

(2014) 10 DEL CK 0180
In the Delhi High Court
Case No : W.P. (Crl.) No. 1396 of 2013

Satyajit Biswas

APPELLANT

Vs

Commissioner of Police and Others

RESPONDENT

Date of Decision : 10-10-2014

Acts Referred:

Citation : (2015) 1 JCC 130

Hon'ble Judges : Vipin Sanghi, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Sumita Kapil, Advocates for the Appellant; Rajesh Mahajan, A.S.C., Arvind Paul, Insp. and Zubeda Begum, Amicus Curiae, Advocates for the Respondent

Judgement

S. Ravindra Bhat, J.—We have heard learned counsel for the parties and the amicus appointed by the Court. The petitioner, a U.S. Green Card holder, preferred these proceedings for the production of his minor daughter Ridhima, who is also a U.S. born and naturalised U.S. citizen.

2. It was alleged that the daughter Ridhima came to India on 02.12.2009 with her mother and brother. The petitioner alleged that the children were detained by the second respondent-his wife for some years and that she did not provide them education. Apparently, the son approached the National Commission for Protection of Child Rights (NCPCR) for protection and requested for appropriate orders to be sent back to the U.S. With the intervention of NCPCR, he could return to the U.S. on 21.11.2012. However, the daughter, Ridhima continued to be in Delhi.

3. Notice of these proceedings was issued and several hearings took place. The order of 02.04.2014 noticed the progress of the case, including the efforts to settle the dispute between the parties separately in chamber. Thereafter, the Court had by its order dated 25.03.2014 recorded the consent of the parties in the following terms:

"The petitioner along with his son has come to India and appeared before us in the Court as per our earlier orders dated 20th February, 2014 and 28th February, 2014.

We have spoken to the petitioner and, spoken to the petitioner as well as his wife and to the two children also.

We were really perturbed to know that though Ridhima is now nine years old she is yet to go to any school for education. She has been in India for the last we spoke to their son and daughter together in chamber.

After speaking to all of them we requested Ms. Zubeda Begum, advocate to assist the Court since the petitioner's wife is not being represented by any advocate. She consented and she has also four years now and undisputedly no attempt has been made by the petitioner's wife to get her admitted in any school. Of course, she has her reasons to put forth for not doing that and one of the reasons was her financial problems. She submitted that all her valuables are in the custody of the petitioner.

As far as petitioner and his wife are concerned, they have serious disputes amongst themselves but for the present we are not going into those disputes since we are primarily concerned with the future of their child Ridhima. We had enquired from Ms. Ridhima as to whether she would like to have schooling and her categorical answer was that she definitely wanted to go to school and that too in U.S.A. and further that she wanted to be in the company of her father and brother. Ridhima is a citizen of U.S.A. by birth.

In view of the aforesaid desire having been expressed by Ridhima, we put to her mother as to whether, as an interim measure, Ridhima could be permitted to be taken by her father to U.S.A. for her being admitted to some school, to begin with for six months period. She stated again that all her valuables are with the petitioner and further that neither the petitioner nor any of his relatives (since both his parents have already expired) have ever bothered to speak to her or her parents. She also stated that in case it is ensured by this Court that her daughter would be brought back to India after six months and she is well taken care of in all respects then she has no objection.

In view of the aforesaid, we permit the petitioner to take Ridhima to U.S.A. to get her admitted in some school there but with the condition that she has to be brought back to India after the expiry of six months period from the date she leaves the country. However, before that is actually done, petitioner shall pay a sum of Rs. 5 lakhs to his wife and deposit with the Registrar General of this Court a further sum of Rs. 10 lakhs as a security for honouring his oral undertaking which he was given today to this Court to come back to India along with his daughter. The amount of Rs. 10 lakhs to be deposited by the petitioner shall be kept in a fixed deposit with UCO Bank, Delhi High Court Branch for a period of six months initially and to be renewed periodically for similar periods till the disposal of the petition. A written undertaking in the form of an affidavit shall be filed. In

case petitioner does not come back to India along with his daughter, the amount of Rs. 10 lakhs shall be forfeited and this Court may consider revoking of the petitioner's passport. The petitioner's wife can communicate with her children by phone or through Internet facilities and the petitioner agrees to this.

It is clarified that the amount of Rs. 5 lakhs which the petitioner would be paying to his wife is to take care of her needs for a period of six months only.

The petitioner submits that he would bring the daughter back during school holidays which would fall after five months, to which his wife has no objection.

Renotify on 28th March, 2014 for further orders. On that date the matter shall be taken up at 2.30 p.m. and petitioner shall again appear in Court and petitioner's wife shall also appear along with her daughter Ridhima.

Copy of this order be given dasti to the parties under the signature of the Court Master".

4. The mediation proceedings, however, apparently did not result in any positive outcome. The Court on 02.04.2014 proceeded to record as follows:

"Considering the fact that baby Ridhima herself had pleaded before us with folded hands that she does not want to stay with her mother because of her cruel behavior towards her and also the fact that she is being deprived of her legitimate right to getting proper education we feel that this is not a fit case where we should permit respondent No. 2 to back track and say that she is not willing to honour consent given by her on 25th March, 2014. Though, withdrawal of a statement made voluntarily before a Court can be said to be amounting to contempt of Court but considering the fact that this is a case centering around matrimonial disputes between the husband and wife, we are not considering initiation of any proceedings in that direction against respondent No. 2.

Since respondent No. 2 was appearing in person we had considered it appropriate to request Ms. Zubeda Begum, Advocate to assist us as Amicus Curiae to which she had agreed. She has submitted brief written submissions relying upon some Supreme Court judgments that in a habeus corpus writ petition this Court should not finally deal with the rights of the parents regarding the custody of the minor children and they should be asked to have that controversy settled by a competent Civil Court. Even this aspect we are not examining today since we are, at this stage, concerned only, as noticed already, with the implementation of our order dated 25th March 2014, which was a consent order. Whether or not finally we would accept this petition for the purposes of deciding the rights of the father and mother in respect of the custody of baby Ridhima would be considered at an appropriate stage if at all it would become necessary once baby Ridhima is brought back to India by the petitioner as per the consent order we re-assess the situation.

Prima facie, we are convinced that it would be in the fitness of things that at least interim custody of baby Ridhima is handed over to the petitioner father.

We, therefore, direct that custody of baby Ridhima be handed over by respondent No. 2 to the petitioner today itself in Court so that he can take her to U.S.A. Of course, the petitioner would equally be bound to honour his undertaking given to this Court to bring her back within a period of six months when this Court would review the situation and pass further appropriate orders at that time.

The State shall ensure that no obstruction is caused by respondent No. 2 when baby Ridhima is taken back to U.S.A. List this matter now for further consideration on 24th September, 2014.

We, however, observe that in case respondent No. 2 would in future also like to have the payment of rupees 5 lakh she shall be at liberty to get that and in case SHO concerned is approached by her the demand draft would be given to her.

Let the written undertaking in the form of affidavit be filed by the petitioner in the Registry by tomorrow and the payment of security amount of rupees 10 lakhs can also be made by tomorrow in the Registry, Before leaving India the petitioner shall also submit in the Registry his residential address in U.S.A. and from there he shall also inform his counsel as to in which school baby Ridhima as been admitted and the counsel in turn shall provide that information to the Court.

We highly appreciate the assistance rendered by Ms. Zubeda Begum, amicus curiae and also for making sincere efforts to bring about settlement between the petitioner and his wife. She assures that she would continue to render her assistance till the matter is finally disposed of.

A copy of this order be given dasti to all the counsel under the signature of the Court Master".

The petitioner has apparently complied with the order and furnished an undertaking for the sum mentioned.

5. The Court has considered submissions of the parties. It is stated by learned counsel for the petitioner that according to the information provided by the petitioner, Ridhima is now admitted to a school. The address of the school (whose name has not been disclosed) is as follows:

Joyce Kilmer #80 Ridge Road Mahwah N.J.--07430

6. It is apparent that the physical custody of the child was initially secured by the second respondent when both--Ridhima and her brother, came to India in 2009. Her alleged neglect of the children resulted in one of them, i.e. the son Ritvik seeking intervention of the NCPCR, which resulted in his going back to the U.S.

7. The previous orders of the Court indicate that as far as the daughter Ridhima is concerned, there was some material to conclude that the second respondent neglected her--especially in her education, since had not been admitted to any school.

8. In this circumstances, after extensive consultations and deliberations, this Court made a series of orders enabling the petitioner to secure--by way of interim arrangement, the temporary custody of Ridhima. These were, of course, subject to several conditions imposed by the Court.

9. This Court is of the opinion that the present proceedings are not appropriate to determine the rights of the petitioner and the second respondent as to the substantive relief of custody of Ridhim, whose interest is of paramount concern. In these circumstances, the most suitable course, therefore, would be that the matter is examined duly and in accordance with law by the competent court having jurisdiction. Since Ridhima lived at Mayur Vihar in Delhi within the territorial jurisdiction of Delhi Courts, the Guardianship Judge in Karkardooma Courts shall consider the contentions of the parties and relevant materials to decide as to the appropriate orders to be made in accordance with law, vis-a-vis the custody. The petitioner agrees to subject himself to the exclusive jurisdiction of the Indian Courts in this regard.

10. Accordingly, the parties are directed to be present before the Guardianship Judge, Karkardooma Courts on 25.11.2014. Copies of the present proceedings shall be transmitted by the Registry of this Court to the said Guardianship Judge, who shall register a new proceeding, in accordance with law.

11. The Court hereby further direct as follows:

(i) The interim orders made on 02.04.2014 as to the custody of Ridhima shall continue subject to the same conditions till such time the Guardianship Judge feels any necessity, after due determination, of varying or modifying it;

(ii) The petitioner shall produce Ridhima on the date fixed before the Guardianship Judge--this date has been fixed with the concurrence of the petitioner's counsel.

(iii) The direction contained in the orders of the Court requiring furnishing of bond of Rs. 10 lakhs shall continue, and shall be subject to the final determination of the Guardianship Judge.

12. All the rights and contentions of the parties, including the right to produce and rely upon such material as is relevant for the purpose of deciding the custody of Ridhima--either interim or finally, are kept open. The writ petition is disposed of in the above terms. A copy of this order shall be communicated by the Registry directly to the Guardianship Judge along with the papers. The Registry shall also communicate a copy of this order directly to the second respondent without process fee.