

SUPREME COURT OF INDIA

Harshita Bhasin

Vs.

State of West Bengal & Ors.

I.A.No.4 of 2016

(T.S.Thakur,CJI., Dr.D.Y.Chandrachud and L.Nageswara Rao,JJ.,)

14.12.2016

ORDER

Dr D.Y.Chandrachud,J.,

SLP(Civil)No.4754 of 2014

1. The applicant, Mukul Bhasin, was impleaded as the fifth respondent to a petition under Article 136 of the Constitution which was disposed of by this Court on 9 April 2014. The first respondent to the application was the petitioner in the Special Leave Petition. The applicant and the first respondent were married on 11 July 2007. They have two children - Ranvir, who was born on 24 July 2008 and Hridaan, born on 16 November 2011. The children are now eight and five years old. There is a matrimonial dispute and parties have been living separately since July 2013.

2. The applicant instituted a petition under the Guardian and Wards Act, 1890 (Petition 754 of 2013) before the Civil Judge (Senior Division), Gautam Budh Nagar, UP, for dissolution of marriage and for custody of the children. The respondent instituted a habeas corpus petition before the Calcutta High Court to which the applicant filed an affidavit-in-opposition. An order was passed by the Calcutta High Court refusing interim custody to the respondent. The High Court, however, directed the applicant to bring the children on a fortnightly basis to Kolkata on a Sunday and to allow the respondent to meet them between 11 am and 4 pm at the residence of the respondent's advocate. This led to the Special Leave Petition by the respondent challenging the order refusing interim custody to her.

3. During the course of the hearing of the Special Leave Petition this Court recorded by its order dated 13 March 2014 that it had interviewed both the parties and the minor children to explore the possibility of an amicable settlement. By way of a temporary arrangement, interim custody of the children was granted to the respondent for the duration of the ensuing school vacation until the reopening of the school of the elder child, after which the children were to be restored to the father. Eventually, on 9 April 2014 the Special Leave Petition was

disposed of since the order of the High Court impugned was purely an interim arrangement which did not finally determine the rights and obligations of the parties. However, the Court which is seized of the Guardianship Petition was requested to expedite its proceedings and to pass final orders, as far as possible, within three months. The interim arrangement regarding visitation rights made by the High Court was directed to continue.

4. The applicant moved the court before which the guardianship proceedings are pending in January 2016 for modification of the visitation orders on the allegation that the respondent was misusing her visitation rights. The trial court dismissed the application on the ground that this would amount to interference with the interim order of custody and visitation passed by the High Court and confirmed by this Court.

5. The basis of the present application is set out in paragraphs 9, 10 and 11 which reads as follows:

“That the minor children to comply with the present visitation arrangement leave their home at Noida at 3:30 am to reach the airport in time to catch a flight to reach Kolkata on time for the visitation. The minor children further return to Delhi after the visitation between 10:30 pm and 1:00 am on Monday morning and have to wake up for school by 6:15 am on the same day. On one occasion the flight of the minor children had to be diverted to Lucknow and the children only reached Delhi by 3:14 am. The present arrangement is not conducive for the minor children keeping in mind their tender age and their mental and physical well-being. That the present Applicant/Respondent No.5 fears that the strenuous and constant travelling from Delhi to Kolkata and back on a regular basis shall have a negative impact on their physical health along with the mental psyche of the children and may even in the future begin to affect the academics, extra-curricular activities, sports and attendance of the children. That the present Applicant/Respondent No.5 humbly submits that the present visitation arrangement is no longer in the best interest and welfare of the children. That it is due to these reasons that the present Applicant/Respondent No.5 is seeking modification of the order dated 09.04.2014 passed by this Hon’ ble Court only to the limited extent of changing the venue of the visits from Kolkata to Delhi. After due consideration the present Applicant/Respondent No.5 humbly states that he is even willing to bear the Petitioner’s cost of travel to Delhi to meet the minor children every fortnightly Sunday so as to let the petitioner interact with them. It is further submitted that the Petitioner has relatives and family members who live in Delhi and shall not be adversely affected in anyway by travelling to Delhi to meet with the minor children and comply with the fortnightly visitation arrangement” .

6. The learned counsel appearing on behalf of the applicant submits that it is extremely stressful for the children to travel to Kolkata every fortnight on a Sunday since they have to leave their home at NOIDA at 3.30 am in order to take a flight to meet their mother at 10 am. Moreover, it has been submitted that the children return back to New Delhi late at night and have to attend school on Monday morning. The applicant has expressed his readiness and

willingness to bear the cost of travel of the respondent to Delhi where, it has been submitted, the children can meet her during the hours fixed by the High Court. Having regard to the fact that prima facie it appears tiring and stressful for the two young children who are eight and five years of age to travel to Kolkata in the manner agreed, we had requested learned counsel for the parties to discuss the matter and indicate to the Court whether an agreement can be broadly arrived at to facilitate the convenience of the young children while at the same time protecting the legitimate concerns of their mother.

7. Ms. Meenakshi Arora, learned senior counsel appearing on behalf of the respondent has fairly stated before the Court that while the respondent would be willing to abide by any reasonable arrangement which would obviate inconvenience to her children, this Court may require the petitioner to provide for the airfare both for the respondent and her mother to travel to New Delhi and the petitioner may be directed to make arrangements to facilitate their stay in a room in a hotel in New Delhi for two nights. During the course of the hearing we had indicated a viable arrangement by which instead of being required to travel to Kolkata every fortnight, the children shall travel once in a month to Kolkata while the respondent will meet the children in New Delhi once in a month. Both the learned counsel have fairly agreed to the suggestion.

8. In view of the above position, we issue the following directions:-

“i) Pending the hearing and final disposal of the guardianship proceedings, the respondent shall be entitled to visitation rights and to meet her two minor children, Ranvir and Hridaan in the following manner:

(i) The applicant father shall travel with the children to Kolkata, on a Sunday, in the first fortnight of every month so as to enable the respondent mother to meet the children in the manner indicated in the order of the High Court dated 8 October 2013;

(ii) The respondent shall in the second fortnight of every month be entitled to visitation rights at New Delhi in the manner indicated in the order of the High Court dated 8 October 2013. To facilitate disbursement of the travel and hotel expenses of the respondent and her mother, the applicant shall by means of an electronic transfer of funds deposit a sum of rupees forty thousand per month into a nominated bank account of the respondent by the seventh day of every month. The respondent shall make her own arrangements for travel to and fro from New Delhi and for stay. The respondent shall fetch the children from the chambers of Ms Udit Seth, Advocate (Chamber No.20A, R.K. Garg Block, Supreme Court, Bhagwan Das Road, New Delhi) and return the children to the father at the same place. The period of visitation shall be as prescribed in the order of the High Court dated 8 October 2013.

9. The order of the High Court dated 8 October 2013 shall in the circumstances stand modified by consent to the above extent.

10. The Interlocutory Application is accordingly disposed of.