

SUPREME COURT OF INDIA

Shilpa Aggarwal

Vs.

Aviral Mittal

CrI.M.P. No.1503 of 2010

(Altamas Kabir and Cyriac Joseph JJ.)

02.02.2010

ORDER

ALTAMAS KABIR, J.

1. By our order dated 9th December, 2009, we had disposed of Criminal Appeal No.2357 of 2009, arising out of Special Leave Petition (CrI.) No.5995 of 2009, without interfering with the order of the High Court impugned in the appeal. In order to ensure that the directions of the High Court were complied with by the parties, we had directed the Respondent-husband to provide the initial expenses of the Appellant-wife and her minor child for travelling to and staying in the United Kingdom for at least a month to attend and contest the proceedings initiated by the Respondent No.1 husband before the Court of Justice, Family Division, U.K. We had also directed the matter to be listed for further orders on 15th December, 2009, to enable the Respondent-husband to submit a proposal for the travel and staying arrangements for the Appellant and her minor daughter in the U.K. for at least a month.

2. Pursuant to the said order, a proposal was duly filed by the Respondent-husband on 15th

December, 2009, but finding the same to be inadequate, we had directed the Respondent-husband to give a detailed proposal with regard to the said arrangements. The Appellant was also directed to file a proposal as to how she intended to work out the order which had been passed on 9th December, 2009. The matter was, accordingly, listed on 29th January, 2010, to consider the fresh proposals to be made by the Respondent-husband and the views of the Appellant- wife in respect thereof.

3. By his application dated 23.12.2009 and filed on 12th January, 2010, the Respondent-husband, inter alia, indicated as follows :- (a) That tickets had been booked by the Respondent for the Appellant and the minor child, Elina, to fly from Delhi to London by Virgin Atlantic Airways on 1st February, 2010. Upon arrival in the United Kingdom at London Airport, arrangements had been made for travel via National Express Coach Service to Swindon where the respondent resides.

(b) The Respondent has a three-bed room house in Swindon, U.K., where the Appellant and Elina were welcome to stay with him, but in case the Appellant did not want to stay in the matrimonial home, she could stay in the named hotel for which bookings had been made from 30th January, 2010, till 28th February, 2010.

(c) The Respondent would pay the Appellant a daily allowance of 40 a day towards maintenance, upon her arrival in the United Kingdom.

(d) The Respondent was willing to reimburse any reasonable expense above 50 which the Appellant may incur for herself in the U.K. till 28.2.2010.

4. In response to the aforesaid offers, the Appellant-wife agreed to stay with the Respondent in their matrimonial home in Swindon along with her minor daughter and her father, till such time as they were required to stay in the U.K. for the purpose of contesting the custody case, subject to the Respondent agreeing to undergo psychiatric evaluation and treatment. The Appellant also sought the permission of the Court to allow her to be accompanied by her father to the United Kingdom for which her father was ready and willing to bear his travelling expenses. The Appellant has also wanted the expenses of her father's stay in the U.K., for the security and support of her minor daughter and herself, to be borne by the Respondent.

5. Apart from her place of stay, the Appellant also made detailed suggestions regarding expenses that would have to be incurred by her on account of travel and commuting in the U.K., for the minor's admission in a Child Nursery, private medical expenses, day-to-day expenses, including clothing, legal expenses, recreational expenses, expenses for 6 acquiring a Computer/Laptop with accessories and other sundry miscellaneous expenses which would add up to an estimated 8342 per

month. A direction was also sought for that the monthly expenses as indicated above for a period of six months should be deposited in the bank account of the Appellant in the U.K. before the Appellant left India for the U.K.

6. We have heard learned counsel for the parties on the proposals and counter-proposals made for the purpose of implementing the order passed by this Court on 9th December, 2009. What has emerged is that the Appellant-wife is willing to stay with the Respondent-husband in their matrimonial home at Swindon, U.K., provided he agreed to undergo psychiatric evaluation and treatment. Counsel appearing for the Respondent-husband has, in consultation with the Respondent, who was present in Court, accepted the condition indicated by the Appellant-wife and undertook to undergo psychiatric evaluation and treatment on his return to the U.K.

The Respondent-husband also had no objection to the proposal of the Appellant to allow her father to accompany her and Elina to the United Kingdom and to stay with her during the period of her stay in the U.K. for the purpose of contesting the custody case. The Respondent also agreed to bear the ancillary expenses involved relating to admission of the child into a Nursery, day-to-day expenses for the Appellant, her daughter and her father, clothing, expenses to purchase Computer/Laptop and accessories, recreational expenses and other sundry miscellaneous expenses.

7. A note of discord was, however, sounded on behalf of the Respondent-husband regarding expenses for private medical treatment, legal expenses and payments made by the Government into the Child Trust Fund and Child Benefit. As far as expenses for private medical treatment is concerned, on behalf of the Respondent it was submitted that the Appellant and the minor child would be entitled to medical coverage as soon as they landed in the U.K. and that, as a result, the question of incurring expenses for private medical treatment did not arise. As to legal expenses, it was submitted on behalf of the Respondent that the amount indicated by the Appellant-wife was extremely high and that he himself was paying his lawyers at the rate of 200 per hour. As far as transfer of Child Trust Fund and Child Benefit is concerned, it was submitted on behalf of the Respondent that whatever amounts had been received by him on the minor daughter's account, which had remained unutilized, would be returned to the State, to which the Appellant's response was that since expenses had been incurred by her in India for Elina, the same should be made over to her instead of being returned to the Government.

8. Since the points of disagreement had been narrowed down to the aforesaid proposals, we direct that as far as expenses for private medical treatment is concerned, the Respondent-husband shall initially provide a sum of 200 for such expenses and will also arrange for medical coverage in terms of the Health Insurance and Life Insurance Cover for the Appellant, her minor daughter and her father. As far as legal expenses are concerned, the Respondent shall initially pay to the Appellant a sum of 2000 per month to enable the Appellant to apply for free legal assistance under the Access to Justice Act, 1999, and other connected enactments and regulations, subject always to the condition that the same are applicable to her. In the event such legal aid is available to the Appellant, further

payment by the Respondent towards legal expenses shall be discontinued. Regarding transfer of the Child Trust Fund and Child Benefit to the Appellant, since the Appellant has been looking after the expenses of the child, the same should be reimbursed to her from the amount being held by the Respondent, unless legally prohibited from doing so.

9. Apart from the above, since all the other proposals, as indicated above, have been duly agreed upon, there will be an order to the following effect :- (i) The Respondent-husband shall bear the travel expenses of the Appellant and her minor child from India to the United Kingdom and, if necessary, back to India. The Appellant's father shall bear his own expenses towards travelling to the U.K.

(ii) During their stay in the U.K. for the purpose of contesting the custody case, the Appellant, her minor daughter and her father 11 will reside with the Respondent in the matrimonial home in Swindon in London, as long as it is necessary for the purpose of contesting the case.

(iii) Within 15 days of the Appellant's arrival in the U.K., both the Appellant and the Respondent shall undergo psychiatric evaluation and treatment and shall also participate in marriage counselling programmes with a mutually agreed upon Marriage Counsellor and the expenses for the same shall be borne by the Respondent.

(iv) The Respondent shall provide 300 per month towards the travelling expenses for the Appellant, her child and her father during their stay in the U.K. for the aforesaid purpose. The Child Benefit which the Respondent had been receiving on account of 12 the expenses for the minor child (Elina) should be made over to the Appellant on account of the expenses already incurred by her for the said purpose, if not legally prohibited from doing so.

(v) The Respondent shall provide a sum of 300 per month, for the child's admission in a Child Nursery, during her stay in the U.K.

(vi) The Respondent shall provide an initial amount of 200 for expenses that may be incurred by the Appellant and her minor daughter and father towards private medical treatment.

(vii) The Respondent shall pay an amount of 1200 per month towards food and daily incidental expenses, such as toiletries, soap, detergent, etc, telephone and broadband.

(viii) The Respondent shall provide for Health Insurance and Life Insurance cover to the Appellant and her minor daughter on their arrival in the U.K.

(ix) The Respondent shall pay a sum of 1600 per month towards the Appellant's legal expenses for contesting the custody and guardianship case.

(x) The Respondent shall provide for a Laptop and printer for the use of the Appellant.

10. The above amounts are to be paid into either of the two accounts of the Appellant maintained by her in Barclays Bank, Hemel Hempstead 20-39-07, Nos.10865826 and 10620122, in the U.K. covering a period of two months, in two instalments, in modification of the earlier order directing arrangements to be made for the Appellant's stay in the U.K. for at least a month to contest the custody and guardianship case.

11. As far as airline tickets are concerned, the same may be purchased by the Respondent and made over to the Appellant, or, in the alternative, the price of the tickets may be deposited in the account of the Appellant in the U.K. to enable the Appellant to access the same for travelling to the U.K. in pursuance of the order passed by this Court on 9th December, 2009.

12. Immediately on deposit of the first instalment into the Appellant's account in the U.K., and on being provided with the airline tickets, the Appellant shall proceed to the U.K. along with her minor daughter, Elina, and, if she chooses, her father, within a month from the date of being informed of the said deposit, with prior intimation to the Respondent. The second instalment is to be deposited within two weeks of the Appellant's arrival in the U.K.

13. In order to meet any other eventuality, the Appellant-wife may make appropriate applications before the High Court of Justice (Family Division), at London, in the pending custody and guardianship case.

14. A copy of this order be made available to the parties forthwith.

15. CrI. M.P. Nos.1503 and 1504 of 2010 in Criminal Appeal No.2357 of 2009 are disposed of, accordingly.