

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 14th December, 2018
Judgment delivered on: 08th January, 2019

+ CRI. REV. PET. 76/2018

HIMANSHU BANSAL

..... Petitioner

versus

RICHA PODDAR

....Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Shakti Narayanan, Ms. Abhilasha and Ms. Shushila,
Advs.

For the Respondents: Mr. D.K. Sharma and Mr. Sumit Sapra, Advs. for
respondent

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

CRI. REV. PET. 76/2018 & CRL.M.A.1555/2018 (stay)

1. Petitioner seeks quashing of order dated 16.10.2017 of the Mahila Court and order dated 18.01.2018 of the Appellate Court, whereby, the appeal of the petitioner, impugning order dated 16.10.2017 of the Mahila Court, was dismissed and the petitioner/father was directed to handover the interim custody of the minor daughter to the respondent/mother.

2. Respondent/mother had filed a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 and *inter alia* asked for custody of the minor child aged about 2 years.

3. Both the Mahila Court as well as the Appellate Court noticing the gender as also the age of the child were of the view that there is nothing on record to show that it would be detrimental to the interest of the minor child if the custody of the minor child was given to the mother. Both the Mahila Court as well as the Appellate Court were of the view that the issue of the permanent custody could be decided by an appropriate Court/Guardianship Court and the Mahila Court could only decide on the issue of temporary custody.

4. Petitioner has impugned the orders of the Mahila Court as well as the Appellate Court primarily on the ground that it would not be in the interest of the child if the custody is granted to the mother.

5. Petitioner/father has contended that the Respondent/mother had left the matrimonial house without any reasonable cause and has deserted both her husband and her child and, as such, was disentitled to custody of the child. Further, it is contended that the mother does not have any independent source of income and, as such, would not be in a position to take care of the child.

6. Further, it is contended that the atmosphere at the residence of the mother is not cordial as the mother of the respondent has filed several cases against her son.

7. Per contra, learned counsel for the respondent submits that the petitioner/father is not residing with the minor child and the minor child lives in Hisar with the grandmother whereas the petitioner father works in Kota.

8. Further, it is contended that the respondent mother is living with her brother at his house and there is no material to show that the atmosphere at the house of the brother where the respondent is residing is not cordial.

9. Before adverting to the legal rights of the parties, some brief background of the factual matrix would be necessary to be referred to.

10. Parties were married according to Hindu Rights and Ceremonies on 27.10.2014. A female child was born on 17.11.2015. The allegation of the petitioner is that the respondent deserted the petitioner and the child and left her matrimonial home on 28.10.2016. The contention of the respondent wife is that she did not voluntarily leave the house but was forced to leave the house and was deserted by the petitioner.

11. Subject petition under Section 12 of the Protection of Women from Domestic Violence Act was filed on 31.01.2017. Application seeking custody of the minor daughter was filed on 15.07.2017. By the impugned order dated 16.10.2017, the Mahila Court was of the view that since the female child was less than 2 years of age and needs care of the mother, interim custody was granted to the respondent mother. This order has been upheld by the Appellate Court.

12. On 12.04.2018, under orders from this Court, the child was produced in Court. Since the child had not seen her mother for nearly 1½ years and was aged only about 2½ years, efforts were made for the child to meet her mother, however, the child was not comfortable with her mother. This Court directed that a meeting be organized in the Delhi High Court Mediation & Conciliation Centre between the mother and the child in the presence of a Child Psychologist/Counsellor.

13. Thereafter, report of the Child Psychologist/Counsellor Ms. Swati Shah dated 04.05.2018 was received. Subsequently, further meetings were also directed between the mother and the child. Reports dated 04.05.2018, 02.11.2018 ad 27.11.2018 of the Counsellor have been received. Same have been perused.

14. Perusal of the reports show that substantial progress was made in the relationship between the mother and the child from the first

meeting till the last meeting held on 27.11.2018. The Counsellor's report dated 02.11.2018 and 27.11.2018 show that the daughter was completely relaxed in the company of her mother and her aunt (mother's sister) and when inquired by the Counsellor, she had shown positive interaction with her mother. The Counsellor in her reports has stated that the daughter was affirmative in the suggestion about living with her mother.

15. The Supreme Court has time and again reiterated that while considering the issue of the custody, welfare of the child is of paramount importance and is the sole consideration. Whenever a question arises before a court pertaining to the custody of a minor child, the matter is to be decided not on considerations of the legal rights of parties but on the sole and predominant criterion of what would best serve the interest and welfare of the minor. Rights and conduct of the parties, i.e., the parents, is immaterial. What is to be considered is the welfare of the child.¹

16. In the facts of the present case, it may be seen that the child is residing in Hisar, Haryana and also goes to a play school in Hisar and the father is employed in Kota, Rajasthan which is at a distance of about 600 kilometers. Father claims that he travels to Hisar regularly for being with the child.

¹ *Elizabeth Dinshaw vs Arvand M. Dinshaw* (1987) 1 SCC 42; *Neel Ratan Kundu vs. Abhijit Kundu*: (2008) 9 SCC 413

17. At Hisar the child is living with her grandmother, who is aged about 65-66 years and the brother of the father, who is aged 42 years and is a divorcee. The female child today is aged about 3 years. The mother of the child, i.e, the respondent is living with her brother, who is married and she also has a sister. The sister of the respondent had always accompanied the respondent to the Court whenever the matter was listed. Even as per the Counsellor's report, the sister of the respondent had accompanied the respondent in the meetings with the child and the child was very comfortable in the presence of the respondent as well as the sister of the respondent and had no hesitation in being alone in their company.

18. Keeping in view of the gender and age of the minor girl and also the reports of the Counsellor, which showed that the child was comfortable in the company of the mother and had also shown inclination of starting to live with the mother, I am of the view that there is no infirmity in the view taken by the Mahila Court as also by the Appellate Court in granting interim custody to the respondent mother.

19. Keeping in view of the totality of facts and circumstances, as noticed above, I am of the view that it would be in the welfare of the child, at this stage, if the interim custody is given to the mother.

20. In view of the above, I find no merit in the petition. The petition is, accordingly, dismissed. There shall be no order as to costs.

21. It is, however, clarified that the observations are *prima facie* in nature and for the purposes of interim custody and would remain in force till the issue of permanent custody is decided by the appropriate Family Court/Guardianship Court. It is clarified that the Family Court/Guardianship Court would be at liberty to decide the said issue of permanent custody without being influenced by anything stated herein

22. Order *Dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

JANUARY 08, 2019
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