

(2023) 10 CHH CK 0021
In the Chhattisgarh High Court
Case No : FA(MAT) No. 123 Of 2023

Syed Irshad Ahmed Zaid

APPELLANT

Vs

Shazia Anjum

RESPONDENT

Date of Decision : 11-10-2023

Acts Referred:

Code of Civil Procedure, 1908 — Order 43 Rule 1, Order 43 Rule 1(a) To (w)
Family Court Act, 1984 — Section 19(1), 19(2)
Hindu Marriage Act, 1955 — Section 24, 25, 26

Citation : (2023) 10 CHH CK 0021

Hon'ble Judges : Goutam Bhaduri, J; Deepak Kumar Tiwari, J

Bench : Division Bench

Advocate : Kshitij Sharma, Abhishek Sharma

Final Decision : Disposed Of

Judgement

1. This appeal is against the order dated 16.01.2023 and order dated 14.07.2022 passed by the Family Court, Rajnandgaon in Case No.59/2022, wherein, limited visitation right has been given to the father (appellant) to meet the child. In the initial order dated 14.07.2022, the Family Court has observed that the father can meet the child in the Meditation Centre situated at concerned District Court premises. Subsequently, another application was filed, wherein, it was prayed that the grandfather of the children, who is aged about 80 years, and is of ripened age, may also be allowed to meet the grandchildren, the said application too has been dismissed.

2. Learned counsel for the appellant would submit that the order passed is not fruitful for the reason that the meeting of the child in the Court premises defeats the entire purpose. He submits that the grandfather of the children may also be allowed to meet the children and the order of visitation right may be modified accordingly until the custody battles are decided.

3. Per contra, learned counsel for the respondent opposes the submission made by counsel for the appellant and would submit that there is no such prayer made

in the appeal and an affidavit of grand father has also not been filed. He would further submit that the father can meet the children in the Office of DLSA, which would serve the purpose. He would submit that the order passed by the Family Court allows the visiting rights, hence, it does not require any modification. He would further submit that the Court premises is a safer place, where the children can meet their father as it also touches upon their security and safety. In support of his contention, he would place reliance on the judgment passed by Division Bench of this Court in the matter of Prabhat Vs. Minor Lomesh and Anr, 2022 CGHC 29679-DB.

4. We have heard learned counsel for the parties.

5. The present appeal has been filed against the interlocutory orders. Reading of sub section (1) of Section 19 of the Family Court Act, 1984 speaks "save as provided under sub section (2) of Section 19". Meaning thereby, the appeal would not lie and interlocutory order cannot be challenged. To put it otherwise, the right of appeal comes with a limitation except with the interlocutory order. A question thus arises as to what would be the effect of the order though it is in the nature of interlocutory.

6. The Supreme Court in the matter of Shah Babulal Khimji vs. Jayaben D. Kania & Anr. reported in (1981) 4 SCC 8 had an occasion to deal with the meaning of the interlocutory or intermediary judgment. The Supreme Court laid down that most of the interlocutory orders which contain the quality of finality are clearly specified in clauses (a) to (w) of Order 43 Rule 1 of CPC. The right of interlocutory order which contained the quality of finality would be the judgment and therefore would be appealable. It further held that there may also be interlocutory orders which are not covered by Order 43 Rule 1 but which also possess the characteristics and trappings of finality in that. Such orders may adversely affect a valuable right of the party or decide an important aspect of the trial in an ancillary proceeding and before such an order can be a judgment, and the adverse effect on the party concerned must be direct and immediate rather than indirect or remote. Therefore, when order vitally affects the valuable right of the defendant it would be undoubtedly treated as judgment to make it appealable.

7. The Delhi High Court in the matter of Manish Aggarwal Vs. Seema Agrawal, 2013 (7) RCR (Civ) 2109 has observed while interpreting Sections 25 and 26 of the Hindu Marriage Act, 1955 (for short 'the Act, 1955') along with the interim maintenance which is determined under Section 24 of the Act, 1955, that the order of such nature of interim maintenance would be final in its nature till the decision on the main matter as it would have a finality attached to them when it visits with civil consequences. While interpreting the effect, the Court held in a likewise cases if the interim maintenance order is not granted to a wife then in such case it may have an effect that she may withdraw from the proceedings even to defend, therefore, it would have a trapping of finality.

8. In a custody battle, there can't be a straight jacket formula to be followed. In the Indian society, the grandparents form an integral part for upbringing of a children and that part of affection and contribution cannot be ignored or shelved and it is the welfare of the children which we are concerned. The grand parents being ancillary part and parcel of the family would hold this way for welfare of the child. Therefore, meeting of the grand parents with the children would also be a necessary part for upbringing, before their mind is polluted by unilateral act of any of the single parents.

9. The Supreme Court in the matter of Yashita Sahu Vs. State of Rajasthan, (2020) 3 SCC 67 held that even if custody is given to one parent, the other parent must have sufficient visitation right to ensure that child keeps in touch with the other parent and does not lose social, physical and psychological contact with anyone of two parents. It is only in extreme circumstances that one parent should be denied contact with the child, therefore, the welfare would be the paramount consideration for the child. The parents may be at loggerheads and may clamp allegation on each other but that factor qua the welfare is to be tested before the Court.

10. In the matter of R.V. Srinath Prasad Vs. Nandamuri Jayakrishna and Ors, 2001 (4) SCC 71 and in Vikram Veer Zohra Vs. Shalini Bhalla, 2010 (4) SCC 409, the principle has been laid down that the custody matter of a child can never be a final and no single factor can be taken to be decisive while granting custody to one.

11. There is no conflict in such proposition. To bring the lens back to the facts of the case, it would show that initially only the father was allowed to meet the children in the Court. Obviously, we are not in agreement with such order, as bringing the child to the Court on frequent occasions cannot be appreciated because of its social structure and atmosphere, which is not under the control of an individual and cannot be mitigated. Therefore, we deem it proper to change the venue of the meeting apart from the fact of giving a contact right to the father. Therefore, following the dictum laid down in Yashita Sahu (Supra) and Ritika Sharan Vs. Sujoy Ghosh, 2020 SCC Online SC 878, we grant the visitation rights to the father at an independent venue and the grand father of the children shall also be allowed to accompany the father. The arrangements are being made in order to draw a balance to ensure the situation since the parents are in conflict and the child develops a sense of security. Further, the interest of child is best served by ensuring that the parents should have a footprint in the upbringing of the child.

12. Therefore, as an interim measure we order as under:-

(1) The father and grand parents would be able to engage with the child on a suitable video conference/call platform twice a week for 5 to 10 minutes.

(2) In order to facilitate the video conference/call, the father shall procure the smart phone for the child and would handover the same to the wife.

(3) If the physical meeting of the father and grand parents with the child takes place at an independent venue, it would be either at the Office of Department of Women & Child Development or any restaurant of the choice of the father on every Saturday and Sunday in between 11 AM to 6 PM.

13. With the aforesaid observation and direction, the appeal is disposed of.

14. No order as to cost(s).