

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA(MAT) No. 36 of 2020**

- Bilal Khan S/o Shri Aziz Khan Aged About 34 Years Caste - Musalman, Resident Of - Ward No. 24, Kapur Singh Dafayee, Chhota Bazar, Chirmiri, P.S. And Tahsil - Chirmiri, District - Korea Chhattisgarh, District : Koriya (Baikunthpur), Chhattisgarh

---- Appellant**Versus**

- Shama Parvin W/o Shri Bilal Khan Aged About 33 Years Resident Of - Presently Resided At - Ward No. 19, Teena Dafayee, Haldibadi, P.S. Chirmiri, Tahsil - Chirmiri, District - Korea Chhattisgarh, District : Koriya (Baikunthpur), Chhattisgarh

--- Respondent

For Appellant : Mr. Surendra Kumar Dewangan, Advocate.

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Vimla Singh Kapoor****Order On Board****18/02/2020**

1. Heard on application for condonation of delay in filing appeal.
2. Upon due consideration, the application is allowed. Delay is condoned.
3. Also heard on admission.
4. Learned counsel for the appellant submits that the learned Court below has rejected the application for custody of two minor children, daughter aged 12 years and son aged 10 years, without giving due consideration to the aspect that the appellant is financially better placed as compared to the respondent-mother.
5. Even though it is held that the appellant is financially more sound as compared to his wife/the mother of the minor children, relying upon the decision of Bombay High Court reported in the case of **Mohammad Shafi**

versus Shamin Banoo, AIR 1979 Bombay 156, learned Court below has taken into consideration the paramount consideration of welfare of two minor children in deciding the application. The children were also interacted and they have expressed to continue with their mother. Girl is aged 12 years and son is only 10 years of age, therefore, in these circumstances, we do not consider present to be good ground to interfere with the order passed by the learned Family Court. However, even though the appellant is not entitled to custody of the children, definitely he is entitled to visit the children.

6. As far as visitation right is concerned, our order dated 10.02.2020 passed in FA(MAT) No.46 of 2019 (Shama Parveen Versus Bilal Khan) shall govern the exercise of right of visitation.
7. The appellant would be at liberty to revive application for custody of the children after two years.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge