

N. Nirmala (Smt.)

Vs

Nelson Jeyakumar

Civil Appeal No. 265 of 1999

(S. B. Majmudar, R. P. Sethi JJ)

21.01.1999

ORDER

1. Leave granted.
2. We have heard the appeal finally by consent of learned counsel for the parties.
3. The question involved in this appeal is about the custody of a minor daughter. The respondent-father was permitted to continue the custody as legal guardian. Learned Single Judge of the High Court confirmed the custody of the minor daughter with the father but gave visiting rights to the appellant-mother in search of actual order passed by learned Single Judge, the appellant-mother in search of actual order of custody, went in appeal. The Division Bench of the High Court by the impugned judgment while dismissing the appeal has deprived the appellant of her visiting right for which there was no cross-objection on the part of the respondent. In our opinion, such a further adverse order against the appellant was not justified. The interest of justice will be served if the order of the learned Single Judge continuing the custody of the minor child with the respondent and as confirmed by the Division Bench is maintained subject to the modification that visiting right which was denied to the appellant by the Division Bench be continued. The Division Bench's order is modified to the following extent. While maintaining the custody of the minor daughter with him, the respondent-father will be directed to leave the child every Saturday in the company of the mother. The mother is also entitled to keep the child in her custody for five days during Christmas vacation and for 20 days continuously in summer vacation. This much further modification is ordered. It is also clarified that during summer vacation, it will not be necessary for the respondent-father to again send the daughter to her other on any Saturday. As there was a doubt about the question of visiting right of the mother on Saturday even during summer vacation, we thought it fit to extend the custody of the child with the mother for continuous 20 days during summer vacation instead of 15 days as granted by the learned Single Judge. Subject to the modification aforesaid, the order of the learned Single Judge about custody of the daughter as upheld by the Division Bench is confirmed. It is further clarified that whatever observations might have been made by the Division Bench regarding the conduct of the parties will not come in the way of the parties in any other pending proceedings which will be decided on their won merits. The appeal is allowed accordingly. No costs.