



2024: DHC: 4021-DE



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment Reserved on: 26.04.2024
Judgment pronounced on: 17.05.2024

+ **MAT.APP.(F.C.) 215/2022, CM Nos.5887/2023, 19661/2023, 30436/2023 & 4373/2024**

VINEET KUMAR LAKHANPAL Appellant

Through: Appellant-in-person.

versus

NAMAN LAKHANPAL Respondent

Through: Ms Seema Seth and Ms Muskaan Deswal, Advs. along with respondent.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE AMIT BANSAL

[Physical Hearing/Hybrid Hearing (as per request)]

AMIT BANSAL, J.

1. The present appeal has been filed by the appellant/husband impugning the order dated 8th December, 2022 passed by the Principal Judge, Family Court, Patiala House Courts, New Delhi (hereinafter referred to as 'Family Court'). The appellant seeks the following reliefs:

“(i) Grant the Petitioner visitation to the children during their winter vacations of 2022, at Children Room, Family Court Patiala House Delhi.



(ii) Post winter vacations of the children, direct the respondent to bring the Children to the 'Children room' at Family Court Patiala House Delhi for physical visitation with the Petitioner on every alternate weekend.

(iii) Issue restraining orders against the relatives of the respondent or Punjab Police staff and gunmen from interfering with the visitation so granted.

(iv) Grant contact rights to the petitioner by allowing daily video calling for 5-10 mins at 9:00 pm with the children so that children can speak to their father.

(v) Quash and set-aside the impugned order dated 08.12.2022 passed by Sh. Harish Kumar, Ld. Judge family court Patiala House Court; and

(vi) Any direction or directions, writ or writs, as deemed fit and proper, in the interest of justice."

2. Briefly stated, the facts of the case are set out hereinafter:
- 2.1 The appellant and respondent got married on 2nd May, 2014 as per Hindu rites and ceremonies. From the said wedlock, a female child was born on 9th May, 2015 and a male child was born on 18th September, 2016.
- 2.2 Marital disputes arose between the parties and the respondent/wife left the matrimonial house along with the children on 13th December, 2019. The respondent has since been residing at her paternal house in Nayagao, Punjab along with the minor children.
- 2.3 Subsequently, the appellant filed a petition before the Family Court under Section 9 of the HMA seeking restitution of conjugal rights along with an application under Section 26 of the HMA, seeking visitation rights in respect of the minor children.
- 2.4 Vide order dated 15th July, 2020, the Family Court, considering the



COVID-19 pandemic situation, granted virtual visitation to the appellant through video conferencing (VC) for about 10 to 15 minutes on 1st and 3rd Sunday of the month at 11 AM from 19th July, 2020.

- 2.5 In the interregnum, the respondent filed a complaint under the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'DV Act') and a petition seeking dissolution of marriage under Section 13(1)(ia) of the HMA before the Chandigarh District Court.
- 2.6 Both the parties filed separate transfer petitions before the Supreme Court, T.P. (C) No. 22/2021 filed by the respondent and T.P. (C) No. 739-40/2022 filed by the appellant. Via common order dated 1st April, 2022, the Supreme Court transferred all the cases pending between the parties to the Family Court, Patiala House Courts, New Delhi.
- 2.7 Subsequently, the appellant filed another application before the Family Court seeking interim custody of the children during the summer vacations. However, vide order dated 8th June, 2022, the said application was dismissed by the Family Court.
- 2.8 The appellant filed an appeal against the aforesaid order before this Court and via order dated 20th June, 2022, a Coordinate Bench of this Court, with the consent of both the parties, directed the respondent to bring the children to Delhi for interacting with the appellant on 25th June, 2022 and 26th June, 2022 at DLF Promenade Mall, Vasant Kunj.
- 2.9 In compliance with the aforesaid order, the children were brought to Delhi for interaction with the appellant on the aforesaid dates. However,



as per the appellant, the interaction between the appellant and the children could not take place as per the directions of this Court. Thereafter, a contempt petition being CONT.CASE (C) 692/2022 was instituted by the appellant before this Court, which is pending adjudication.

- 2.10 Subsequently, the appellant once again filed an application seeking interim custody of the children and the same was dismissed on 15th September, 2022 by the Family Court, while directing the appellant to continue availing visitation granted vide order dated 15th July, 2020.
- 2.11 The appellant filed another application before the Family Court seeking physical visitation during school breaks of the children. Vide order dated 8th December, 2022 (hereinafter referred to as 'impugned order'), the said application was dismissed.
3. Assailing the impugned order passed by the Family Court, the appellant has approached this Court by way of the present appeal.
4. Notice in the present appeal was issued on 22nd December, 2022.
5. Vide order dated 23rd December 2022, an interim arrangement was agreed upon between the parties that the appellant will have virtual visitation of 5 to 10 minutes every day at 9 PM. Subsequently, via order dated 7th February, 2023, the time was changed to 8 PM.
6. Alleging non-compliance of the aforesaid orders, the appellant filed a contempt petition being CONT.CAS (C) 1410/2023 before this Court against the respondent and her brother for obstructing virtual visitation granted to the



appellant. The said contempt petition was disposed of by the Division Bench on 23rd January, 2024 while giving directions to facilitate daily VC interactions between the appellant and the children without any hinderance.

7. On 5th January, 2023, the parties were referred to mediation before the Delhi High Court Mediation and Conciliation Centre (Mediation Centre). However, the mediation proceedings were not successful.

8. The predecessor bench, via order dated 30th May, 2023, permitted the appellant to meet the children under the supervision of the child counsellor at the Children Room of the Mediation Centre on 19th to 21st June, 2023 from 11 AM to 2 PM. In addition, the appellant was directed to pay a sum of Rs.20,000/- to the respondent towards incidental expenses.

9. Via order dated 21st September, 2023, the respondent was once again directed to bring the children to Delhi for meeting the appellant under the supervision of the child counsellor at the Children Room of the Mediation Centre from 14th to 17th November, 2023. Subsequently, the dates were changed to 24th to 27th December, 2023. The appellant was also directed to pay Rs.7,000/- towards travelling expenses.

10. At the hearing on 26th April, 2024, we interacted with the minor children as well as the appellant and the respondent. After the said interaction, the judgment was reserved. Thereafter, both the parties have filed written submissions.

11. Broadly, the appellant, appearing in person, has made the following submissions:



- I. The respondent and her step-father deceitfully took away the children from Delhi to Chandigarh on 13th December, 2019.
- II. The respondent has repeatedly disrupted petitioner's visitation to the children by tutoring the children against the appellant and using influence of her step-father, who is a DGP, Punjab (Retd.). The appellant has also been harassed by the security guards provided to the step-father of the respondent. This clearly shows her lack of intent in facilitating the interaction between the appellant and the children.
- III. The photographs and video graphs placed on record by the appellant show that the children have an affectionate bond with the appellant.
- IV. The report of the child counsellor has also indicated that the children are displaying affection towards the appellant and are not asking for the respondent when left alone with the appellant.
- V. The predecessor benches of this Court, after interacting with the children, have time and again permitted the appellant to have unhindered access to the children.
- VI. It is a well-settled position of law that a non-custodial parent cannot be a mere guest in life of the children and deserves equal quality time with the children. Reliance in this regard is placed on the judgment of the Supreme Court in *Yashita Sahu v. State of Rajasthan & Ors*, 2020 3 SCC 67.
- VII. The appellant is regularly paying maintenance amounting to Rs.8500/- to the respondent and is also willing to contribute to the travelling and



lodging expenses that are to be incurred for physical visitation of both the children from Chandigarh to Delhi.

12. *Per Contra*, the counsel appearing on behalf of the respondent has made the following submissions:

- I. The respondent has been complying with the orders passed by the Family Court as well as this Court granting visitation rights to the appellant to meet the minor children.
- II. No disruption was caused either by the respondent or her family members or the security guards provided to the father of the respondent during the physical interaction between the children and the appellant at the DLF Promenade Mall on 25th June, 2022 and 26th June, 2022.
- III. The children have time and again resisted to meet the appellant and have not bonded with the appellant in the last few visitations availed by the appellant.
- IV. The respondent is working as a teacher in Strawberry Fields High School, Chandigarh and it becomes difficult for her to take leave from school for travelling to Delhi to facilitate physical visitation.
- V. There was no threat to the petitioner when he visited Chandigarh even at the time when the father of the respondent was serving as DGP, Punjab. In fact, the appellant had himself filed an application in the past seeking visitation to the children at CAW Cell, Chandigarh.
- VI. The respondent has not contributed anything towards the education and day-to-day expenses of the children and the monthly maintenance of



Rs.8500/- granted to the respondent is grossly insufficient to meet the aforesaid expenses.

13. We have heard the rival submissions and perused the material on record.

14. It cannot be disputed that since 2019, when the respondent relocated with the children to her maternal home in Chandigarh, the appellant has been granted virtual visitation rights through video conferencing (VC) for 10 to 15 minutes twice a month on 1st and 3rd Sunday. Subsequently, vide order dated 23rd December, 2022, a Coordinate Bench of this Court modified the schedule of virtual visitation through VC to 5 to 10 minutes on a daily basis. To facilitate the aforesaid virtual interactions, detailed directions were passed by this Court on 23rd January, 2024 in CONT.CAS.(C) 1410/2023. Therefore, in our view, the virtual visitations can continue to take place in terms of the directions passed in the aforesaid order.

15. From time to time, the appellant was also granted physical visitation to meet the minor children. The appellant physically met the two children at the DLF Promenade Mall, Vasant Kunj, New Delhi on 25th June, 2022 and 26th June, 2022, even though it is the case of the appellant that the aforesaid visitation was marred on account of presence of security guards attached to the step-father of the respondent, who is a DGP, Punjab (Retd.).

16. Subsequently, the appellant was also granted access to the children in the Children Room attached to the Mediation Centre under the supervision of the child counsellor from 19th June, 2023 to 21st June, 2023 for a period of 3 hours daily. Thereafter, vide order dated 8th November, 2023, the appellant was once



again provided physical visitation from 24th December, 2023 to 27th December, 2023.

17. We have perused the report dated 18th July, 2023 of the child counsellor attached to the Mediation Centre. Summarizing the meetings held from 19th June, 2023 to 21st June, 2023, the report states that though initially children expressed reluctance in meeting their father i.e. the appellant, later children started getting comfortable with the appellant and enjoyed playing games with him. Based on the aforesaid, the counsellor recommends regular meeting of the appellant with the children at a neutral place for holistic development of the children.

18. On 26th April, 2024, we interacted with the children in the chambers and found them to be precocious. Both the children clearly stated that they do not want to visit Delhi for physical interaction with their father, i.e, appellant.

19. At this stage, it may be prudent to refer to some of the decisions of the Supreme Court regarding visitation rights to be granted to a parent.

20. The Supreme Court in ***Rohith Thamma Gowda v. State of Rajasthan & Ors***, 2022 SCC OnLine SC 93, observed that it is crucial to distinguish between 'wishes of the child' and 'best interests of the child', especially in cases involving child of tender age. The best interests of the child have to be considered for determining custody unless substantial misconduct is proven against one of the parents. The relevant observations are set out below:

“8. At the outset we may state that in a matter involving the question of custody of a child it has to be borne in mind that the question 'what is the wish/desire of the child' is different and distinct from the



question what would be in the best interest of the child. Certainly, the wish/desire of the child can be ascertained through interaction but then, the question as to what would be in the best interest of the child' is a matter to be decided by the court taking into account all the relevant circumstances. When couples are at loggerheads and wanted to part their ways as parthian shot they may level extreme allegations against each other so as to depict the other unworthy to have the custody of the child. In the circumstances, we are of the view that for considering the claim for custody of a minor child, unless very serious, proven conduct which should make one of them unworthy to claim for custody of the child concerned, the question can and shall be decided solely looking into the question as to what would be the best interest of the child concerned”*

21. In *Yashita Sahu* (supra), the Supreme Court observed that a child of tender years requires company of both the parents. It was further observed that if the custody of the child is given to one parent, sufficient visitation should be granted to the other parent to ensure that the child is not deprived of the love and affection of the other parent. The relevant observations are set out below:

“22. A child, especially a child of tender years requires the love, affection, company, protection of both parents. This is not only the requirement of the child but is his/her basic human right. Just because the parents are at war with each other, does not mean that the child should be denied the care, affection, love or protection of any one of the two parents. A child is not an inanimate object which can be tossed from one parent to the other. Every separation, every reunion may have a traumatic and psychosomatic impact on the child. Therefore, it is to be ensured that the court weighs each and every circumstance very carefully before deciding how and in what manner the custody of the child should be shared between both the parents. Even if the custody is given to one parent, the other parent must have sufficient visitation rights to ensure that the child keeps in touch with the other parent and does not lose social, physical and psychological contact with any one of the two parents. It is only in extreme circumstances that one parent should be denied contact with the child. Reasons must be assigned if one parent is to be denied any



visitation rights or contact with the child. Courts dealing with the custody matters must while deciding issues of custody clearly define the nature, manner and specifics of the visitation rights.”

22. In the present case, even though both the children stated during chamber interaction that they do not want to meet their father, in our considered view, taking into account their age, i.e, 7 years and 9 years, they require love and affection of both the parents for their holistic growth and development. It is not the case of the respondent that the appellant has in any manner misbehaved with the children during physical interactions that have taken place in the past. Therefore, besides virtual visitation, which had already been in place for a sufficient period of time, physical visitation with the appellant would be in the best interests of the children.

23. In the present case, the physical meetings are a bit of a challenge since the appellant and the children are located in different cities. Having said that, in our view, Chandigarh and Delhi are a short distance away and are easily accessible.

24. During our interaction with the respondent, she was agreeable to bring the children to Delhi during their school summer vacations for a period of one week. In our view, additionally, the children could be brought to Delhi at least for a further period of four days during any of the school breaks/long weekends.

25. The aforesaid arrangement for the time being would ensure that the children while living with the respondent, continue to interact with the appellant on a regular basis.



26. Accordingly, the present appeal is disposed of in terms of the following directions:

- i. The virtual visitation granted to the appellant for about 5 to 10 minutes on a daily basis, would continue to operate as per the directions passed by this Court on 23rd January, 2024 in CONT.CAS(C) 1410/2023.
- ii. The respondent shall bring the children to Delhi during their school summer vacations for a period of one week every year, beginning from June, 2024 this year.
- iii. In addition, the children shall also be brought to Delhi for a period of four days during any of their school breaks/long weekends. Instead of bringing the children for a continuous period of four days, the respondent shall have the option of bringing the children on two separate occasions for two days each.
- iv. The respondent shall give at least two weeks' notice to the appellant of the dates when she would bring the children to Delhi, so that the appellant ensures his availability in Delhi during that period.
- v. The appellant shall bear the round-trip expenses of the respondent and the children travelling by Shatabdi Express Train between Chandigarh and Delhi.
- vi. The appellant shall make arrangements for stay of the respondent as well as that of the children at a reasonably priced accommodation in Delhi. The expenses for the said stay shall be borne by the appellant.
- vii. During the period when the children would be in Delhi for visitation, the



visitation shall take place in the Children Room attached to the Mediation Centre of this Court from 11 AM to 2 PM.

- viii. The interaction between the appellant and the children shall be held under the supervision of the child counsellor. However, the child counsellor may choose not to oversee the aforesaid interactions if the children are found to be comfortable with the appellant.
 - ix. The parties are given liberty to change the aforesaid venue with mutual agreement to any other suitable place in Delhi. Needless to state that the child counsellor would not be expected to be present in such meetings.
 - x. In addition, the appellant would have the right of visitation in Chandigarh on one weekend every month. The appellant would inform the respondent of the proposed dates of his visit to Chandigarh. The respondent shall keep the appellant informed about her correct address.
 - xi. The respondent and her family members shall provide unhindered access to the appellant during the aforesaid visitation at the Children Room attached to the Family Court, Chandigarh District Court.
 - xii. The Home Secretary, Union Territory, Chandigarh (2nd Floor, Chandigarh Secretariat, Sector 9, Chandigarh) shall ensure that none of the State Authorities or police officials in any manner interfere with the access granted to the appellant by virtue of this order. The appellant shall be at liberty to approach the Home Secretary if any hindrance is caused during the aforesaid visitation in Chandigarh.
27. Besides visitation, the appellant has also sought access to all the



information relating to the progress of his children in school including the access to the school portal and the WhatsApp Group of parents and teachers.

28. In our view, there is no reason the appellant should not be granted access to the school portal and the WhatsApp Group of parents and teachers. Accordingly, the respondent is directed to provide the said access to the appellant.

29. It is clarified that the appellant shall not give any instructions/directions to the school authorities in contradiction to what has been given by the respondent in respect of their children.

30. The Registry shall dispatch a copy of this order to the Home Secretary, Union Territory, Chandigarh (2nd Floor, Chandigarh Secretariat, Sector 9, Chandigarh), for information and compliance.

**AMIT BANSAL
(JUDGE)**

**RAJIV SHAKDHER
(JUDGE)**

MAY 17, 2024

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