

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No.114 of 2019**

- Praveen Kalmegh, Petitioner In Person S/o Gyandev Kalmegh Aged About 41 Years R/o Quarter No. 2-A, Sadak 08, Sector -1, Thana Bhilai, District Durg Chhattisgarh., District : Durg, Chhattisgarh

---- Appellant**Versus**

1. Krishna @ Vedant Kalmegh S/o Praveen Kalmegh Aged About 8 Years Represented No. 1, Through Minor Mother Vaishali Kalmegh R/o Makan No. 843, Ward No. 43, Adarsh Nagar, Borsi Road Tahsil And District Durg Chhattisgarh., District : Durg, Chhattisgarh
2. Smt. Vaishali Kalmegh W/o Praveen Kalmegh Aged About 35 Years R/o Makan No. 843, Ward No. 43, Adarsh Nagar, Borsi Road Tahsil And District Durg Chhattisgarh., District : Durg, Chhattisgarh

---- Respondents

For Appellant	:	Appellant in person
For Respondents	:	Shri Achut Tiwari, Advocate

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board**Per Manindra Mohan Shrivastava, J.****18/11/2019**

With the consent of learned counsel for the parties, the matter is heard finally.

1. This appeal is directed against the impugned judgment and decree dated 18-02-2019 passed by the Family Court, Durg in Civil MJC No.68/14, by which, appellant's application for grant of custody of Minor Child-Krishna has been rejected.
2. Appellant, father of Minor Child-Krishna, moved an application for grant of custody of the child on the pleadings, inter alia, that from the wedlock of the

appellant and the respondent-Vaishali, Minor Child-Krishna was born in the year 2007. It is pleaded that because of dispute between the husband and wife, for which, respondent-wife is solely responsible, they are residing separately. Allegations were made against the respondent-wife that she is not properly maintaining the child and further that the atmosphere, in which, the child is being grown, is not conducive for his proper development. According to the appellant, he is posted and working as Senior Technician at Bhilai Steel Plant and earning handsomely and he would be in a better position to provide necessary financial help for education and other needs of his son-Krishna as against various disabilities, which the respondent-wife is suffering from, which is adversely affecting the growth of the child.

3. Averments made in the plaint were disputed and denied by the respondent-wife by stating that she is providing all necessary care to the child as expected from the parents. She stated that her son is getting education in a school and all his needs are being fully taken care of.

4. After allowing the parties to lead oral as well as documentary evidence, the learned Family Court came to the conclusion that welfare of the child rests in allowing him to remain in the custody of his mother, with whom, he has been residing ever since from childhood till date. It is this order which is under challenge in this appeal.

5. Appellant, who appears in person, argued that the Court below has rejected the application without due and proper appreciation of oral as well as documentary evidence led by the appellant to establish that the welfare of the child would be better served, if the child is allowed to be given in the custody of his father, who is natural guardian also. According to the appellant, he is financially more sound as compared to the respondent-wife, as the appellant is posted at Bhilai Steel Plant. Further, the appellant has got residence and also

having various medical facilities, which would be available to his son, in the event, he is residing with the appellant. He has also contended that the appellant is residing in a joint family system along with number of family members, as a result thereof, his son would get familiar and good atmosphere as compared to the lonely state of affairs, where he resides along with his wife, where there are no other family members. According to him, the respondent-wife is not financially sound and at times, she is exhibiting unusual and arrogant behaviour and inference of she being mentally unsound may be drawn. Therefore, viewed from all the angles, welfare of the child would be better served, if the custody is given to the appellant.

6. On the other hand, learned counsel for the respondents would argue that in order to come to the conclusion that welfare of the child would be served in allowing him to remain in the custody of his mother, the Court below has taken into consideration that right from the date of birth of child, he has been continuously residing along with his mother only. He would also submit that the specific evidence has been made that all care and caution for development of the child is being taken and he has been admitted in the school and he is also doing well. The allegations made against the mother have not been able to travel beyond the level of allegations and no clinching evidence has been led to prove that the mother is not mentally fit to take onerous responsibility of maintaining her own child.

7. We have heard appellant in person and learned counsel for the respondents and perused the records.

8. Earlier, in order to ascertain the wishes of child-Krishna, we had directed the parties to produce the child in the Court. In chamber, we interacted with the minor Child-Krishna and recorded observation in order sheet dated 22-10-2019, as below:-

“Having interacted with the minor, we could gather that presently, the minor is inclined to reside with his mother, though he stated that he went for outing along with his father on couple of occasions.

Having specifically enquired whether he is willing to reside with his father for a short period, the minor, at present, does not seems to be willing to take that option.”

The appellant has proved that he is posted and working as Senior Technician at Bhilai Steel Plant and looking to his family background, it is found that the appellant is financially sound and his family atmosphere appears to be conducive for development of the minor Child-Krishna.

9. On the other hand, respondent No.2-mother of minor Child-Krishna, herself has entered the witness box. She has stated that the child is being taken care of and he has been admitted in the school. Evidence has also come, which has not been controverted that the respondent-wife is working as Assistant Manager in the Insurance Company. This has been clearly stated by the respondent No.2.

Though, the appellant has made certain allegations against his wife including that she is suffering from mental disorder, but, there is no clinching evidence to come to the conclusion that the respondent-wife suffers from disability of any kind.

10. One of the main compelling reason as to why the learned Court below allowed minor child-Krishna to remain in custody of his mother that he is residing along with his mother right from his date of birth. It thus appears that child-Krishna, since last 12 years, is residing with his mother and living with her. Naturally, a child is having love and affection for his mother and he is more comfortable with her. This is what has been observed by us while interacting with the child.

11. On comparative assessment of the evidence led by both the parties, we do not find that there is any strong overriding consideration or circumstance

warranting custody to be given to the father. The minor child is residing with his mother, since the date of his birth. Therefore, we do not find any good ground to interfere with the impugned order passed by the learned Court below, allowing the minor child to remain in the custody of his mother and rejecting appellant's application for grant of custody of child.

12. We have also noticed that the Court below has granted visitation rights to the appellant in the manner that every Sunday, the appellant is entitled to have the company of the child from 9 AM till 5 PM in the evening and he will also be entitled to take the child for outing, which shall not be disturbed by the wife.

13. It has also been brought to the notice of this Court and contended by the appellant before us that despite there being an order that the appellant is entitled to visitation right to child, quite often, the respondent-wife is creating impediment, due to which, he is required to approach the Court below time and again.

Even though, we are not inclined to interfere with the order impugned, but, we make it clear that the respondent-wife is duty bound to respect the order of the Court with regard to visitation rights and allow the appellant to regularly meet his minor child-Krishna, as has been directed by the Court below. The respondent-wife must understand that for complete development and welfare of the child, love, care, affection and guidance of both the parents is necessary and the dispute between the husband and wife should not in any manner be allowed to spoil the childhood of child and he should continuously get the affection, guidelines and moral support from the Father as well, which cannot happen, unless the father is allowed to effectively exercise his right of visitation with the minor child-Krishna. On the face of allegation made by the appellant against the respondent-wife that despite order of the Court, she is creating hindrance in visitation rights of the appellant, the Family Court, on such

application being filed, shall draw strict and appropriate proceedings in accordance with law. Even though, at this stage, we are not inclined to interfere with the order passed by the Court below, taking into consideration overall circumstances of the case that the appellant is the natural guardian, he would be at liberty to revive his application for custody of the child, after two years.

14. With the aforesaid observations/directions, this appeal stands dismissed. Let appellate decree be drawn accordingly. Parties to bear their respective costs.

SD/-
(Manindra Mohan Shrivastava)
Judge

SD/-
(Vimla Singh Kapoor_)
Judge