

SUPREME COURT OF INDIA

I.S.Sirohi

Vs.

Commr.of Police

CrI.A.No.1361 of 2008

(Altamas Kabir and Markandey Katju JJ.)

27.08.2008

ORDER

1. Leave granted.

2. This appeal arises out of the judgment and order dated 18th September, 2007 passed by the Delhi High Court in Writ Petition(CrI.)No.1225 of 2007 filed by Shri I.S. Sirohi, the appellant herein, who is the father-in-law of Mrs. Deepti Sirohi, the respondent No.4 herein. The writ petition was disposed of by the High Court on 18/09/2007 by a non-speaking order, which reads as follows:-

"In the circumstances of the case we feel that such a writ petition does not lie.

Dismissed."

3. Having regard to the nature of the order passed, notice was issued in the special leave petition on 12th October, 2007, and subsequently, on 7th December, 2007, after service of notice when the matter was listed, the parties were referred to mediation before the Delhi High Court Mediation Centre and the matter was directed to be listed once a report was received in respect of such mediation.

4. When the matter was listed on 25th February, 2008, it was directed to be put up for final disposal, and accordingly, the same was listed before us on 26th August, 2008. After hearing the counsel for the respective parties, we had directed the matter to appear today in Chambers, when the respondent No.4-wife was directed to produce the two children who were the subject matter of the reliefs prayed for in the writ petition. She was also directed to be personally present, and a similar direction was given with regard to the paternal grandfather.

5. Today, when the matter was taken up, we had occasion to speak to the respondent-wife, the two children, Ruchira, aged approximately 10 years, and Rajat, aged 7 years, the parents-in-law of the respondent 4-wife and their respective counsel.

6. Since we were considering the writ petition wherein a writ in the nature of habeas corpus, as far as the two children are concerned, had been prayed for and which had been dismissed by a one sentence order of the High Court, we were of the view that since the children have been separated from the paternal grand-parents as well as their father for almost two years, it would be in the best interest of all concerned, and especially the children, to pass appropriate interim orders to enable the paternal grand-parents of the children, as well as the husband of the respondent No.4, to have access to the children. We are fully alive to the fact that this is not a custody proceeding, but, in the facts and circumstances of the case, we are of the view that the children should also not be alienated from the company and affection of their father or paternal grand-parents. In our view, the children require the care, love and affection, both of the father's side of the family, as well as that of the mother, and that none of them should be denied access to the children. Accordingly, after having spoken to the children and the parties, as also their learned counsel and keeping in mind the interest of the children, we pass the following interim order:

“(1)The paternal grand-parents of the children will be entitled to meet the children at the house of the respondent No.4-wife every alternate week-end, preferably on Sunday, between 9.00 A.M. and 1.00 P.M. in the presence of a member of the family of the respondent No.4-wife or a mutual friend. During such visit, the grand-parents of the children shall not be allowed to take the children out of the house of the respondent No.4-wife. However, during holidays consisting of four or more consecutive holidays, the appellant before us will be at liberty to keep the children with him at least for two days during the said period. The respondent No.4- wife shall arrange to drop the children to the house of the appellant for the said purpose, and to take back the children to her custody at a day and time to be mutually fixed;

(2)Although, Dr. Niren Sirohi, the father of the children and the husband of the respondent No.4 is not a party before us, since the writ petition for a writ in the nature of habeas corpus has been filed by his father, seemingly on his behalf also, we further direct that he too will be entitled to visit the children as and when he visits India, upon prior notice to the respondent No.4-wife, who shall thereupon give proper access to him to meet the children either in her presence or in the presence of some other family member of the respondent No.4-wife or a mutual friend, at a date and time to be mutually agreed upon. In case the children agree to go out with him for an outing, he will be at liberty to take them out, but shall return them to the custody of the respondent No.4-wife by 6.00 P.M. at her residence. Dr. Niren Sirohi will under no circumstances be entitled to remove the children from the custody of the respondent No.4-wife, except in the manner aforesaid, or to take them out of India without applying to this Court for such permission. Ms. Asha Nair, learned advocate appearing for the State, shall give necessary instructions in this regard to all concerned authorities and provide them with a copy of this order to ensure that the same is strictly implemented. The learned counsel appearing on behalf of Dr. Niren Sirohi in the trial court, where the proceeding under Section 498A Cr.P.C. is pending, undertakes to obtain an affidavit from Dr. Niren Sirohi to that effect and to file the same in this Court within a month from date.

(3)The visitation rights being given to the paternal grand-parents and Dr. Niren Sirohi should not in any way cause any interference with the normal school routine of the children, who are attending school in Greater Kailash-II.”

7. The affidavit to be affirmed by Dr. Niren Sirohi should contain an undertaking that he will not proceed any further with the civil and criminal cases pending in the U.S.A. during the pendency of this appeal before this Court and shall not under any circumstances remove the children from India or from the custody of the respondent No.4-wife, except in the manner and to the extent indicted in this order, until further orders of this Court. Similarly, the respondent No.4-wife also undertakes not to proceed with the criminal and civil proceedings filed by her, which are pending here in India.

8. We also stay the criminal proceedings which are now pending before the learned Magistrate in Patiala House, New Delhi, though we have been informed by learned counsel appearing on behalf of the respondent No.4-wife that the complaint against the paternal grand-parents has since been withdrawn. We have been further informed that the proceedings before the Magistrate has been stayed by the High Court and such stay is operative till 1st September, 2008. By virtue of this order, the stay shall continue until further orders.

9. In addition to the above, it has been mentioned by Ms. Indu Malhotra, learned senior counsel appearing for the respondent No.4-wife, that her client and Dr. Niren Sirohi jointly own a house property in Lexington, Massachusetts, U.S.A., and that attempts are being made by Dr. Sirohi to sell off the same. Though, not denied, the said submission made by Ms. Malhotra has been explained by learned counsel appearing for Dr. Sirohi indicating that since expenses for maintaining such a big house consisting of nine rooms, was costing him about 4000/- dollars a month, he was being compelled to sell the same, and under the prevalent laws in the U.S.A., he would have to keep aside 50% of the said proceeds in a separate account in the name of the respondent No.4-wife. We can see no ground to prevent the sale from being proceeded with and completed since it cannot prejudice the respondent No.4-wife, who will be entitled to receive 50% of the sale proceeds as her share of the property. We, accordingly, see no reason to interfere with the sale of the property and Dr. Sirohi may proceed with such sale, if he so wishes, subject to depositing 50% of the sale proceeds in the name of the respondent No.4-wife in a separate account to her credit.

10. Let this matter be listed on 26th November, 2008, for further directions, with liberty to the parties to mention for variation of this order or for other orders, even before the said date, in the event it becomes necessary to do so.