

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.4100 of 2014 (O&M)

Date of decision: 07.08.2015

Mrs. Neeraja Chawla

.... Petitioner

versus

Divas Chawla

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Tushar Sharma, Advocate,
for the petitioner.

None for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ?No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

1. The mother of a child is aggrieved at the order passed by the Family Court directing the wife to make the child available for the father's visitation during the vacation time also, apart from the days when the father by the terms of the arrangement has been allowed the benefit of custody in two spells of 10 days each. The father of the child has claimed that apart from these two spells, any other Sunday coming during the holidays will also be a day when he will exercise the right of visitation. The court allowed for such an interpretation of the order and the matter is before the court to complain that it was not the way it was contemplated by parties.

2. The reading of the order and the arrangement which at that time entered into surely admits of an ambiguity of one party believing that the right of visitation will be unavailable during the vacation other than the 20 days custody in two spells of 10 days each, while yet another party contending that such a right will be available independently of the 20 days. The court had accepted an interpretation which makes possible for the father to seek the visitation right for every Sunday even apart from 20 days custody during vacation.

3. The vacation periods of the years 2014 and 2015 have come and gone and an order that will be passed will have a meaning only for 2016 onwards during the summer vacation. Any order relating to the custody is never final. No issue of *res judicata* will ever operate against a party and it will be open for a party to apply for modification and the court will consider it in the interest and welfare of the child of what is appropriate. The mother of the child is present in person and I have explained to her that the minimal adjustment relating to rights of visitation must be respected for the emotional upbringing and comfort of the child and she responds to the situation positively but her concern has been that if there were occasions when she will take the child away during the vacation apart from 20 days period which is mutually agreed upon and there is an intervening Sunday, she will be fettered in exercise of such a

right. I will modify the order to make it possible for the wife to inform any other alternative day which will be convenient and such an information must be sent through an email to his known email ID and also a hard copy of such communication to his regular address so that the alternative day is mutually agreed upon. I will allow for the rights of visitation therefore also for remaining Sundays apart from 20 days custody but it will be flexible enough for a party to readjust to any other date or day so that the total number of days for visitation for every week apart from 20 days is at all times respected.

4. The petitioner has also a grievance that the court has passed these orders ex parte without service of notice. The court has recorded that the premises had been found locked. The explanation is that she is working and cannot be expected to keep the house open at all times. It is fair enough for her that she works to fend for herself and to support a child and the court will ensure that there is a proper proof of service of notice actually either through email or if the petitioner is not available, the notice must be at least served on the mother who will sign as a representative for the daughter.

5. In the light of modification that I have made, the husband will not resort to any police intervention and the observations that he will resort to police to take custody is ordered to be deleted. Even apart from the holiday time, if there is any other Sunday which happens to be a some special occasion like birthdays

of friends where the wife (mother of the child) wants to take the child out, if any flexibility is needed, the mother of the child will communicate to the father of the child at least 2 weeks in advance for such modification.

6. The order stands modified and the revision petition is dismissed.

(K.KANNAN)
JUDGE

07.08.2015
sanjeev