

SUPREME COURT OF INDIA

Nutan Gautam

Vs.

Prakash Gautam

C.A.No.3409-3410 of 2019

(R.Banumathi and R.Subhash Reddy,JJ.,)

05.04.2019

JUDGMENT

R.Subhash Reddy,J.,

SLP(C)No.28166-28167 of 2018

1. Leave granted.

2. These appeals are filed by the wife of the respondent herein aggrieved by orders dated 21.05.2018 and 20.08.2018 passed by the High Court of Judicature at Allahabad in First Appeal NO.316 of 2018. Trial Court in favour of the respondent-husband. The Trial Court also directed that the son of the appellant, namely, Krish alias Master Krishav Gautam, should be admitted in Col.

3. The marriage of the appellant-wife and the respondent- husband was solemnized in the year 2006. In the year 2009 a son was born to them who is named Krish alias Master Krishav Gautam. In the year 2012, respondent-husband filed a petition for divorce under Section 13(1)(ia)(iii) of the Hindu Marriage Act, 1955. The said divorce petition is decreed ex-parte by Satsangi's Kiran Memorial Public School, New Delhi.

4. Aggrieved by the ex-parte order, the appellant herein filed First Appeal NO.316 of 2018 before the High Court of Judicature at Allahabad. Pursuant to order of the Family Court, the son of the parties has been admitted in Col. Satsangi's Kiran Memorial Public School, New Delhi, and he has been put in a Boarding House of the School. By way of an interim order dated 21.05.2018, which is impugned in these appeals, the respondent-husband was permitted to take the boy with him to Delhi and to leave him in the Boarding House till the start of the summer vacations of 2018. Further, the appellant-mother was permitted to take the child in summer vacations and leave him in the School/Boarding House before the reopening of the School.

5. The Family Court has also awarded an amount of Rs.10,000/- per month towards maintenance for the appellant-wife. In view of the plea of the respondent-husband that the

appellant-wife is entitled for maintenance only from one forum, appellant-wife is directed to elect one forum to which she wants to get maintenance.

6. After reopening of the School in the summer vacation, it appears that the boy, Krish @ Master Krishav Gautam, was not willing to go to study in the Boarding House in Col. Satsangi's Kiran Memorial Public School, New Delhi. Further, fifteen days' time was granted by the High Court to the appellant- mother vide Order dated 20.08.2018 to comply Order dated 21.05.2018.

7. We have heard Mr. Harikumar V., learned counsel appearing for the appellant-wife, and Mr. R. Basant, learned senior counsel appearing for the respondent-husband.

8. It is contended by learned counsel for the appellant-wife that the boy is not willing to study in the Col. Satsangi's Kiran Memorial Public School, New Delhi, as he is attached to his mother very much and intends to study in his old school. Accordingly, he was admitted in Global International School, Shahjanpur, where he is comfortable with his studies. It is submitted at the Bar that as welfare of the child is the paramount consideration and he is good at studies by pursuing his study in Global International School also at Shahjanpur, and requested to set aside the impugned order and permit the boy to continue in the same school at Shahjanpur.

9. On the other hand, Shri R. Basant, learned senior counsel appearing for the respondent, has submitted that the respondent is willing to join his son in the best school of Delhi by paying more than Rs.2,00,000/- (Rupees Two Lakhs) towards fees and it is in the interest and welfare of the child to allow him to study only at Col. Satsangi's Kiran Memorial Public School, New Delhi. Further, It is submitted that there was a specific direction for joining the boy in the Boarding House/School at New Delhi after reopening, the appellant-wife has violated Order dated 21.05.2018 and further Order dated 20.08.2018. It is submitted that wish of the child itself is not a criteria and the welfare of the child will be best served by admitting him in Col. Satsangi's Kiran Memorial Public School, New Delhi.

10. We have heard learned counsel on both the sides, perused Orders dated 21.05.2018 and 20.08.2018 and other materials placed on record.

11. It is clear from the materials placed on record, in view of the differences cropped up between the parties, respondent- husband has filed petition for divorce under Section 13(1)(ia) (iii) of the Hindu Marriage Act, 1955, in the year 2012 which is decreed ex-parte and appeal against that order is pending before the High Court. The appellant-wife is presently residing at her parental house at Shahjanpur, Uttar Pradesh. The boy is studying in Global International School, Shahjanpur, Uttar Pradesh, while granting ex-parte decree it appears that the Trial Court directed that their son should be admitted in Col. Satsangi's Kiran Memorial Public School, New Delhi. In view of such direction, it appears, the boy was admitted in the said School at New Delhi and was allowed to be taken by the appellant-wife in the summer vacation of 2018.

12. It is true that in Order dated 21.05.2018, the respondent was permitted to take the son and get him joined at Boarding House in Col. Satsangi's Kiran Memorial Public School, New Delhi, and the appellant-wife was permitted to take custody of the boy in the summer vacation and to ensure that he returns to the Boarding House after summer vacation. It is the case of the appellant that after summer vacation the boy was not inclined to go to the Boarding House/School and wanted to study only in his old school, namely, Global International School, Shahjanpur. It is also not in dispute that the child was earlier studying in the same school where he is admitted now for further studies. We are informed now that he has now completed 3rd standard and is aged about 10 years. It is natural, a boy of that age who has studied earlier in the school at Shahjanpur, willing to continue in the same school as much as he is acclimatised with the environment of such school where he has started his studies from Ist standard onwards. This Court also interacted with the boy and the boy expressed his desire to continue his studies only in Shahjanpur school. When the boy is not inclined to study in Col. Satsangi's Kiran Memorial Public School, New Delhi, and stay in the Boarding House, we are of the view that in the interest of the welfare of the child, he cannot be compelled to admit in Col. Satsangi's Kiran Memorial Public School, New Delhi, attached with the Boarding House. In such view of the matter, it cannot be said that the appellant-wife has violated the direction issued by the High Court vide Orders dated 21.05.2018 and 20.08.2018.

13. From the very perusal of the order impugned, it appears that the High Court has ascertained the views of the boy and has recorded that he is very much attached and has more affiliation towards his mother (appellant herein). In that view of the matter we are of the opinion that the child, namely, Krish @ Master Krishav Gautam cannot be compelled to join in Col. Satsangi's Kiran Memorial Public School at New Delhi. We are further of the view that in the interest and welfare of of the child, Krish @ Master Krishav Gautam shall be allowed to continue his study at Global International School, Shahjanpur.

14. Further, in the impugned order, the appellant-wife is directed to elect one forum from which she wants to get the maintenance. As the same is also not in conformity with the law, the said direction is liable to be set aside. Ordered accordingly.

15. As the respondent-husband is a natural father of the child, namely, Krish @ Master Krishav Gautam, he is also entitled to visitation rights. We permit the respondent- husband to visit his child and he is entitled to take the child from the House of the appellant on any Sunday's and public holiday's whenever he visits Shahjanpur. The appellant-wife shall allow the child to leave along with the respondent-father at 09:00 a.m., and the respondent-husband to return the child at the house of the appellant-wife before 06:00 p.m. on the same day. For any further modification of visitation rights respondent-father is at liberty to move the High Court with appropriate application and the same shall be considered in accordance with law, keeping in view the welfare of the child.

16. For the aforesaid reasons, Orders dated 21.05.2018 and 20.08.2018 passed by the High Court of Judicature at Allahabad in First Appeal No.316 of 2018 are set aside. We request the High Court to dispose of the appeal itself as expeditiously as possible in accordance with law.

17. In the result, the appeals are allowed with the direction's as indicated above. No costs.