



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Reserved on: 18th August, 2023**
Pronounced on: 12th September, 2023

+ **MAT.APP.(F.C.) 154/2022**

GAUTAM JINDAL Appellant

Through: Appellant in person.

versus

MEENU JINDAL Respondent

Through: Ms. Shivani, Mr. R.S. Dakha, Mr.
M.S. Dakha & Ms. Meena Tyagi,
Advocates with respondent in
person.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J

1. The present **Appeal under Section 47 of the Guardians and Wards Act, 1890** has been filed on behalf of the appellant against the impugned Judgment dated 28.02.2022 passed by the learned Judge, Family Court, Central Tis Hazari, Delhi, whereby the Petition under Section 25 of the Guardians and Wards Act, 1890 has been partly allowed and the appellant herein has been given limited visitation rights.

2. **The facts in brief are that** the appellant got married to the respondent Smt. Meenu Jindal on 15.01.2006 according to Hindu Rites and Ceremonies and from their wedlock, one son, Master Vaibhav Jindal,



who is respondent No. 2 herein, was born on 21.04.2007.

3. The disputes arose between the appellant/husband and the respondent No. 1/wife and they started living separately since 2009. The appellant claimed that the respondent No. 1 had filed false case in CAW Cell against his father in the year 2012, though the said complaint was withdrawn by the respondent No. 1. The father of the appellant died on 29.12.2014 after which the appellant approached the respondent No. 1 to resume the matrimonial relationship to which she did not agree.

4. It was further asserted that in a complaint case pending before the learned Metropolitan Magistrate, Central District, Tis Hazari Courts, Delhi, the appellant had requested for meeting with the respondent No. 2 and the matter was referred to Mediation Cell, Tis Hazari, Delhi, but the same did not yield any fruitful result.

5. The parties are residing at a distance of 100 to 150 meters and the appellant/father has tried many a times to meet respondent No. 2, but respondent No. 1 not only has prevented the respondent No. 2/son from meeting the appellant/father, but has also threatened the appellant that in case he makes any such endeavour to do so, she shall file a complaint with the police.

6. The appellant/father has further asserted that the respondent No. 1 has filed a Petition under Section 125 of the Code of Criminal Procedure, 1973 for maintenance, wherein she herself has stated that she is unable to maintain the respondent No. 2/son. The appellant in the said proceedings, has been directed to pay Rs. 4,500/- per month towards maintenance of respondent No. 2/son.



7. Therefore, considering the welfare of respondent No. 2/son and the financial capacity of the appellant, it is claimed that the custody of the child must be handed over to the appellant.

8. **The respondent No. 1 in her written reply** to the petition had taken a preliminary objection that the custody petition has been filed only to avoid payments of maintenance to the respondent No. 1 under Section 125 of the Code of Criminal Procedure, 1973.

9. It is further asserted that the appellant has concealed the second marriage with Ms. Rinku Chaudhary @ Rinku Jindal without dissolution of first marriage with respondent No. 1. From the marriage with Ms. Rinku Chaudhary @ Rinku Jindal, the appellant also has one son.

10. The respondent No. 1 has further claimed that the respondent No. 2/son is a student of Class VII in Saraswati Bal Mandir School, Jhandewalan, New Delhi and she is meeting all his educational expenses to the tune of Rs. 4,700/- per month.

11. The respondent No. 1 has further contended that the appellant has filed the affidavit of assets, wherein he has stated that he is 8th pass and working as a daily wager and earns Rs. 5,000/- to Rs. 7,000/- per month. On the other hand, respondent No. 1 is a post-graduate and earns more than Rs. 10,000/- per month from tuition and Rs. 15,000/- per month by working in a Law Firm. As per the appellant himself, he does not have financial capacity to meet the expenses of the child.

12. **On merits**, it is denied that after the demise of the father of the appellant, the appellant had approached the respondent No. 1 to join the matrimonial home or that she had refused the same to do so.



13. It is further asserted that in fact, the respondent No. 2/son himself does not want to meet the appellant/father.

14. On the basis of pleadings, the issues were framed which read as under: -

“1. Whether the petitioner is entitled to custody of minor Vaibhav Jindal as prayed for? OPP

2. Whether the petitioner is not entitled to the custody as he has remarried and also having son from that marriage? OPD

3. Relief.”

15. The evidence was led by both the parties.

16. The learned Judge, Family Court observed that no cogent evidence was produced about the second marriage of the appellant with Ms. Rinku Chaudhary @ Rinku Jindal and in the absence of evidence, it cannot be held that the appellant has performed the second marriage and has a son from the said marriage. However, it was evident from the manner in which the appellant has responded in the cross-examination, there was sufficient evidence to conclude that the appellant was residing in the same property as Ms. Rinku Chaudhary @ Rinku Jindal, though their relationship was not clearly spelled out.

17. It was also observed that the respondent No.2/Vaibhav Jindal, who was born on 21.04.2007, has been in the exclusive custody of the respondent No. 1 since 2009, when the appellant and the respondent No. 1 separated. Moreover, from the evidence, it emerged that the appellant was not even aware about the school in which the child was studying. Furthermore, the child on interaction had expressed that he was not



willing to meet the appellant/father.

18. It was held that it would not be in the interest of the welfare of child to hand over his custody to the appellant. However, considering that the child had no inclination to meet the appellant/father it was directed that the appellant be granted visitation rights to meet his son i.e., respondent No. 2 for two hours or till the time, the child intended to continue meeting on every second Saturday from 10:00 A.M. to 12:00 noon after every three months, and the same shall commence from April, 2022. Accordingly, the petition was disposed of.

19. Being aggrieved by the limited visitation rights granted to the appellant/father, he has preferred the present Appeal.

20. The main ground which has been agitated by the appellant is that the parties are living in close vicinity and the visitation rights granted to the appellant are too infrequent and that he may be granted enhanced visitation rights.

21. **Submissions heard.**

22. Indisputably, the parties have been living separately since the child was two years old and since then, the respondent No. 2/son has been in the exclusive custody of his mother/respondent No. 1.

23. As per the submissions of the appellant/father himself, though an endeavour was made to seek visitation rights before the Mediation Cell on two occasions, but it did not yield any fruitful result.

24. The appellant has claimed the custody of the respondent No. 2 on the ground that the mother/respondent No. 1 does not have sufficient financial capacity to look after the needs of respondent No.2/child.



25. The learned Family Judge has given the finding that the appellant/father has been residing in the same house as Ms. Rinku Chaudhary @ Rinku Jindal. Though the respondent had claimed that the appellant has married Ms. Rinku, that is a fact which could not be proved from the evidence.

26. The financial status of either party is not the sole determining factor when considering the issue of custody though it may be relevant as has been held in the case of Dhanwanti Joshi v. Madhav Unde (1998) 1 SCC 112 and reiterated in Smriti Madan Kansagra v. Perry Kansagra 2020 SCC OnLine Del 1414. Interestingly, in the present case, the appellant himself had deposed in his testimony that he was doing a labour job of aluminium with one Mr. Santosh, and earning Rs. 200 to 250/- per day. On the other hand, the appellant himself had claimed that the respondent No. 1 is a post-graduate and earning more than Rs. 10,000/- per month from private tuitions and Rs. 15,000/- per month by working in a Law Firm. The respondent No.1 had also admitted in her testimony that she is a qualified and was earning Rs. 10,000/- to Rs. 15,000/- per month, though she was unemployed for the last two or three years.

27. From the evidence as led by the parties, it is evident that the respondent No. 1 is not only more qualified, but is also having a better financial capacity to take care of the minor son i.e., respondent No. 2 herein which she has been doing since the infancy of the child.

28. Aside from the respondent No. 1 being better qualified, she has also been taking care of all the financial needs, including the educational requirements of the respondent No. 2/son. No evidence whatsoever has



been led on behalf of the appellant to show that the respondent No. 1 is not able to take care of the educational, financial or other needs of the respondent No. 2/child.

29. It is also pertinent to observe that the child, since the age of two years, has been in the exclusive custody of the respondent No. 1/mother and has had minimal interaction with appellant/father. Now, the respondent No. 2/son is 16 years of age and has expressed his independent preference of continuing in the custody of the respondent No. 1/mother

30. The learned Family Judge has rightly denied the custody to the appellant/father. It is also pertinent to note that during the course of arguments before the learned Family Judge, the appellant had limited his right to custody to the visitation rights.

31. The question which thus needs consideration is whether the appellant is entitled to visitation rights. In the case of Yashita Sahu v. State of Rajasthan (2020) 3 SCC 67, the Hon'ble Apex Court observed that the child, especially of tender age, requires love, affection, company and protection of both the parents, he is not an inanimate object which can be tossed from one parent to the other. The Court must weigh each and every circumstance very carefully before deciding the manner in which the custody should be shared between the parents. This is to ensure that the child does not lose social, physical and psychological contact with either of the parents. It is only in extreme circumstances that even the visitation rights may be denied. It was further observed that when the parents are living in the same town or area, even though the spouse was not granted custody, he may be given visitation rights.



32. In the present case, admittedly, the parties are residing in close vicinity to each other. However, it cannot be ignored that the child, who is more than 16 years of age, has had minimalistic contact with his father since infancy and has no inclination to meet his father.

33. Balancing the rights of the child and his interest and welfare, we find that the visitation rights as granted by the learned Family Judge *vide* impugned Judgment dated 28.02.2022 does not call for any interference.

34. Accordingly, we find no merit in the present Appeal and the same is hereby dismissed along with pending application, if any.

(NEENA BANSAL KRISHNA)
JUDGE

(SURESH KUMAR KAIT)
JUDGE

SEPTEMBER 12, 2023
S.Sharma