

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR 2089 of 2018 (O&M)

Date of Decision: April 27, 2022

Ekta Nayyar

...Petitioner

Versus

Aseem Nayyar

... Respondent

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Abhilaksh Grover, Advocate
for the petitioner.

Mr. Veneet Sharma, Advocate
for the respondent.

FATEH DEEP SINGH, J. (Oral)

This is a civil revision by petitioner Ekta Nayyar wife of respondent Aseem Nayyar who through this invocation has tried to lay challenge to an order dated 20.06.2018 (Annexure P-10) passed by the Court of learned Civil Judge (Senior Division) Amritsar in a petition under Section 25 of the Guardians And Wards Act, 1890 (in short, '**the Act**').

The arguments of the two sides permeates and trickles down to undisputed fact that a marriage between Ekta Nayyar petitioner and Aseem Nayyar respondent took place on 14.10.2006, out of which, the couple was bestowed with a son namely Abhav stated to be born on 23.11.2009 and who at present happens to be aged 12 years and a student of class seven. As a consequence of the matrimonial disaccord that crept into the relations of the couple, the father Aseem Nayyar filed a petition under Section 25 of the Act seeking custody of the child and in between had also sought interim custody. It would not be out of place to mention here that the couple are hotly pursuing the litigation against each other and out of this imbroglio multifarious petitions have come about against different orders in the same very petition which have been filed in different courts at different stages. The present petition is one of them.

It is not displaced that a Co-ordinate Bench of this Court vide order dated 22.12.2017 in its right earnest had

sought to make feasible and practical arrangements for the interim custody of the child for various periods of time during the year keeping in view the betterment of the child and ensuring that his upbringing does not suffers in any manner.

Though during the course of arguments before this Court much stress has sought to be laid to orders dated 22.12.2017, 28.03.2018 and 11.07.2018 at various stages.

Thus, what one can decipher is that the couple though appears to be educated with the decent background but their fighting appears to have come to a stage where they do not miss a opportunity to harass and humiliate the other spouse and thus to the mind of this Court to fulfil this sadistic and egoistic pleasure deriving out of tormenting other side are totally inoblivion to the magnitude of harm that they are trying to cause to the little child. It is there in the arguments and the records that the child is being made to appear in the Courts and which apparently would have its own adverse impact on the child's growth and mental well being and these traumatic experiences

of the fight between the couple will leave tell-tale-signs, which would be permanent scar on the child and thus was one of the reasons, this Court has desisted in interacting with the child else it might bring about more harm to the child than to be of any good to him.

The Hon'ble Supreme Court in **Vasudha Sethi and others** Vs. **Kiran V. Bhaskar and another** 2022 SCC online SC 43 had gone into length as to the paramount consideration is the welfare of the child and the manner how the custody of the child needs to be dealt with, it was observed by their Lordships as follows:-

Each case has to be decided on its own facts and circumstances. Though no hard and fast rule can be laid down, in the cases of Kanika (supra) and Nithya (supra), this Court has laid down the parameters for exercise of the power to issue a writ of habeas corpus under [Article 226](#) of the Constitution of India dealing with cases of minors

brought to India from the country of their native.

This Court has reiterated that the paramount consideration is the welfare of the minor child and the rights of the parties litigating over the custody issue are irrelevant. After laying down the principles, in the case of Nithya (supra), this Court has clarified that the decision of the Court in each case must depend on the totality of facts and circumstances of the case brought before it.

The factual aspects are required to be tested on the touchstone of the principle of welfare of the minor child. In the cases of Lahiri (supra) and Yashita (supra), the Benches of this Court consisting of two Judges have not made a departure from the law laid down in the decisions of larger Benches of this Court in the cases of Nithya (supra) and Kanika (supra). The Benches have applied the law laid down by the larger

Bench to the facts of the cases before them. It is not necessary for us to discuss in detail the facts of the aforesaid cases. By its very nature, in a custody case, the facts cannot be similar. What is in the welfare of the child depends on several factors. A custody dispute involves human issues which are always complex and complicated. There can never be a straight jacket formula to decide the issue of custody of a minor child as what is in the paramount interest of a minor is always a question of fact. But the parameters for exercise of jurisdiction as laid down in the cases of Nithya (supra) and Kanika (supra) will have to be followed.

Since both the parents luckily are residents of the same city not far off their residences, not far off from each other certainly can be a comprehensive factor to ensure that a child can be provided with healthy atmosphere by both the parents

for his normal growth provided the couple does not indulges in this war of one upmanship.

The learned Court of Civil Judge (Senior Division) Amritsar in the order under assail dated 20.03.2018 (Annexure P-10) had passed the following directions:-

After hearing the submission of the learned counsel for both the parties and going through the court file, this court is of the opinion that vide order dated 14.12.2017 the Court while deciding the application for handing over the temporary custody of minor during the present case allow the petitioner to take the minor on every 2nd and 4th Saturday of each month from 07.00 P.M. after the school hours and hand-over the minor to respondent at 03. P.M. on Sunday evening. Alongwith the visitation right on Parents Teacher meet, the petitioner was permitted to take the minor for first five days of school holidays during summer vacations and first five days

of holidays during winter vacations also. The petitioner was also permitted to take the minor child on the birthday of the minor as well as on the birthday of the petitioner from 5PM to 8PM on concerned days. The petitioner was also permitted to take the temporary custody of the minor on festivals like Holi, Dussehra, Diwali and Raksha Bandhan from 10 A.M. to 5 P.M. on concerned days. A specific direction was given to the respondent including her parents to obey the visiting rights of petitioner. Similarly the petitioner was directed not to commit any default in the period of stay of minor with him. No doubt the respondent approached the Hon'ble High Court and vide its order dated 22.12.2017, above said order dated 14.12.2017 was modified to the extent that the petitioner is allowed to take the custody of minor child after school hours on Saturday till 9PM and from 10 AM to 7 PM on

Sunday in the 2nd and 4th week of the month.

Meaning thereby that the Ho'ble High modified the order to the extent regarding night stay of minor with the petitioner on 2nd and 4th week of the month.

However, High Court never declined the interim custody of the minor on the festivals as referred above. Even during the winter vacations, the custody of the child is allowed daily with the petitioner from 10 AM to 7 PM w.e.f. 27.12.2017 but no order regarding the custody of the minor during summer vacation is modified. Similarly the order dated 14.12.2017 stands regarding the entitlement of the petitioner to meet the teachers of the minor on parent teacher meet at least for half an hour.

Perusal of the order of the Hon'ble High Court further clarifies that the custody of the minor during festivals is also neither declined nor modified. In these circumstances, the petitioner is well entitled to

take the temporary custody of the minor as per the order date 14.12.2017 modified on 22.12.2017 by the Hon'ble High Court. Even then, the present application dated 14.02.2018 in hand has become infructuous as the relevant dates have already been passed. However, the contents of the present application this Court has presumed that at the time of visitation of petitioner some mis-happening took place between the parties. Although without any prima-facie evidence it cannot be concluded that which party is at fault, however, to keep the peace and harmony, this court finds it justified to direct the SHO of the concerned Police Station to depute some police officials with the petitioner while he goes for taking and returning the interim custody of the minor from the respondent. During the pendency of the present petition, the petitioner is directed to approach the concerned police official on the

relevant dates for the said purpose. It is further clarified that the examination of the minor are going to be concluded on 22.03.2018 and as per entitlement of the petitioner he is going to take the custody of minor on 4th Saturday and Sunday i.e. 24.03.2018 and 25.03.2018. However, considering the request of the petitioner that the matter is fixed for 24.03.2018 before the hon'ble High Court, therefore, he is unable to take the minor and thereafter there are vacation of the minor from 23.03.18 to 30.03.18 and birthday of petitioner is coming on 29.03.18 and therefore the petitioner is allowed to take the minor during 25.03.2018 to 29.03.2018 from 10 AM to 7 PM. The application is accordingly disposed off and the matter is adjourned for 11.04.2018 for further proceedings”.

Though this order pertains to period in the year 2017-2018, the same can be replicated for the period from the

date of this order till the disposal of the main petition under Section 25 of the Act. However, to ensure that deputing police official to check the rights that have come through these orders, it would be in the best interest of the parties of the two sides that such a duty be assigned to Sh. Sanjeev Kumar Menon, present District Welfare Officer of the City of Amritsar or his successor if any.

The Deputy Commissioner, Amritsar shall ensure that both the sides adhered to these directions in letter and spirit and does not allow any remiss. Though no prayer has come about, this Court feels it expedient that for the overall growth of the child, a child psychologist of repute would be appointed by the District Magistrate/Deputy Commissioner who would at fixed intervals as he might think proper get examined the child to ensure overall development physical as well as mental.

With these observations which are legally firm and are upheld, this Court disposes off the instant petition. Copy of the same be sent to the concerned Court as well as District

Magistrate and District Welfare Officer, Amritsar for compliance.

Before parting with, this Court deems it necessary to direct both mother and father of the child need to restrict their forays into multifarious litigation so that the same does not has it adverse affects on the upbringing of the child and to ensure that they behave in humane orderly manner when they are there in the presence of the child.

The Principal Medical College Amristar is directed to choose best of the child psychologist from this field and pass on the information to the Deputy Commissioner, Amristar, who would act thereon in the light of this order.

April 27, 2022

amit rana

(FATEH DEEP SINGH)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No