

Smt. Mohini

Vs

Virender Kumar

Civil Appeal No. 895 Of 1976

(R. S. Sarkaria, V. R. Krishna Iyer, Jaswant Singh JJ)

01.03.1977

JUDGMENT

KRISHNA IYER, J. –

1. The guardianship and custody of a child 11 years old is the subject-matter of the anxious concern of the child is paramount in our minds when we dispose of this appeal. We hope that the provision that we make for the future of Deepak alias Raju the minor, involved in this case, will make him a bright boy and the parents, although now divorced, will have occasion to feel proud of him. We mention this so that the frayed feelings between the parties may be softened and their attitude towards their son may some day bring them together into a better relationship.

2. Counsel for the parties, Shri Ram Reddy and Shri A. K. Gupta have helped the Court in producing a happy solution to this unhappy episode. The father of the respondent, we must record, also has played a useful role in bringing about a solution of the dispute about alimony.

3. The minor child Raju will be in the custody of the appellant mother will also be the guardian of the minor. We declare so.

4. The minor Raju will be taken care of educationally and otherwise in a manner becoming of the status of the parents and of a middle class family in India. The education of the minor will be given particular attention and the physical and mental health of the minor will not be neglected. It is represented by Shri Ram Reddy that the father of the appellant is well-to-do and that the minor's welfare is financially and affectionately safe in the hands of the appellant mother. The appellant undertakes that the minor shall be looked after properly, and he will be put in a good educational institution. We accept his representation, particularly because the appellant is the only daughter of her parents and the minor is the only child of the appellant.

5. Although the guardianship and custody of the minor will be with the appellant it is fair that the father-respondent has occasion to see his only child. In this behalf, we make a direction that during the long vacation for the school in which the minor is studying (extending over 10 days) the respondent will be entitled to take the minor son with him from the appellant's home or from the boarding school (if the child were admitted to any such institution and is residing there). In all, the father-respondent will be entitled to keep the custody of the minor son for a period not exceeding one month in a year. If there is any obstruction offered by the appellant in the respondent taking the minor son with him it will be open to the respondent to move the District Court, having jurisdiction over the place where the minor is in custody and make over such custody to the father-respondent. Likewise, the appellant-mother or her father will be entitled to take the minor child back from the

custody of the father at the end of the period of one month above mentioned. In case the respondent-father obstructs or otherwise creates difficulties in the way it shall be likewise open to the appellant mother to move the District Court concerned to depute an officer to see that the minor's custody is secured by her. If the minor's welfare is jeopardised seriously by any act of willful neglect or otherwise of the appellant it shall be open to the respondent to move the same District Court to see that appropriate directions are given for promotion of the welfare of the minor. In case this order requires modification in the actual working on account of difficulties cropping up, it is open to the parties to move this Court for such change as this Court deems fit to make.

6. Apart from taking the minor into custody and keeping him for one month for which we have made separate provision, it shall always be open to the respondent father, after giving notice of the time and the date of his visit, to meet the minor son at the residence of the appellant or hostel but he will not take the minor with him outside the home.

7. The only surviving point is regarding the alimony which is payable by the respondent to the appellant. It is a happy augury that parties have been able to agree that on payment of a sum of Rs. 8000 by the respondent to the appellant the entire claim past, present and future, under this head so far as the appellant is concerned against the respondent will stand extinguished. This sum of Rs. 8000 will be paid in installments of Rs. 500 every three months, the first installment being payable by March 31, 1977. In case of default of two consecutive installments, the entire sum remaining unpaid out of Rs. 8000 shall be recoverable in a lump sum by taking out execution. On payment of the first installment on March 31, 1977 the execution proceedings taken out by the appellant against the respondent for alimony will be withdrawn. The parties will bear their costs.

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