

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

FAO (FC) No. 09 of 2025

Decided on: 30th December, 2025

Sahil Yadav

....Appellant

Versus

Smt. Radha

...Respondent

Coram

Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

*Whether approved for reporting?*¹

For the appellant:

Mr. Saurav Rattan, Advocate.

For the respondent:

Mr. Varun Thakur and Mr. Aditya Chouhan, Advocates.

G.S. Sandhawalia, Chief Justice *(Oral)*

The present appeal is filed by the father of the minor child who is aggrieved by the order passed by the Family Court, Sirmaur, dated 17.09.2024, wherein interim visiting rights were given to meet the minor child, namely, Himansh, and it is noticed that on earlier occasion i.e. on 17.03.2023 the following terms and conditions were agreed by the parties:-

- i. That the petitioner will meet his minor child Himansh at hotel city Heart on every second and fourth Sunday of the month between 12.00 PM to 01.00 PM ;
- ii. that during the meeting time of the petitioner with master Himansh neither party nor their relatives will interfere or create an ugly atmosphere during the meeting hours ;
- iii. that in case of any eventuality regarding the

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes

sickness of the master Himansh, then the respondent will inform the petitioner in advance about such eventuality, which prevents the minor from meeting the petitioner.

2. The child is stated to be four years old at that point of time and vide order dated 17.09.2024, the first condition was modified and it was ordered that the father will meet his minor child Himansh on every second and fourth Sunday of the month between 12.00 PM to 04.00 PM, while denying the grand-father to meet the child, due to his earlier conduct. Condition was also put that no eatables would be provided to the child by the father or the mother during the meetings.

3. It is not disputed that against the order dated 17.09.2024 the wife had approached this Court by filing FAO (FC) No. 52 of 2024, which was decided on 02.01.2025, by a co-ordinate Bench and the appeal was disposed of by giving liberty to approach the Family Court again. In such circumstances we are of the considered opinion that same principle would also apply to the father of the child/appellant.

4. Counsel for the respondent has now informed us that even the main case was dismissed in default on 26.04.2025, and thereafter, an application for restoration of main case was dismissed on 02.08.2025, and now another application has been filed on 06.08.2025 for restoration of the first application for restoration, and

the case is now fixed for leading evidence on the issues which were framed on 15.12.2025. Necessary zimni orders have been produced before us.

5. Keeping in view the fact that the main case itself has been dismissed and is apparently for the custody of the child, keeping in view the provisions of Section 19(4) of the Family Courts Act, 1984, we on our own motion have examined the records of the case, as to the correctness, legalities and the proprieties of the orders being passed by the Family Court, since apparently the petition has also been dismissed in default. Section 19(4) of the Family Courts Act, 1984, reads as under :-

“19(4) The High Court may, of its own motion or otherwise, call for and examine the record of any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) for the purpose of satisfying itself as to the correctness, legality or propriety of the order, not being an interlocutory order, and, as to the regularity of such proceeding.”

6. We are of the considered view that the manner in which the Family Court is proceedings is not justified in the facts and circumstances of the case, as it is settled principle that the Family Court has to be sensitive to both the parents, and also keeping in mind the welfare of the child, who is not to be treated as chattel. It is thus apparent that the dismissal in default on the first occasion on

26.04.2025, was on account of the fact that the counsel had not put in appearance when the application for modification of the order had been filed. The only impediment now as pointed out is that the proceedings itself have been dismissed in default and as noticed by us the orders would not be legally sustainable, since there was non appearance of the counsel on 26.04.2025.

7. It is the least that was expected from the Family Court that the matter should have been adjourned for another date to await the presence of the counsel for the parties and before proceeding in such a hasty manner and costs could have been imposed. It is the settled principle that the rules of procedure are hand maids of justice and especially in the family matters the technicality should not come in the way, that on account of the non appearance of the counsel, the petition itself would be dismissed on the first day itself. It is also to be noticed that apparently another application was filed for the restoration which is stated to have been filed on 19.07.2025 and on 02.08.2025 the said application had met with the same fate, without even adjourning the application, leading to the filing of the second application in which notice was issued and reply having not been filed, conveniently by the wife on five occasions after the counsel had though put in appearance on 18.08.2025 and thus issues were then

framed on 15.12.2025. The framing of such issues and leading of evidence for restoring the application and the main proceedings would be an impediment towards the father to even get interim visiting rights and it would be travesty of justice if the application for restoration is to be elongated and is to be decided after three years and that the father being denied even the visiting rights for all these years, which is least expected from the Family Court.

8. Accordingly, while exercising our powers under Section 19(4) of the Family Courts Act, 1984, we set aside the orders dated 26.04.2025 and 02.08.2025 and also order dated 15.12.2025 i.e. framing of issues and direct the restoration of the main proceedings and of applications. It is accordingly open to both the parties to file appropriate application for the modification in the main order dated 17.09.2024. The parties shall put in appearance before the Family Court on 05.01.2025, when the matter is stated to be posted. Needless to say that the applications filed will be decided before the closing of the winter vacation. Registry is directed to send back the record of Court below forthwith.

(G.S. Sandhawalia)
Chief Justice

30th December, 2025
(Anurag)

(Jiya Lal Bhardwaj)
Judge