

SUPREME COURT OF INDIA

Gaytri Bajaj

Vs.

Jiten Bhalla

SLP(Civil)No.35468-35469 of 2009

(P.Sathasivam and J.Chelameswar,JJ.,)

16.12.2011

ORDER

1. The petitioner-wife and the respondent-husband were married on 10.12.1992 and two daughters were born out of the said wedlock. The elder daughter was born on 20.08.1995 and the younger daughter on 19.04.2000. It is the grievance of the petitioner-wife that the Additional District Judge by order dated 03.06.2003 passed a decree of divorce within eight days from the presentation of the first and second Motions under Section 13-B(1) of the Hindu Marriage Act, 1955 (hereinafter referred to as "the Act"). The petitioner-wife has filed a suit for declaration on 01.02.2006 seeking a declaratory decree that the respondent has obtained a decree by fraud.
2. On 10.10.2007, the respondent-husband filed an appeal under Section 28 of the Act in the High Court of Delhi at New Delhi. The petitioner-wife filed cross-objections to the said appeal on 07.11.2007. The learned single Judge of the High Court, by order dated 08.09.2008, allowed the appeal filed by the respondent-husband without deciding and adjudicating on the cross-objections filed by the petitioner-wife. Being aggrieved by the order of the learned single Judge, the respondent-wife filed a review petition on 13.10.2008. The said review petition was also dismissed on 10.07.2009 by the learned single Judge of the High Court. Both the said orders were impugned in the present special leave petitions.
3. By order dated 14.12.2009, this Court issued notice to the respondent-husband.
4. The short question which falls for consideration in these SLPs for the present is with regard to the custody of the two children.
5. During the course of hearing, at one stage, considering the issue raised, namely, relating to the custody of children, both being daughters, at the request of counsel for both sides, we decided to interact with the children as well as their parents, namely, petitioner-wife and respondent-husband in our Chambers to find out the actual friction in order to arrive at the possibility of any amicable settlement. Pursuant to the same, both parties including their children were present before us and a detailed interaction was held with the children and

their parents separately. In the course of interaction, we were able to ascertain the following facts:

“a) The date of birth of first daughter is 20.08.1995 and presently she is aged about 17 years. The date of birth of second daughter is 19.04.2000 and presently she is aged about 11 years. Both of them were living with their father and are in his custody and the petitioner-wife had no access to the children or even a brief meeting with them.

b) After interacting with the children separately and putting several questions about their age, education, their future and importance of company of mother as of now, both of them were very clear and firm that they want to continue to live with their father and they do not want to go with their mother”

6. In the aforesaid facts and circumstances, we feel that if the children are forcibly taken away from the father and handed over to the mother, undoubtedly, it will affect their mental condition and it will not be desirable in the interest of their betterment and studies. In such a situation, the better course would be that the mother should first be allowed to make initial contact with the children, build up relationship with them and gradually restore her position as their mother.

7. In a matter relating to the custody of children the first and the paramount consideration is the welfare and interest of the child and not the rights of the parents under a statute. Even the statutes, namely, the Guardianship and Wards Act, 1890 and Hindu Minority and Guardianship Act, 1956 make it clear that the welfare of the child is a predominant consideration. In a matter of this nature, particularly, when father and mother fighting their case without reference to the welfare of the child, a heavy duty is cast upon the Court to exercise its discretion judiciously bearing in mind the welfare of the child as paramount consideration.

8. In the relevant facts and circumstances of the case, we are convinced that the interest and welfare of the children will be best served if they continue to be in the custody of the father. In our opinion, at present, it is not desirable to disturb the custody with the father. However, we feel that ends of justice would be met by providing visitation rights to the mother. In fact, during the hearing on 12.12.2011, Ms. Indu Malhotra, learned senior counsel for the petitioner-wife represented that if such visitation rights, namely, visiting her children once in a fortnight is ordered that would satisfy the petitioner-wife. Learned senior counsel also represented that if the said method materializes, the petitioner-wife is willing to withdraw all civil and criminal cases filed against the respondent-husband which are pending in various courts.

9. Mr. Ranjit Kumar, learned senior counsel for the respondent-husband made it clear that this Court is free to pass appropriate interim arrangement if the same is feasible and in the interest of the children. Since both are residing at Delhi, it is desirable to pass appropriate

direction for the meeting of the petitioner-wife either in the house of the respondent-husband or in a common place like Mediation Centre of this Court or the High Court.

10. We, accordingly, make the following interim arrangement:

“(i) The respondent-husband is directed to bring both daughters, namely, Kirti Bhalla and Ridhi Bhalla, to the Supreme Court Mediation Centre at 10 a.m. on Saturday of every fortnight and hand over both of them to the petitioner-wife. The mother is free to interact with them and take them out and keep them in her house for overnight stay. On the next day, i.e., Sunday at 10 a.m. the petitioner-wife is directed to hand over the children at the residence of the respondent-husband. The above arrangement shall commence from 17.12.2011 and continue till the end of January, 2012.

(ii) The respondent-husband is directed to inform the mobile number of elder daughter (in the course of hearing, we were informed that she is having separate mobile phone) and also landline number to enable the petitioner-wife to interact with the children.”

11. Inasmuch as the petitioner-wife is willing to withdraw all civil and criminal proceedings filed against the respondent-husband, in view of the interim visitation rights being granted to her, we hope and trust that the respondent-husband will cooperate and persuade the children to spend time with their mother as directed above.

12. It is also made clear that for any reason if the said visitation is not workable due to the attitude of any of the parties or due to the children, counsel appearing for them are free to mention before this Court for the next course of action.

13. Put up on 03.02.2012.