

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) No. 5593 OF 2010

Sumana Bhasin

...Appellant

Versus

Neeraj Bhasin

....Respondent

ORDER

From meeting the persona dramatis in this unfortunate and painful affair, i.e., the estranged spouses and their two children what we could see may be stated thus:

The spouses are living separately for the past three years and there appears to be little chances of their coming together. The husband was at least willing to talk about reconciliation but for the wife it was a closed issue and she was not even prepared to consider the possibility. This we state simply as a fact without holding the wife to any blame for taking that position.

Their two sons, Pranav, aged fifteen years and Vishnu, aged seven years live with the mother.

The elder son, Pranav, aged fifteen years also appeared to be quite antagonistic towards the father. He was quite rebellious of him and did not show any enthusiasm for meeting the father or being taken out by him. In reply to a pointed question he said that he would meet his father no more than once in a month. On being further pressed he conceded two meetings in a month. We, however, got the impression that rather than meeting the father his object was to be the escort for the younger brother when he should be taken out by the father.

The father is fully aware of his elder son's feelings towards him and he too does not seem to care much about the elder son.

But the position is quite different in respect of the younger son, Vishnu. The father is quite fond of him and thinks that the younger one has taken after him. In answer to a question by us he warmly described the time spent by them together when he last took out Vishnu.

We also talked to Vishnu. Only seven years old, he is still almost a babe. But by speaking to him we felt that he was not unduly ill disposed towards the father. He seemed to be quite comfortable and happy in the company of the father.

It seems to us that excepting Vishnu, who is still very small, all the three clearly understand how each one feels about the others. It is noted above that the elder son Pranav, is not much interested in going out with the father for the sake of his company. But he consented to go along with the younger brother mainly with the view to see that the young one should not come under the father's spell. The mother was more forthright. When it was pointed out to her that Vishnu did not appear unduly reluctant about going out with the father she said that he is very young and could be easily won over by the offer of material things fancied by small children. She was not happy at all to let Vishnu go out alone with the father. As to Pranav, she said that he was in class X and his studies did not leave him with much free time for anything else. The intent was clearly to limit the visitation right of the father; Vishnu should not be allowed to go alone with the father and Pranav was too busy with his studies to be asked to go with Vishnu each time he was taken out by the father.

It may also be stated here that earlier the father was permitted to keep the sons overnight. But in view of some very serious allegations leveled against him in a petition filed by the wife, the father's visitation rights were curtailed and he was only allowed to take out the children during the day time. Then the elder child refused to go out with him. At this stage, the court

directed that the father should be allowed atleast to take the younger one, if necessary by taking the help of police.

On a careful consideration of all the material facts and circumstances, we are of the view, that it would be quite unjust to deny the father any meetings with Vishnu or to make it subject to the condition that he should meet Vishnu only in the company of Pranav, to allay the apprehensions of the mother and the elder son. In our view the following arrangement would meet the ends of justice:

The father, Neeraj Bhasin will be free to take out Vishnu from his mother's residence on every Saturday. On the first and third Saturdays of the month he can keep Vishnu with him for a period of six hours, from 10 am to 4 pm. On the second and fourth Saturdays of the month the outing of Vishnu with his father may last for eight hours, from 10 am to 6 pm. (The period of outing is fixed by this order but the hours may be flexible and may be fixed for the coming week subject to the mutual convenience of the parties). On each occasion it would be open to Pranav to accompany his father and the younger brother but Vishnu's meetings with the father as indicated above will not be dependent upon Pranav joining him. Similarly, it will not be open to the father not to take along Pranav if he wished to join them and to insist that he would take out only Vishnu.

Before parting with the record of the case, we may say that as the situation stands, there is a grave danger of it further deteriorating into a competition between the husband and the wife to capture the mind and the affections of Vishnu. Should such a situation develop, it would be most harmful for Vishnu, as he would be likely to develop divided loyalties and eventually a divided personality. We hope that the parents, though fighting between themselves would not allow such a situation to arise and put Vishnu to harm.

All the observations made here are for the purpose of this order and any observations or comments made in this order shall not be used to the benefit or prejudice of any of the parties in any collateral proceedings.

The arrangement as indicated above is made in view of the facts and circumstances now being in existence. In case there is any material development or alteration in the relevant facts and circumstances concerning the parties it will be open to the court in seisen of the case to pass appropriate orders in accordance with law. In such event the aggrieved party will seek his/her remedies as may be available in law. As and when vacation starts in the children's school it would be open to the father to move the learned Guardianship Judge to re-fix the hours of meeting with the children and also to ask for keeping the children with him overnight. If such an

application is filed the learned Judge will consider the rival contentions (which are expressly kept open) and pass appropriate orders, in accordance with law.

The special leave petition stands disposed of with the above observations and directions.

.....J
(AFTAB ALAM)

.....J
(T.S. THAKUR)

New Delhi,
March 18, 2010

