

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No.4385 of 2018

Date of decision: 4th May, 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. APS Sandhu, Advocate for the respondent.

FATEH DEEP SINGH, J.

As if dozens of petitions between the couple Ekta Nayyar petitioner wife and Aseem Nayyar respondent husband were not sufficient enough in spite of this Court having earlier decided their matter bearing CR No.2089 of 2018 while adjudicating on a decision passed in petition under Section 25 of the Guardians and Wards Act, 1890 (in short, 'the Act') over the custody and visitation rights in respect of the minor child of the couple; they have again had the audacity to come up in the instant revision whereby a challenge is sought to be laid to orders dated 22.12.2017 (Annexure P5); dated 22.05.2018 (Annexure P9) and order dated 10.07.2018 (Annexure P13) of the Court dealing with the petition under Section 25 of the Act. The operative part of order dated 22.12.2017 (Annexure P5) is reproduced below:-

*“... ... the impugned order in the interregnum can be
modified so as to allow the custody of the child Abhav with*

the respondent-father after school hours on Saturday till 09:00 p.m. and from 10:00 a.m. till 07:00 p.m. on Sunday in the second and fourth week of the month. Learned counsel further states that for the period of five days during the winter vacations, the custody of the child he allowed daily with the respondent-father from 10:00 a.m. to 07:00 p.m. w.e.f. 27.12.2017. Accordingly till further orders, the impugned order stands modified in the above terms.”

The relevant part of order dated 22.05.2018 (Annexure P9) reads as follows:-

“After hearing the rival contentions of both the parties and going through the case file, this Court is of the opinion that after considering all the facts and circumstances, the order dated 14.12.2017 was passed vide which first 5 days of school holidays during summer vacation were granted to the petitioner to take the minor child. During pendency of the proceedings nothing new comes out which suggests the Court to extent 5 days of summer vacation into 10 days. Although the respondent has also challenged the order dated 14.12.2017 before the Hon’ble High Court, however, Hon’ble High Court never stayed the order regarding giving the custody of the minor for first 5 days of school holidays during summer vacations to take the minor by the petitioner. In these circumstances, the application is disposed off that no time is extended for summer vacations. However, applicant/petitioner is permitted to take the minor child on 2nd of June, 2018 at about 10 A.M. from the house of respondent and drop him

back at the house of respondent on 7th of June, 2018 at about 10 A.M. i.e. during summer vacations.”

The concluding part of order dated 10.07.2018 (Annexure P13) reads thus:-

“5. This Court is of the considered opinion that the allegations and counter allegations raised by the parties are matter of evidence. The Court has already passed the order to handover the custody of the minor to the petitioner during summer vacations and that order has never been complied with by the respondent. The contention of the respondent that giving custody of the minor to the petitioner is not in the welfare of the child, is not liable to be accepted as depriving the minor from love and affection of both the parents is certainly not in the interest of the child. The contention of the respondent that minor is in terror due to the meeting with his father is also liable to be ignored as the Court has already observed that minor is equally love his father. Therefore, it is the fundamental right of the minor to get love and affection from both the parents. As per the custody guidelines, visitation and interim custody is for the primary benefit of the child and cannot be viewed as a privilege to be exercised at the whim of either parent. Certainly in the present case, overnight access at the home of non custodial parent need to be encouraged so that child has a close and continuing relationship and gets love and affection not only from parents but also the other family members like grand parents, cousins, uncles and aunties. This Court is of the view that the minor has a right to childhood of hopeful

existence and free from neglect. Mere submission of the respondent that handing over the custody to the petitioner is not for the welfare of the child is not suffice rather the minor needs consistent support system as also love, hope and encouragement. It would promote a healthy emotional development of minor and the custodian parent cannot be permitted to try to alienate the child from the non custodian parent as it would cause serious consequences in the later part of the minor's life. Accordingly, present application is disposed off and is allowed to the extent that respondent will handover the custody of the minor tomorrow itself at 10 A.M. i.e. 11.7.2018 before the Court to the petitioner during summer vacations till 16.7.2018 at 7 A.M. as although in the application it is mentioned that summer vacations are going to an end on 8.7.2018 however, during the course of arguments, it is intimated by the petitioner to the Court that summer vacations are going to an end on 16.7.2018 and this contention is never opposed by counsel for the respondent. Rest is matter of evidence.”

Upon hearing Mr. Abhilaksh Grover, Advocate for the petitioner; Mr. APS Sandhu, Advocate for the respondent and perusing the records of the case.

All these three orders are over the interim custody/visitation rights of the child and deal with the manner the child would be taken care of during the interim period.

The brief background is that marriage between Ekta Nayyar and Aseem Nayyar was solemnized on 14.10.2006 out of which a male

child Abhav was born to the couple on 23.11.2009 and who is the bone of contention between the couple in all these litigations. Consequent upon the matrimonial disaccord between the couple, the child who is a mere student of 2nd class has become the rolling stone in this imbroglio between the couple, who to satisfy their own sadistic pleasures and egos are trying to put the child to more discomfort and inconvenience and which was the primary reason this Court did not feel it appropriate to call the child to the Court to interact with it as he had, as is there on the records, over exposure to this litigations in the Court of law.

The law as to custody of a minor child has been well enunciated by the Apex Court in the case reported in **2022 SCC online SC 43 titled ‘Vasudha Sathi and others vs. Kiran V. Bhaskar and another’**, wherein the Court had held the welfare of the child to be of paramount consideration and which is to be tested on the touchstone of the principle of welfare of the minor child, and though no straitjacket formula could be laid down however the Courts have to act in the light of facts of each individual case on its own.

In order (Annexure P5), the crux of the orders was interim custody of the child/visitation rights and further in order (Annexure P9) again the consideration has been interim custody and visitation rights of the child during the period of summer vacations and the school holidays, and so in order (Annexure P13) which pertains to similar situation as to interim custody of the minor child and the guidelines of visitation rights

considering primary benefits of the child holding that it is not a privilege to be at the whims of each parent.

Since this Court in CR No.2089 of 2018 titled as 'Ekta Nayyar vs. Aseem Nayyar' had passed detailed judgment where too an order dated 20.03.2018 and 22.12.2017 (Annexures P10 and P15 respectively in the said matter) were adjudicated which were passed in the same very petition under Section 25 of the Act and which too deal with the interim custody and visitation rights of the minor child during various periods. In the light of the orders passed in civil revision detailed above, the present revision petition do not bring about any fruitful results and rather is rendered infructuous in the light of earlier orders of this Court as detailed above. Present revision petition in the light of the same does not sustain and stands dismissed.

(FATEH DEEP SINGH)
JUDGE

May 4, 2022

rps

Whether speaking/reasoned	Yes/No
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Whether reportable	Yes/No
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