

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****FA(MAT) No. 3 of 2019**

- Sujit Dey S/o B. N. Dey Aged About 45 Years R/o Upadhaya Nagar, Mahesh Colony, Naya Talab, Gudiyaari Raipur Tehsil And District- Raipur, Chhattisgarh

**---- Appellant****Versus**

1. Vijyesh Dey S/o Sujit Dey Aged About 11 Years R/o D-81 Tagore Nagar Raipur Tehsil And District- Raipur, Chhattisgarh
2. Smt. Anushri Dey (Valima) W/o Sujit Dey C/o Prakash Chandra Bagri, R/o D-81 Tagore Nagar Raipur Tehsil And District- Raipur, Chhattisgarh

**--- Respondents**


---

|                |   |                            |
|----------------|---|----------------------------|
| For Appellant  | : | Mr. J. K. Gupta, Advocate. |
| For Respondent | : | Mr. Apurv Goyal, Advocate. |

---

**DB : Hon'ble Shri Justice Manindra Mohan Shrivastava****Hon'ble Smt. Justice Vimla Singh Kapoor****Order On Board****22/10/2019**

1. With the consent of the parties, this appeal is heard finally in motion stage. The appellant-father has called in question legality and validity of order dated 18.02.2019, by which, his application for grant of custody of child has been rejected.
2. Admittedly appellant-Sujit Dey was married to respondent No.2 Smt. Anushri Dey on 27.11.2003 and they are blessed with the son/respondent No.1 Vijyesh Dey, aged about 11 years. Application for custody of child was made by appellant that he is the natural guardian, his wife is not properly taking care of the son and he is not being provided proper education, he is being kept under threat and his continuance with his mother will adversely affect his growth.
3. The allegations were resisted and it was stated that the respondent wife belongs to an affluent family and proper education is being provided to the

child. It was also stated that the welfare of the child rest in allowing the child to continue to reside with his mother.

4. Learned Family Court rejected the application holding that the evidence on record shows that respondent wife is very well maintaining the child and also providing proper education. The Court below have also taken into consideration that the appellant has failed to lead any clinching evidence that the child is not getting proper care and education.
5. Learned counsel for the appellant argued that the appellant is the father and therefore natural guardian of son Vijyesh Dey. It is submitted that other things being equal, the preferential right of the father to get the custody of the child need to be respected. It is also argued that the appellant is capable of taking care of his son by providing proper education in the same manner as was provided to him by his mother.
6. Learned counsel for the respondent supporting the order would argue that the Court below has taken into consideration the entire material on record including specific evidence that the mother of the child belongs to an affluent family residing in huge house and number of facilities are available and further that the appellant has admitted in his cross-examination that his son is being provided proper education in a good school.
7. Having gone through the order passed by the Court below, this Court did not find any good ground to interfere with the order. Learned Court below after scrutiny of evidence on record, particularly the evidence of the appellant and respondent, has come to the conclusion that the appellant in his cross examination has admitted that his son is getting proper education while residing with his mother, he could not lead any specific evidence, that physical and mental health of the child or his growth is being adversely affected while remaining in custody of his mother. The child is also willing to reside with his mother. This Court also finds that a decree of divorce has been granted in favour of respondent wife and against the appellant on the ground of cruelty recording a finding that the appellant is maintaining illicit relation, therefore, no interference is called for.
8. However, learned counsel for the appellant is right in submitting that

even if custody is not granted to him, he being father of the child, is entitled to visitation rights. To that extent, learned counsel for the respondent does not raise any objection and submit that proper order may be passed in that regard.

9. Taking into consideration the submission and over all circumstances, age of the child and that both father and mother are residing in the same city, it is ordered that the appellant will have visitation rights and he may visit and meet his son Vijyesh Dey every Sunday from 5:00pm to 8:00pm in the evening. With the consent of the mother, the appellant may also take the child for outing, excursion or entertainment. With the aforesaid, the impugned order is modified only to the extent of allowing visitation rights to the appellant. The finding with regard to custody of the child is not interfered with. The appeal is accordingly partly allowed in the manner and to the extent stated hereinabove.

**Sd/-**  
**(Manindra Mohan Shrivastava)**  
**Judge**

**Sd/-**  
**(Vimla Singh Kapoor)**  
**Judge**