

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MCC No. 330 of 2020

- Abhijit Kumar Singh S/o Shri Kalika Prasad Singh Aged About 39 Years R/o Flate No. 801, B. T. 09, Omex Hights Sector -86, Faridabad, District Faridabad Haryana, District : Faridabad, Haryana

---- appellant

Versus

- Smt. Pooja Singh W/o Shri Ashish Sharma Aged About 36 Years R/o Flat No. 108, Harsh Hevens, Ashok Nagar, Sipat Road, Bilaspur, Police Station Sarkanda, District Bilaspur Chhattisgarh

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- Shri Abhijit Kumar Singh, appellant in person.
 - Shri Vivek Kumar Agrawal, Advocate for the respondent.
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D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board

Per Manindra Mohan Shrivastava, J.

16.08.2021

Heard.

2. The appellant in person has appeared through video conferencing seeking modification of the decree passed by this Court earlier on 10.12.2019 in appeal FAM 224/2019.

3. The appellant who is the father of the minor daughter Kumari Shambhavi has argued that earlier when the decree of the Family Court was modified by this Court on 10.12.2019, he was not heard.

4. He would argue that after divorce between the parties, the appellant being the father is entitled to proper and effective visitation rights to meet his daughter which purpose may not be fully served with the limited time and days as ordered passed by this Court earlier on 10.12.2019. He would submit that the non-appellant wife has remarried and appellant's daughter is now residing in the family atmosphere with step father. Therefore, in these

circumstances, more so when the appellant is residing in Delhi, he may be allowed effective visitation rights by an appropriate arrangement of his daughter brought to Delhi in frequent intervals so that he may enjoy his right of visitation with his daughter. According to him, in last about one and a half years, twice he made an attempt to meet his daughter at Bilaspur but the meeting was not in a normal and healthy atmosphere but there was lot of tension and the time was also very short. He further submits that he is in a position to spend two days at Bilaspur. In any weekend, he may be allowed to take the child with him for about two days on any Saturday and Sunday as may be directed by this Court.

5. On the other hand, learned counsel for the respondent would submit that the appellant participated in the divorce proceedings and had no grievance with the decree passed by the Family Court but it was only non-appellant wife who filed appeal seeking modification of the decree to the extent of specific direction with regard to the visitation rights granted to appellant on which, order was passed on 10.12.2019. He would further submit that even though notice were issued and the service of notice was effected through paper publication, the appellant chose not to appear. Lastly, he would submit that the daughter Ku. Shambhavi aged about 11 years is residing at Bilaspur and non-appellant has no objection to appellant meeting the daughter on the days and during the hours as per the directions/decrees dated 10.12.2019 but if daughter is compelled to visit Delhi during Covid time, it would adversely affect her safety also, apart from, unwarranted and uncalled for inconvenience to the daughter and it may also hamper her studies.

6. We have heard both the parties and perused the records before us.

7. At the first place when the Family Court passed decree of divorce, visitation right was granted to the appellant taking into consideration that the daughter was in the custody of wife. The appellant did not challenge the

decree on any ground whatsoever, but remained content with the same. In Para 14 of the judgment and decree passed by the learned Family Court on 15.11.2018, it has been clearly recorded that there is no dispute between the parties with regard to the custody of daughter Ku. Shambhavi and that their statements are to the effect that the daughter shall continue to remain in the custody of the mother. This was never challenged by the appellant by filing any appeal before this Court.

8. It was only the divorced wife who filed appeal seeking modification of the judgment and decree to the extent of specific directions with regard to the visitation rights granted to the appellant – the father of the daughter Ku. Shambhavi.

9. The application for modification of judgment and decree dated 10.12.2019 seeks modification that the appellant is not being allowed to meet his daughter, non-appellant wife has remarried, name of the parentage of the child is changed, he was not duly informed regarding the proceedings before this Court and the decree subsequently passed by this Court on 10.12.2019.

10. The Family Court while passing decree of divorce had granted visitation rights to the appellant without specifying the time or days on which the appellant could meet his daughter. It was not the appellant but non-appellant/wife who filed appeal for modification. The appellant was served through paper publication but he did not appear therefore, in those circumstances we passed a final order modifying the judgment decree to the extent of specific directions with regard to visitation rights granted to appellant by the Family Court and keeping in view, that the appellant being the father of the child is entitled to visitation rights. We fixed the time of meeting between 4 to 7 PM in the evening at the address given in the cause title of the judgment and decree dated 15.11.2018 on every second and fourth Sunday of the every month.

11. The prayer for modification that the daughter be brought to Delhi for two days cannot be allowed because this will involve movement of the daughter all the way from the Bilaspur to Delhi which is far away and apart for causing inconvenience is not only likely to hamper her studies but also expose the child to prevailing pandemic condition and may adversely affect her health also. The object of providing visitation rights could be very well achieved under the present arrangement where the appellant may come to Bilaspur on Sundays as directed earlier and meet his daughter without subjecting the daughter to inconvenience as stated herein above.

12. However, taking into consideration that appellant would be coming to meet his daughter from Delhi and as he is not resident of Bilaspur, we consider it appropriate to enlarge the time of meeting of the appellant with his daughter. We consider it appropriate if the time of meeting is modified from 4 to 7 PM to 1 to 7 PM in the evening at the address given in the cause title or at some other place as may be agreed to between the appellant and non-appellant. As agreed to between the parties, the appellant shall inform to non-appellant at least two days before regarding his visit.

13. However, the prayer of the appellant to allow temporary custody of the child cannot be allowed in these proceedings. Without saying anything more, we leave the appellant to workout such other remedies as may be available to him under the law, if at all appellant is willing to take the custody of the child.

14. The application is accordingly partly allowed and decree modified to the extent as above.

15. A decree be drawn accordingly.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge