

(2024) 02 GUJ CK 0052

In the Gujarat High Court

Case No : R/First Appeal No. 2413 Of 2023, Civil Application (For Stay) No. 1 Of 2023

Chirag S/O Ram Prakash Beria

APPELLANT

Vs

Megha W/O Chirag Beria D/O Sunil Kumar Tibrewal

RESPONDENT

Date of Decision : 16-02-2024

Acts Referred:

Guardian And Wards Act, 1890 — Section 7, 9, 25

Citation : (2024) 02 GUJ CK 0052

Hon'ble Judges : Biren Vaishnav, J; Nisha M. Thakore, J

Bench : Division Bench

Advocate : Bhagirath N Patel, Hetal Kosambiya

Final Decision : Disposed Of

Judgement

Biren Vaishnav, J

1. This appeal has been filed by the appellant challenging the order dated 02.01.2023 passed in CMA No. 38 of 2020 by the Family Court at Surat.
2. Apparently, by the order under challenge, though the custody of the children – Aarush and Pratik were rejected on an application filed by the respondent mother, the operative portion of the order indicates that the calling and visitation rights were given to the respondent mother.
3. The respondent mother is present in the court today. Ms. Hetal Kosambiya, learned advocate appearing for the respondent mother has placed an affidavit on record by which the respondent states that she is waiving her rights qua permanent custody and guardianship of the minor children Aarush and Pratik. This is in light of the settlement arrived at between the parties and she voluntarily foregoes such rights of calling and visiting her children as granted by the Family Court, Surat and which order is the subject matter of challenge in this appeal by the appellant father.

4. The affidavit of the respondent reads as under:

"... I had filed an application bearing Civil Misc. Application No. 38 of 2020 before the Family Court, Surat being an application for permanent custody of minor children Arush Beria and Pratik Beria under the provisions of section 7, 9 and 25 of the Guardian and Wards Act, 1890. By an order dated 02/01/2023 in Civil Misc. Application No. 38 of 2020, the Ld. Principal Judge, Family Court, Surat has passed the final order.

The operative part of such order is as under;

::ORDER::

1. The CMA No. 38 of 2020 is hereby rejected but the petitioner will be entitled to talk to both children on video call for 10 to 15 minutes on everyday in the evening or at such a time as mutually agreed upon by the petitioner and the opponent.

2. Further, visitation rights twice in a month, as mutually agreed upon by the parties, to meet master Pratik Beria is allowed to the petitioner and except unavoidable circumstances, the opponent or his relatives would bring master Pratik Beria with them to the family court compound or any other suitable place as mutually agreed by both the parties and would allow the petitioner to meet master Pratik Beria for half an hour to one hour and after completion of the said time period, the petitioner will have to hand over custody of Master Pratik Beria to the opponent or his relative. It is hereby directed that during such visitation time period, the petitioner would take utmost care of the minor child master Pratik Beria and if the minor child is not found comfortable with her, in that case, the petitioner mother should not pressurize the opponent to spend much time with minor son Pratik Beria. The opponent father is also directed to create a positive environment so that the petitioner mother may meet her son Pratik Beria.

3. The applicant mother is also entitled to have custody of her minor son Pratik Beria for seven to ten days during the Diwali Vacation as well as in the Summer Vacation. The opponent father may send suitable person with Pratik to the house of the applicant so that minor Pratik Beria may find comfortable in the said house. The applicant mother is also directed to return the custody of minor Pratik if he does not found comfortable in her company.

4. The opponent father is also directed to make continuous counseling of both the children on quarterly basis, in presence of the applicant mother with any lady counselor providing her services as a conciliator in the Family Court or the applicant father may also send her both the children for counseling with their respective class teacher or school Principal or to child psychologist so that order of this Court may be followed in its true spirit.

5. There shall be no order as to costs.

Challenging the above referred judgment/order, the appellant has filed the captioned First Appeal before this Hon'ble Court.

I hereby say and submit that the dispute between the parties i.e. me and the appellant herein is resolved due to the intervention of some relatives and friends from both the sides and therefore, I am filing this affidavit and state on oath that I have no objection if the main appeal filed by the appellant herein is allowed.

That I hereby declare that minor children AARUSH and PRATIK are in custody of appellant and the appellant has the sole custody and guardianship rights of the minor children AARUSH and PRATIK and that the I have permanently waived my legal rights of custody and guardianship over minor children AARUSH and PRATIK. In future, in all matters and situations pertaining to minor children AARUSH and PRATIK, whatsoever, the appellant as sole legal guardian shall be absolutely and exclusively entitled to take decision and action for the benefit and welfare of minor children AARUSH and PRATIK. I shall never claim custody of minor children AARUSH and PRATIK or interfere with the sole guardianship rights of the appellant minor children AARUSH and PRATIK.

As per the settlement arrived at between the parties, i.e. me and the present appellant, I hereby declare that I don't want any rights as narrated in the above referred order of the Family Court and I hereby declare that I voluntarily forgo such rights of calling and visitation of my minor sons granted by the Ld. Principal Judge, Family Court, Surat in Civil Misc. Application No. 38 of 2020.

I hereby further declare on oath that I will not claim any custody of my minor sons and also not claim such right of calling and visitation of my Minor sons including Pratik Beria in future and I will not try to make any contact to them in future.

By way of present affidavit, I am declaring that I voluntarily forgo the right of custody, calling and visitation of my minor sons including Pratik Beria and in future I will not claim such rights.

In view of what is stated herein above, I have no objection if the main First Appeal filed by the appellant is allowed.

What is stated herein above is true to the best of my knowledge and information and I believe the same to be true and correct."

5. In light of the aforesaid affidavit, which specifically indicates that she has no objection if the appeal is allowed and that she foregoes her right of custody, calling and visitation of her minor sons, the order dated 02.01.2023 passed in CMA No. 38 of 2020 by the Family Court at Surat is hereby quashed and set aside. Appeal is accordingly allowed. Connected civil application also stands disposed of.