son, namely, Kulpreet  
Singh on every Saturday starting from 23rd January, 1999 at 2.30  
P.M. till 6.30 P.M. He was also directed to deposit, in the first  
instance, a sum of Rs. 20,000.00 (Rupees twenty thousand) in a  
nationalised bank in the account of his minor son and further to

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deposit a sum of Rs. 2,000.00 (Rupees Two thousand) every month with effect from 1st February, 1999. Subsequently, an application came to be filed on behalf of the appellant stating some difficulties which had arisen during this time in regard to visitation rights given to respondent Harbans Singh.

Both the parties have put in their proposals in writing and stated that order dated 20th January, 1999 may be modified and an agreed order in regard to visitation rights as also deposit of money be passed in the following terms :—

1. Respondent Harbans Singh shall have right to visit his minor son, Kulpreet Singh till he attains the age of 18 years - once a fortnight for one day from 10.00 A.M. to 5.00 P.M.
2. Out of two visits in the month, respondent Harbans Singh shall be at liberty to take his minor son alone or along with his mother out of the house any where in Patiala.
3. Whenever there is a vacation for a period of four weeks or more in the school, respondent shall have the option of calling his minor son to stay with him for ten days at Chandigarh.
4. Respondent shall deposit another sum of Rs. 4,000.00 in the bank account already opened in the name of the minor with the State Bank of Patiala, High Court Branch, Chandigarh, within two months. On deposit of the said amount, the Manager of the Bank is directed to take out F.D.R. in the name of Kulpreet Singh for a period of five years and the same shall be kept by the Manager in his safe custody to be given to Kulpreet Singh on attaining majority or earlier, if so directed by the Court.
5. Respondent shall deposit a sum of Rs. 2,500.00 ( Rupees Two thousand and five hundred only) by the 7th of each month starting from April, 1999 with the Principal/ Bursar, Yadvindra Public School, Patiala. The amount so deposited by the respondent shall be utilised by the

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school towards tuition fee and other school charges and the surplus, if any left shall be kept in reserve. The amount which may lie in surplus with the school, shall be disbursed as and when any order is passed in this behalf by this Court.

Order dated 20th January, 1999 shall stand modified to the extent indicated above.

Appeal admitted.

Sd/-

1st April, 1996

(V.K. Jhanji)  
Judge”

(20) The perusal of aforesaid orders passed from time to time shows the confusion in the minds of the parents, admittedly they have not kept the interest of the child paramount with themselves. More so, it has been fight of the egos between the two human beings. I had the opportunity to meet both of them and that the effect of education cannot be lost sight of. Perhaps, they have not understood the bondage which stood created between themselves after the birth of the child. Resultantly they made an effort to find a solution in the courts for every little thing, even to the extent of the times, for which the child has to be taken to the parks for the enjoyment of environments.

(21) A number of misc. applications have been filed for one relief or the other and the projecting effort has been to claim the fiscal effects levelling them to be incurred for the benefit of the child. In the facts of this case, we are aware that the custody of the child and the interim orders which are being asked for can be claimed till the child attains the age of majority. The time is too short barely one and a half year. Upon attaining the age of majority, the child would be entitled to take his own decisions in respect of everything. It is very difficult to say as to whether the child has been educated in that perspective by any of the parents. If not, the child shall have to learn himself, may be the hard way.

(22) During the course of hearing of the applications and the present appeal, I had asked both the husband and wife for filing the

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statement of financial affects, which have been kindly filed in Court through their respective counsel, which are noticed as under :—

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

FAO No. 2057 of 1996

SURINDER KAUR .. *Appellant.*

*versus*

HARBANS SINGH .. *Respondent.*

**STATEMENT**

1. The appellant who is the wife of the respondent was married about 19 years ago. Barring about first 6 months of the marriage when the appellant was posted near Jalandhar, where the parents of the respondent lived, they have never shares matrimonial home for any length of time since their marriage.
2. A child was born about 17 years ago and is now studying in Plus-II Class.
3. The appellant has supported the child, discharging the duties of father and mother both and has given him the best of education, even beyond her resources in Y.P.S. Patiala, where he has studied through out his school. The child is healthy, strong and has a distinguished academic record. He has secured over 90% marks in the school examination and if all goes well, the child should have a bright future.
4. The father of the child has neither given any time to the child or to me, nor has given any kind of financial support whatsoever to the maintenance of the family or education of the child, except about Rs. 60,000 or so under the orders of the Court dated 1st April, 1999 @ Rs. 2,500 per month for the period April, 1999 to February, 2001.

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5. The respondent wanted to get out of marriage and filed a divorce petition which was dismissed by the trial Court. The appellant has always opposed the idea of divorce, as she finds no future for herself and her child in the event of divorce. Even now, the appellant is not interested in divorce.
  6. The respondent filed an application for seeking custody of the son from the appellant on the ground that the appellant is poor, has no means, belongs to backward family and cannot look after the child. The child has never shown any willingness right from young age to go and live with the father, because of lack of love and affection on the part of the father.
  7. The appellant does not know the exact nature of assets created by the respondents. The appellant knows that he owns a Flat No. 2616, Sector 47-C (HIG Flat) in Chandigarh, as per his version, which itself is on power of attorney. He also owns a new Zen car. How much other moveable or immovable assets, he has, is not to the knowledge of the appellant. He claims to have a sizeable income from the newspaper where he is working and earning royalty on books, etc. as per his own claim. The respondent also owns a MIG Flat in Sector 45-C (First Floor) apart from a house at Jalandhar.
  8. The child is ambitious and bright and is hopeful to get admission in a good professional Engineering College or I.I.T. and make a career on that basis. This will require expensive education over the next 5 to 7 years before he become self supporting. This type of education is beyond the means of the appellant.
  9. The appellant is not willing to consider agreeing to divorce as the respondent is refusing to give any support to the appellant or to the child.
  10. The appellant is willing to consider such an eventuality provided the future of the child is secure and the appellant's old age is not jeopardized. The appellant does not want anything from the respondent for herself.

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11. The child may require support for higher education, marriage and settling in life. Education along for a period of 5 to 7 years may cost anything from Rs. 10 to 20 lacs.

In view of the above, the appellant is willing to consider the proposal of divorce by mutual consent, if the respondent agrees :—

- (a) to transfer to the name of the child, 2/3rd of the market value of the assets in the name of the respondent including the house No. 2626, Sector 47-C (HIG Flat), Chandigarh, other immovable or moveable properties, This is subject to verification of the list of assets to be disclosed by the respondent.
- (b) separate payment to the extent of 1/5th of the gross salary of the respondent to be paid till the age of 21 years or the completion of the Engineering or any other professional degree by the child, whichever is earlier;

The list of the assets of the appellant are as below :—

- |    |   |                    |
|----|---|--------------------|
| 1. | G.P. Fund account   | About Rs. 3,34,000 |
| 2. | Public Provident Fund account   | About Rs. 20,000   |
| 3. | FDR with State Bank of Patiala, YPS Branch  | Rs. 34,000         |
| 4. | Saving Bank Account in State Bank of Patiala  | Rs. 15,000         |
| 5. | House on 160 sq. yards at Patiala with 1800 sq. feet covered area   | Rs. 12 lacs        |
| 6. | The appellant has taken a loan of Rs. 4 lakhs from the Government and Rs. 2 lakhs from friends and relations to finance the house, which loan is still outstanding. |                    |

Chandigarh  
Dated 1st May, 2002.

(Sd.) . . . ,  
Appellant.

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Respectfully Showeth :

**FACTS**

Married on	..	2nd December, 1984.
Date of birth of husband.	..	17th August, 1950.
Date of birth of wife.	..	10th March, 1955.
Son's date of birth.	..	13th November, 1985.

Wife is Lecturer in Philosophy since 12th April, 1980. Husband is working with the Tribune since 2nd March, 1983.

**ASSETS**

HUSBAND		WIFE	
(1)	Flat 2 Bed Room DD on power of Attorney basis.	(1)	Spacious well built and decorated to taste house at Hem Bagh, Patiala.
(2)	Zen Car purchased in 2000 Financed.	(2)	Scooter.
(3)	Bank Deposits less than Rs. 40,000.	(3)	Not known.
(4)	All house hold items sent to wife including beddings, Fridge, Garments, etc. etc. on 15th October, 1998.		
(5)	Husband filed case for custody of minor son on 6th September, 1995.		

- (6) Decided in favour of husband by learned Guardian Judge on 14th June, 1996.

Rs. 30,000 lying with SBP High Court Branch. Rs. 15,000 approximatly with Y.P.S. Patiala.

**PROPOSALS :—**

- (1) For this year-I have entrusted much more than required amounts.
- (2) In which ever Institution, where ever (India/Abroad) in any stream befitting to the Minor son will be exclusively met by me provided I am associated and given due regard— regarding the Institution of Father son relationship.
- (3) I never spent even a single penny of her salary. All her salary is with her, which is more than her husband.
- (4) I have to look after my respected old mother.
- (5) I have no other valueables. But still I can provide a deposit of maximum of Rs. One lakh in her favour, and that too with great difficulty.

Chandigarh  
Dated 30th April, 2002.

(Sd/-) . . . . ,  
Appellant.

**THE TRIBUNE TRUST**

**SALARY ACCOUNT FOR THE MONTH OF MARCH-2002**

HARBANS SINGH VIRDI		DESIGNATION : CHIEF SUB EDITOR	
Payment By Cash		Due for 31.0 Days	
Basic Pay	: 10315.00	E.P.S.	: 541
V.D.A.	: 1861.28	T.C. to P.F.	: 1468
Hill Allowance	: 0.00	---D E D U C T I O N S---	



Special Allowance	:	0.00	Empl. Subs. to P.F.	:	4185
Special Relief	:	150.00	P.F. Withdrawal Ded	:	0
C.C.A.	:	140.00	Advance Deduction	:	2129
Reclass Fitment	:	975.00	Loan W/o Interest	:	0
Staff Welfare Alw	:	140.00	Loan with Interest	:	3751
House Rent Allow.	:	3610.25	Income Tax Ded.	:	3000
Conveyance Comp	:	600.00	E. S. I. C.	:	0
Medical Comp.	:	350.00	H.D.F.C. Loan	:	0
Other Allowance	:	0.00	T&C Coop. Society	:	100
Entertainment Alw	:	0.00	Group Saving Schm.	:	106
Leave Compensatry	:	2206.98	Total Deductions	:	13271
Total Amount	:	20348.51			
Due Emoluments	:	20349.00	Amount Paid	:	7078

For Dy. Personal Manager

**THE TRIBUNE EMPLOYEES P. F. TRUST  
PASS BOOK**

Account No. : 32  
 Name of Employee : HARBANS SINGH VIRDI  
 Designation : CHIEF SUB EDITOR  
 S/o, W/o, D/o : SANTA SINGH  
 Date of Birth : 17th August, 1950  
 Date of Joining : 2nd March, 1984  
 Period : From : 1st April, 2001 To : 31st  
 March, 2002

**PROVIDENT FUND ACCOUNT**

Date	Trust Amnt.	Empl's Amnt.	Total Amnt.	Balance
01/04/2001	156743	341608	498351	498351 Cr
03/04/2001	1165	3295	4460	502811 Cr
01/05/2001	1475	3942	5417	508228 Cr
01/06/2001	1475	3942	5417	513645 Cr
29/06/2001	1475	3942	5417	519062 Cr
01/08/2001	1366	3972	5338	524400 Cr
02/08/2001	5874	9791	15665	540065 Cr
31/08/2001	1242	3972	5214	545279 Cr
01/10/2001	1366	3972	5338	550617 Cr
30/10/2001	1407	4058	5465	556082 Cr
28/11/2001	1407	4058	5465	561547 Cr
01/01/2002	1407	4058	5465	567012 Cr
01/02/2002	1468	4185	5653	572665 Cr
01/03/2002	1468	4185	5653	578318 Cr
31/03/2002	13910	13910	27820	606138 Cr
<b>TOTALS :</b>	<b>193248</b>	<b>412890</b>	<b>606138</b>	<b>356038 Cr</b>

**LOAN ACCOUNT**

Date	Particulars	Debit	Credit	Balance
01/04/2001	Opening Balance			250100 Cr

**THE TRIBUNE TRUST  
ESTABLISHED 1881**

(Publication : The Tribune, Dainik Tribune, Punjabi Tribune)

No. \_\_\_\_\_ FD/ CHANDIGARH-160020 May 6, 2002

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**CERTIFICATE**

This is to Certify that Mr. Harbans Singh Viridi, Chief Sub-Editor, has the following interest bearing loans as on 31st March, 2002.

	<b>Amounting Rs.</b>
1. House Building Loan	56985.00
2. Computer Loan	61647.00
3. Car Loan	97325.00
Total debit :	<u>215957.00</u>

For The Tribune Trust

(Sd.) . . . ,

Manager Accounts.

If represents our record of your translations with us. Please advice us immediately if you find any exception to the details otherwise it will be taken that you have found the account correct.

BANK OF PUNJAB LTD. A/c Typsb General PU Date : 01.05.2002.

A/c No. 32SBI160821363 INR Page : 1

Sector-32, Chandigarh, BOP Sector-32, Chandigarh

Name & Address :

Mr. Harbans Singh Viridi,  
# 2616,  
Sector 47-C,  
Chandigarh  
Union Territory

Statement of account for the period from 01.04.2002 to 01.05.2002.

Date particulars Cheque No. Withdrawals Deposits Balance

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Annual Close B/F			9,759.67 Cr
Spice	25860	418.32	9,341.35 Cr
Rowan Enter	25861	3,900.00	5,441.35 Cr
Page Total :	4,318.32	0.00	5,441.35 Cr

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(23) Considering the pros and cons that the child is going to attain majority very soon, it shall be in the interest of the child that both the parents should deposit some amount in his name so that he can prosecute his studies, even after attaining the age of majority, hopefully the circumstances would so warrant.

(24) In view of the above, the appeal is accepted with the following directions :—

- (I) The custody of the child upto the age of majority shall remain with the mother. When the child attains majority he shall have the absolute freedom and choice to live with any of the parents and the visitation according to his own convenience and need.
- (II) During the time of custody upto the age of majority, the husband shall have the absolute right of visitation to the child at Patiala and shall also be entitled to take him out as per the choice of the child but the choice shall be tainted with the interest of the child for which the spouse taking out the child shall be responsible. For this purpose, it shall not be necessary for the husband to take permission of the wife. The period for which he may be taken out shall be with the consent of the child and knowledge of the mother. Preferably, it shall be appreciated, if all three together would go out for visitations. The right to exercise a choice is being granted to the child, as I have found him to be possessed of intelligible discourses. I am sure that with this kind of robust common sense and by understanding the situation around him, the child would make an effort to cement and bondage between the parents. Such contribution by the child may educate the parents which has been missed out by them.

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(III) The monetary effect which is required to be borne by both the spouses is equally important in the case at hand. Both the spouses are earning and are financially quite comfortable. Resultantly, it is directed that both the spouses shall deposit a sum of Rs. Two Lac each in a common bank, which shall be converted into fixed deposit receipt alongwith in the name of the minor child i.e. Kulpreet Singh. A categoric instruction shall be incorporated in the fixed deposit receipt that upon attaining the age of majority, the amount shall be operable by the child and that none of the spouses shall have any right to claim any portion therefrom including the interest from the said deposit. However, the constraint imposed shall be that the entire of the money shall not be withdrawn by the child. The amount shall always remain in a fixed deposit receipt for a period where it shall earn maximum rate of interest. The interest accrued therefrom shall be deposited in the account of the child. The account shall be opened on the same day when the fixed deposit receipt is made as aforesaid. The said account shall operable by the mother and the withdrawal shall be made strictly for and in the best interest of the child. Preferably a statement of account shall be made, copy thereof shall be communicated to the husband after every three months. The restraint to withdraw this money shall come to an end after the child attains the age of 25 years but if in any circumstances, the withdrawal is required prior thereto, the same shall be granted under the orders of this Court. The amount as aforesaid shall be deposited by both the spouses within two months from today.

(IV) The spouses shall take out a policy of medical insurance of the child and that the premium in respect thereof shall be paid alternatively for the year by the spouses. The first policy shall be taken out by the husband.

(25) Before I part with this judgment, I must share the thought with both the spouses-children are born to the lucky ones and

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thus the stroke of luck and the benign kindness of His Almighty shall not be allowed to go a stray by the persons who were equally contributors for the creation. I am sure, that with the passage of time good sense shall prevail upon both the spouses to live under one roof and enjoy the remaining part of life. The contributors after having acquired happiness may give that in succession to the child. The words do give healing touch but act in personam, works wonders. Both the spouses are educated and have acquired perfect mannerism, which should be used for furtherance of the achievement of togetherness.

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**R.N.R.**

*Before M. M. Kumar, J*

**DALBIR KAUR—Petitioner/Defendant**

*versus*

**JAGIR KAUR & ANOTHER—Respondents/Plaintiffs**

C.R. No. 5360 OF 1999

25th February, 2002

*Code of Civil Procedure, 1908—O.XXIII, R1.1(3), O.XIV R1.2—Dismissal of the suit as withdrawn—Another suit claiming the same relief filed—Whether the suit barred by the principle of res judicata & not maintainable—Preliminary issue—Dismissal of defendant's application for deciding the suit on preliminary issue—Formal defect in claiming the relief—Under O.XXIII R1.1(3) permission can be granted to institute a fresh suit to the satisfaction of the Court—No illegality or irregularity in allowing plaintiff's application for withdrawal of the suit and to file afresh on the same cause of action—Neither such orders causing any failure of justice nor any irreparable injury to the defendant as all objections remain open to him—Petition dismissed.*

Held, that under sub-rule (1) of Rule 1 of Order XXIII of the Code, the plaintiff has been given an absolute right to withdraw the suit at any time but under sub-rule (3) of Rule 1, such a right is tampered with the requirement that the Court must be satisfied that there is some formal defect or there are sufficient grounds for allowing the plaintiff to institute fresh suit on the same subject matter or a part