

MOHAN KUMAR RAYANA
v.
KOMAL MOHAN RAYANA
(SLP(Civil) No. 9821-9822 of 2009)

APRIL 6, 2010

[Altamas Kabir, G.S. Singhvi and Cyriac Joseph, JJ.]
2010 (4) SCR 402

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. These petitions involve the final stage of a custody battle on account of disruption and finally a break down of the marriage ties between the petitioner and the respondent.

2. The petitioner and the respondent got married in Hyderabad on 11th August, 2000. A girl child, Anisha, was born on 2nd March, 2002. The nuclear family, along with the mother of the petitioner-husband, resided together at Chamboor, Mumbai till July, 2004 when, for whatever reason, the respondent-wife left the matrimonial home to stay with her parents at Bandra. On 24th November, 2005, with the help of police personnel from Chamboor Police Station, she took away Anisha from the custody of the petitioner's mother. The petitioner recovered the custody of the daughter on 30th November, 2005 and this resulted in both the husband as well as the wife filing separate Custody Petitions before the Family Court in December, 2005. On 20th December, 2005, the Family Court granted weekend access/visitation right to the respondent-wife and by a subsequent order dated 15th September, 2006. the Family Court granted interim custody of the child to the petitioner-husband pending hearing and final disposal of the Custody Petition. The child remained in custody of the petitioner-father between November, 2005 and 2nd February, 2007, when the husband was directed to make over the custody of the child to the respondent-wife and since then she has been in the custody of the respondent-wife.

3. Two appeals being Family Court Appeal No.29 of 2007 and Family Court Appeal No.61 of 2007 were filed by the petitioner-husband and the respondent-wife respectively. The Family Court Appeal No.29 of 2007, which was filed by the petitioner-husband, was directed against the judgment and order of the Family Court directing that custody of the minor child be made over to the respondent-wife. Despite the finding that during the period when Anisha was in the petitioner's custody she had been well looked after and cared for and the petitioner had dutifully discharged his parental responsibility towards her. In the other appeal, the respondent-wife challenged the order of access made in favour of the petitioner-husband on every alternate weekend and to share 50% of the School Vacations with the petitioner. In fact, at one stage this matter also once appeared before us and certain specific directions were given regarding the manner of access of the petitioner-husband to Anisha. While disposing of the pending appeals, the Division Bench of the High Court had occasion to consider the legal and practical approach regarding custody of the minor in the light of the well-established doctrine that in these cases, the welfare and interest of the minor was the paramount consideration. Having dealt with the relevant provisions of the Hindu Minority and Guardianship Act, 1956, since the parents as also the minor is a Hindu and while passing the final order the Division Bench was fully alive to the fact that under Section 6 of the above Act the father is the natural guardian of the person of the minor during his minority. Despite the said legal position, the High Court, after carefully considering the various other aspects conducive to the child's welfare, and despite the interim order of custody in favour of the petitioner-husband, chose not to interfere with the order of the Family Court and directed that the custody of minor Anisha should continue to be with her mother, the respondent herein, and that sufficient access provided to the petitioner-father would meet the ends of justice. The petitioner's prayer for Anisha's custody, therefore, was rejected and being aggrieved thereby, the petitioner-husband has filed the instant Special Leave Petition.

4. On behalf of the petitioner-husband it was urged that the judgment and order of the High Court suffered from various infirmities. It was submitted that having found that Anisha had been well looked after during the period of petitioner's custody and the respondent-wife was trying to poison the child's mind against the petitioner and having also held that from the psychiatric evaluation made that the respondent-wife had a manipulative personality, apart from having a tendency towards psychosis which needed medical attention, the High Court erroneously chose not to interfere with the order of the Family Court directing custody of minor Anisha to be made over to the respondent-wife. It was further urged that the High Court had not properly appreciated the fact that when the respondent-wife left the matrimonial home in July, 2004 to pursue film and television career, she left Anisha behind when she was only 2 years and 4 months old, thereby virtually abandoning the child when she needed her mother's care the most. For more than 2 years she did not have any contact with Anisha till in May, 2005 she forcibly removed Anisha from her paternal grandmother's custody. It was submitted that the respondent-wife was so bent upon pursuing a career in films and television that she had no qualms about leaving a 2½ year old baby girl who needed her attention and motherly affection.

5. Mr. Shyam Divan, learned Senior Advocate, who appeared with Dr. A.M. Singhvi, learned Senior Advocate, for the appellant, submitted that the final conclusion of the judgment and order of the High Court was against the grain of the findings therein regarding the petitioner's ability to look after the welfare of the minor child. Mr. Divan urged that both the parties were subjected to psychiatric evaluation on the directions of the High Court and in all the reports, and, in particular, in the report dated 20th September, 2007, submitted by Dr. Haridas, who was the Head of Department of Psychiatry, JJ Hospital, Mumbai, the respondent was diagnosed with a histrionic personality disorder of a nature that rendered her unfit for having custody of the child. It was pointed out that in the said report it was also mentioned that the

respondent-wife was highly manipulative and readily spoke lies even for trivial matters and showed trends of psychosis. On a comparative assessment of both the parties, the report concluded that it would not be in the interest of the child to keep her in the custody of respondent-mother and that, on the contrary, the petitioner-father was more fit and capable to undertake the upbringing of the child. Mr. Divan submitted that even in the second report submitted on 22nd November, 2008, it was stated that there was no evidence to revise the recommendations made in the earlier report. Mr. Divan submitted that despite the opinion of the medical experts and the Court's own findings that the child was being manipulated, tutored and poisoned against the petitioner-husband by the respondent-wife, the High Court, as mentioned earlier, had erroneously chosen not to interfere with the order of the Family Court and in the ultimate analysis allowed the custody of the minor child to remain with the respondent-wife.

6. It was also submitted that in the face of the opinion of experts, the Family Court ought not to have relied upon the statements made by the Counsellors appointed by it or on the evidence of Shridhar Khochare, the Secretary of the Society where the parents of the respondent resided, or the evidence of Dr. Vivek Hebar who had also seen the respondent-wife at the school where Anisha was studying. It was submitted that as against the opinion of Dr. Anjali Chhabaria, wherein it was clearly stated that Anisha had confided in her that the respondent was mad and was not good, the Family Court ought not to have given undue importance to the report of Mrs. A.R. Tulalwar who had interviewed Anisha on 13th January, 2006. It was also submitted that the attitude of the respondent-wife to block all interaction between the petitioner and the child in order to alienate the child completely from the petitioner and to deprive her of the petitioner's love and affection as a father, was also a factor which went against the respondent being given custody of the minor. Mr. Divan submitted that obsession of the respondent-wife for exclusive custody of the minor child was commented upon by the

High Court and the very fact that she has also filed an appeal only with regard to 50% access given to the petitioner-husband during the minor's school vacations, also made her obsession for exclusive custody, to the detriment of the child's interest, very clear. It was submitted that a parent who poisons the child's mind against her father does not act in the child's welfare and should not, therefore, be entrusted with the custody of the child. Mr. Divan submitted that the minor child requires love and care of both the parents and even if the relationship between the two are disrupted, the child should not be deprived of a meaningful relationship with both the parents. It was urged that while the wishes of the minor are to be considered seriously in deciding a matter of custody, the same was not the sole criteria and it would have to be seen as to who would be more suitable for the upbringing of the child, who, till November, 2005, when the child was about 3½ years' old, did not even make an attempt to meet the child and was prepared to sacrifice the welfare of the child in order to pursue a film and television career. Mr. Divan submitted that in view of the conduct of the respondent and her denial of access to the minor despite the orders of this Court, the respondent should not be allowed to enjoy the fruits of her conduct.

7. In this regard, Mr. Divan referred to the decision of this Court in *Gaurav Nagpal vs. Sumedha Nagpal* [(2009) 1 SCC 42], wherein this Court, *inter alia*, held that the paramount consideration of the Court in determining the question as to who should be given the custody of a minor child, is the "welfare of the child" and not rights of the parents under the statute for the time being in force or what the parties say. The Court has to give due weightage to the child's ordinary contentment, health, education, intellectual development and favourable surroundings, but over and above physical comforts, the moral and ethical values should also be noted. They are equal, if not more important than the other. When the Court is confronted with conflicting statements made by the parents, each time it has to justify the demands and has not only to look at the issue on a legalistic basis but human

angles are also to be considered as relevant for deciding the issues. In the facts of the said case where the father had flouted the orders of the Court in keeping the custody of the minor child with him, this Court observed that he cannot be a beneficiary of his own wrongs and the said fact cannot be ignored while considering the father's claim that the child had not been living with him since a long time. It was also observed that in child custody matters there should be a proper balance between the rights of the parents and the welfare of the child and in such circumstances, the choice of the minor is also an important consideration. Mr. Divan submitted that in the face of overwhelming evidence that the respondent should not be entrusted with the custody of the minor child, both the Family Court as well as the High Court quite inexplicably decided that the interest of the minor would be best served if custody was given to the respondent. It was submitted that if the welfare and future interest of the minor was to be taken into consideration, the order of the Family Court as affirmed by the High Court, was liable to be set aside and the custody of the minor child should be made over to the petitioner.

8. The submissions made by Mr. Shyam Divan were firmly opposed by Ms. Meenakshi Lekhi, learned Advocate, who appeared for the respondent-wife. Learned counsel submitted that the allegation that the respondent-wife had abandoned her minor child was incorrect, since in March, 2005, when she left her matrimonial home, she took Anisha with her in terms of an arrangement between the petitioner and herself. Ms. Lekhi submitted that this aspect of the matter had been examined at some length by the learned Judge, Family Court, Mumbai at Bandra in his judgment dated 2nd February, 2007 and the allegation of the petitioner-husband that there was no communication between the respondent and the minor daughter stood contradicted by the evidence on record. In fact, the learned Judge, Family Court had gone on to observe that the contrary stand taken by the petitioner-husband and the positive statement brought out in his cross-examination was

sufficient to dislodge his case that the respondent-wife had abandoned the child.

9. Ms. Lekhi also submitted that Mrs. A.R. Tulalwar, Marriage Counsellor appointed by the Principal Judge, Family Court, to ascertain the wishes of the minor child for the purpose of access by the respondent-wife, had in her final report indicated that the child shared a normal relationship with the respondent-wife and considering her age she needed her mother's company to strengthen the bond between them. It was also observed that the child was familiar with the mother and access would have to be worked out even outside the Court. In her second interview report, Mrs. Tulalwar further observed that Anisha share a very good relationship with her mother and was willing to spend time with her mother, and, in fact, this was her need at her age. Ms. Lekhi also referred to the interview which the Court had had with the child on 15th November, 2006, whereupon the Court concluded that as far as the wishes of the child were concerned, she did not want to leave her father as well as her mother, as she loved both of them very dearly and wanted them to reunite.

10. Ms. Lekhi submitted that the allegations regarding abandonment of the child by the respondent-wife were not, therefore, believed by the learned Principal Judge, Family Court, which ultimately felt that it would be in the best interest of the minor if her custody was made over to the respondent-wife.

11. As far as the allegations regarding denial of access by the respondent-wife to the petitioner to meet Anisha is concerned, it was urged that between 2007 till January, 2009, the petitioner made no attempt to exercise visitation rights given to him and did not make any attempt to meet the child. On the other hand, the petitioner who is very successful businessman and who has to go abroad very often, was not really interested in the welfare of the child since a suggestion had also been made by Dr.

Haridas that if the petitioner-husband was not willing to accept custody of the child, she could always be sent to a boarding school.

12. Ms. Lekhi submitted that the order passed by the learned Principal Judge, Family Court, Mumbai at Bandra, as affirmed by the High Court, did not warrant any interference and the Special Leave Petitions were liable to be dismissed.

13. Having the interest of the minor in mind, we decided to meet her separately in order to make an assessment of her behavioural pattern towards both the petitioner as well as the respondent. Much against the submissions which have been made during the course of hearing of the matter, Anisha appeared to have no inhibitions in meeting the petitioner-father with whom she appeared to have an excellent understanding. There was no evidence of Anisha being hostile to her father when they met each other in our presence. From the various questions which we put to Anisha, who, in our view, is an extremely intelligent and precocious child, she wanted to enjoy the love and affection both of her father as well as her mother and even in our presence expressed the desire that what she wanted most was that they should come together again. However, Anisha seems to prefer her mother's company as the bonding between them is greater than the bonding with her father. Anisha is a happy child, the way she is now and having regard to her age and the fact that she is a girl child, we are of the view that she requires her mother's company more at this stage of her life. There is no doubt that the petitioner is very fond of Anisha and is very concerned about her welfare and future, but in view of his business commitments it would not be right or even practicable to disturb the status quo prevailing with regard to Anisha's custody. The conditions laid down by the High Court regarding visitation rights to the petitioner are, in our view, sufficient for Anisha to experience the love and affection both of her father and mother. There is no reason why the petitioner, who will have access to Anisha on holidays and weekends, cannot look after her welfare without having continuous custody of

her person. As has repeatedly been said, in these matters the interest of the minor is of paramount importance to the Court which stands in *loco parentis* to the minor. Of course, the wishes of the minor are to be given due weightage, and, in the instant case, the same has been done.

14. We, therefore, see no reason to interfere with the order passed by the learned Principal Judge, Family Court, Mumbai at Bandra, as affirmed by the Bombay High Court.

15. The Special Leave Petitions are, accordingly, dismissed and all interim orders are hereby dissolved.

