

**Subhash Vs. Anju**

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**Court :** Delhi

**Decided On :** Aug-31-1995

**Reported in :** 59(1995)DLT767

**Judge :** Manmohan Sarin, J.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Sections 115

**Appeal No. :** Civil Revision Appeal No. 710 of 1995

**Appellant :** Subhash

**Respondent :** Anju

**Advocate for Pet/Ap. :** Sanjeev Sharma,; Naveen Thakur and; N.K. Sharma,  
Advs

**Judgement :**

**Manmohan Sarin, J.**

(1) The petitioner has filed this petition under Section 115 Civil Procedure Code . assailing the order dated 26.7.1995, by which the learned Guardian Judge granted the custody of the child (one and a half years of age) to the respondent-mother. Counsel for the petitioner appearing before me has strenuously urged that the conduct of the respondent had to be considered. The respondent according to him, had abandoned the child as an infant. Further she did not have the resources

to look after the welfare of the child. Counsel for the petitioner states that respondent has harassing the petitioner and his family members by filing false reports with the anti-dowry cell. He submits that the respondent did not care for the child and had refused to come even when the infant was admitted to the hospital for treatment of Diarrhoea.

(2) On 29.8.1995, when the revision petition came up for admission, I had directed issuance of notice of the revision petition to the respondent on the limited question of health of the respondent. This was on the petitioner pointing out that the respondent also suffered from tuberculosis. He had relied on an X-ray report dated 13.2.1994, pertaining to the respondent in which the findings were as under:-

(I) Cardiac size is normal. (ii) Both field are prominent. (iii) Bilateral infiltrative Koch's lesion is seen. (iv) Costo-phrenic angles are clear.

(3) The petitioners Counsel had also candidly admitted that the respondent had filed a certificate before the Trial Court, according to which, the petitioner is cured of tuberculosis. The petitioner was directed to place on record a copy of the said Certificate. The petitioner has done so. Counsel for the respondent has also filed a photocopy of the same. One Dr. S.K. Gupta, Mbbs, Mamc, Md has certified that he had treated the respondent for Pulmonary Koch's infection and after the complete course of treatment, she was completely free from tuberculosis. Counsel for the petitioner has also fairly stated that the child has not shown any symptom of being infected with tuberculosis, It would therefore, appear that the child did not get the infection while in the womb. Besides, now the respondent is certified to be cured of tuberculosis. Counsel for the petitioner has assailed the medical certificate on the ground that the said certificate does not give the details and particulars of treatment and the period thereof. This by itself would not be a valid ground to reject the medical certificate. It is well recognized that tuberculosis is curable with regular course of treatment. In fact, it becomes non infective with a short course of treatment.

(4) There is also no merit in the submission of Counsel for the petitioner regarding the respondent not having the resources to look after the child or the harassment that has been caused to the family. It would be for the petitioner's father to support

and maintain the wife and child, who according to him, have no resources. Besides the respondent has placed on record an affidavit filed by the respondent's father who is employed in the Ministry of Health and has also shown the willingness to support the respondent child.

(5) Counsel for the petitioner submitted that the handing over of custody of the child be deferred till the respondent was examined through a Government hospital. In view of the fact, that the child did not contract any infection and the recent certificate of a registered medical practitioner who is a Md, certifying that the respondent was cured and free of the disease, there is no justification to defer the custody of the child being given to respondent. It would be open for the petitioner to approach the learned Guardian Judge, with an application for medical examination of the respondent if the situation so warrants.

(6) Counsel for the petitioner also submitted that he has not been accorded visitation rights. No prayer seems to have been made in this regard. It would also be open to the petitioner to seek visitation rights and approach the learned Guardian Judge in this regard.

(7) In view of the foregoing discussion, it is held that the impugned order is in accordance with Law. It does not suffer from any material irregularity warranting interference in the exercise of revisional jurisdiction. The petition is dismissed. The petitioner shall handover the custody of the child to the respondent tomorrow at 12.00 p.m. before the learned Guardian Judge.

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