

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

**WRIT PETITION NO.360 OF 2023
WITH
MISCELLANEOUS CIVIL APPLICATION NO.105 OF
2023
WITH
MISCELLANEOUS CIVIL APPLICATION NO.207 OF
2022
WITH
MISCELLANEOUS CIVIL APPLICATION NO.239 OF
2023
WITH
MISCELLANEOUS CIVIL APPLICATION NO.520
OF 2023**

Amey Dilip Sardessai, age: 32 yrs,
S/o Shri Dilip B. Sardessai,
married, service, r/o. Ribandar,
Panaji, Goa.

... Petitioner

Versus

Mrs Gayatri Amey Sardessai, age
31 yrs, d/o. Sanjay Shivram
Kamat, married, Doctor r/o
Guirim, Mapusa, Goa.

... Respondent.

**Mr Parag Rao, Advocate with Mr Ajay Menon and Ms
Sowmya Drago, Advocates for the Petitioner/Applicant.**

Ms Ashwini Agni, Advocate for the Respondent.

**WITH
WRIT PETITION NO.433 OF 2023
WITH
MISCELLANEOUS CIVIL APPLICATION NO.1626 OF 2022
(F)**

Mrs Gayatri Amey Sardessai, 30

years of age, d/o Sanjay
Shivram Kamat, r/o
H.No.580/1-5, "Kamaxi" Aradi,
Guirim, Bardez, Mapusa-Goa,
403507.

... Petitioner.

Versus

Mr Amey Dilip Sardessai, major of
age, s/o Shri Dilip B. Sardessai,
r/o H.No.2/136/A24, Flat
No.FA/405, Sinari Apartments,
Patto, Ribandar, Goa 403006.

... Respondent.

Ms Ashwini Agni, Advocate for the
Petitioner/Applicant.

**Mr Parag Rao, Advocate with Mr Ajay Menon and Ms
Sowmya Drago, Advocates for the Respondent.**

**CORAM:
DATED:**

**PRAKASH D. NAIK, J
9th NOVEMBER 2023**

JUDGMENT:

1. The Petitioner in Writ Petition No.360 of 2023 has challenged the impugned judgment and order dated 03.01.2022 passed by the learned District Judge-3 North Goa, Panaji in Miscellaneous Civil Application No.50/2021.

2. The petitioner and respondent registered their marriage on 15.05.2015 and solemnized the marriage as per Hindu customs and rituals on 03.07.2017. Out of their wedlock they have a boy named Krushav.

3. The petitioner filed an application in the Court of Civil Judge Senior Division at Panaji Goa for custody of the minor child on 08.11.2020. The petitioner filed an application for interim relief for weekend custody of the minor child. The respondent opposed the application by filing reply. The application dated 08.11.2020(Exhibit D-4) was decided by the learned Judge vide order dated 08.09.2021. The application for visitation rights and weekend custody of the child preferred by the petitioner was rejected.

4. The petitioner filed Misc. Civil Appeal No.50/2021 challenging the order dated 08.09.2021. The petitioner filed an application for interim relief on 16.09.2021. The learned District Judge vide order dated 13.10.2021 rejected the application for interim relief.

5. The Misc. Civil Appeal No.50/2021 preferred by the petitioner was finally heard and the order dated 08.09.2021 was modified vide order dated 03.01.2022. The petitioner was allowed to visit his son on Sundays, Wednesdays and Fridays between 4:00pm and 7:00pm. The respondent was directed to

see that her son was taken to her paternal house at St Anthony Waddo, Guirim, Bardez.

6. The petitioner in Writ Petition No.360 of 2023 is aggrieved by the order dated 03.01.2022 whereas, the mother has preferred a separate petition viz. Writ Petition No.433 of 2023 challenging the same order, i.e. 03.01.2022 passed by the District Judge.

7. For the sake of brevity, the parties are referred to as father and mother.

8. Mr Rao appearing for the father submitted that the father is concerned for the welfare of the child. Father cannot be deprived of visitation rights to the child and is also entitled for overnight weekend custody. There was no reason to refuse the weekend custody to the father. The father is also entitled for visitation rights everyday. It was an error to hold that grant of visitation rights everyday would amount to nuisance. The father want to spend quality time with the child and be part of upbringing of the child which is normal desire of every parent. The father has been bonding with the child and now the child

has grown up. The appellate Court failed to appreciate that if weekend custody is given to the father, the child would get accustomed to live with the father. The attempt of the father for weekend custody is to see that the child gets accustomed and acclimatized with father's home. The parties were referred to mediation on two occasions. The mediation reports refer to the conduct of the respondent/mother. The petitioner being the father, has right to have visitation rights and weekend custody of the child. The father had made a complaint to Mapusa Police Station about assault, criminal intimidation, threats against the father of his wife on 30.07.2021. Another complaint was lodged by the petitioner/father against the relatives of his wife on 16.01.2022. The father was assaulted by the relatives of his wife which is evident from the photographs annexed to this petition.

9. Learned advocate for the petitioner has relief upon the decision of this Court in the case of **Anand Chandani v/s. Ketaki Gokhale** dated 10.10.2023 passed in Writ Petition No.1398/2023(Filing) and decision dated 14.09.2023 delivered by the Division Bench of this Court in Writ Petition No.97/2021 and the decision dated 24.03.2023 in Writ Petition No.541 of

2023(Filing) in the case of ***Ketaki Gokhale v/s. Anand Chandani.***

10. The mother has filed affidavit-in-reply and opposed the reliefs sought by the father in this petition. The mother has also filed an additional affidavit.

11. Learned advocate for the mother submitted that the father is not maintaining the time allotted to him for visitation rights. The father is not taking good care of the child. He is an unfit parent. While the child was in custody of the father, he had several injuries or fallen sick. Mother was required to take the child to the doctor. Child was not treated properly by the father. Reliance is placed on the certificate of the doctor with regard to the sickness of the child. The child has fallen ill on several occasions. Weekend custody should not be given to the father. The child is too small to hand over the custody to the father. Presently, the child is aged around three years and five months. The father is aggressive person. Domestic violence case has been filed against him by the mother. Criminal prosecution is lodged against him under Section 8 of the Goa Children's Act. He has been chargesheeted. The child is not given proper food. Some observations in the mediation reports cannot be

considered adverse against the mother. The child goes to pre-school. At the most, limited visitation rights could be given to the father. Any neutral place can be fixed for picking up the child. There is deliberate delay by the father in handing over the custody of the child to the mother by giving excused of traffic although the father reaches on time to take custody of the child. The father has failed to perform his duty and is not entitled to the rights claimed by him. The mother takes great care of the child and all expenditure of the child. The child has no feelings for father. The father has put the child to risk on many occasions. There are incidents where the child has fallen sick due to being fed such circumstances during visitation. The child is intolerant to eggs and seafood. Although the father is aware about the said fact, the child was made to consume such food. The decisions relied upon by the learned Advocate representing the father are not applicable in the present case. The child in the case of **Anand Chandani** was about five and half years old. The child was in custody of the father. Various other factors were considered by this Court while granting weekend custody to the father. However, in the present case considering the factual aspects of this case and the age of the child, weekend custody should not be granted to the father.

12. In rejoinder Mr Rao submitted that the offence under Section 8 of the Children's Act was registered by making false allegations against the father. The victim therein was a boy aged about 16 years who was the son of the servant of mother's parents. The father was assaulted. Complaints were filed by the father against the opponents.

13. Vide order dated 08.09.2021, the learned Senior Civil Judge 'A' Court, Panaji rejected the application preferred by the father. It was observed that the mother is residing at her parental house from 27.04.2020 and the child was born and brought up at that place. The mother is a doctor by profession. During the pendency of the proceedings, Writ Petition No.219/2021 was filed before the High Court by the father and vide order dated 26.04.2021 arrangements regarding visitation rights was recorded. As per agreement of the parties, the mother was to bring the child to her paternal place on every Sunday, Wednesday and Friday. It was also recorded that the father along with his parents can attend the said place for having access to the child and spend time till 6:00pm. Learned Judge felt that the said arrangement of visitation rights shall serve the

purpose considering the totality of the factors instead of having daily visitation rights at least for the time being till the clouds of pandemic looming over disappear. The said arrangement was continuing and there should not be any problem in future. The said arrangement is sufficient to create bond between the father and his son considering the tender age of the child. Insofar as weekend custody is concerned, since the child is settled at one place in the familiar environment and since he requires breastfeed of mother, giving weekend custody to the father shall totally unsettle the arrangement and it may cause severe inconvenience to the child. The arrangement for visitation as agreed between the parties before the High Court shall serve the purpose.

14. During the pendency of the appeal preferred by the petitioner/father before the District Judge, the application for interim relief was dismissed by the learned Judge vide order dated 13.10.2021. It was observed that visitation rights are given to the father as per the order passed by the High Court. The Court refused to grant interim relief. The appeal was disposed off vide order dated 03.01.2022. The Court observed that the child is less than 2 years old. Time has not come to consider the

question of granting weekend custody to the father. Shuffling of the child from one person to another will not be for the welfare of the child. Therefore, father is not entitled to weekend custody of the child.

15. Today, the child is aged around three years and five months. While the impugned orders were passed by the Court below the child was aged around two years or less than two years.

16. The factual matrix of the case would indicate that the relationship between the mother and father is strained. The Court is dealing with the visitation rights and the prayer for weekend custody of the child sought by the father. The mother has opposed the reliefs sought by the father and has also opposed the modified order passed by the Appellate Court.

17. Child needs love and affection from both the parents. It cannot be said that the father is unable to give love, care and protection to the child. His mother is also available at his residence. The child should develop bonding with mother as well as father. It appears that the mother has visited her parents

home for delivery of the child and, therefore, there was acrimony between the father and mother. The child was delivered when the mother was at her parental home. Complaints are lodged against each other. While determining the question as to which parent the care and control of the child should be committed, the paramount consideration is the welfare of the child. It is noted that the child is aged around three years and five months. For a substantial period of time the custody of the child should be with the mother. But the father cannot be deprived of visitation rights and weekend custody. It is settled law that the welfare of the child is of paramount importance while considering the issue relating to child custody and visitation rights. Father or mother cannot be branded as enemy of child. Paramount welfare of the child depends on many factors. As per the orders of this Court the matter was referred for mediation on two occasions. The reports are on record. This Court is not drawing any adverse inference on either party on the basis of the mediation report. However, there is no reason to deny the visitation rights and weekend custody to the father. Considering the age of the child the weekend custody can be granted for a limited period which can be increased after certain period of time.

18. The order dated 19.01.2022 indicate that grievance was made at the instance of father that he was assaulted while he was availing visitation rights. Whereas, it was contended on behalf of the mother that her parents were assaulted by the petitioner/father. The Court noted that it is not for this Court to go into rival allegations particularly since both the parties have filed complaints against each other. This Court recorded that there are orders permitting visitation and it is the responsibility of both the sides to honour the same in letter and spirit. Any fights between the parents is bound to cause incalculable harm to the child. The Court expect both the parties to behave with utmost care particularly when it comes to rights, welfare and interest of the minor child. Vide order dated 02.02.2022 the parties were directed before Pre-litigation Counselling Centre. Report was submitted by the Counsellor from Pre-litigation Centre. It was perused by this Court on 26.02.2022. It was suggested that if the Court interacts with the parties for ascertaining their anxiety and apprehensions, it may go to some distance in trying to find an amicable solution to the problems faced by the parties. The parties were directed to be present in the chamber for interaction. The Court interacted with the

parties and vide order dated 01.03.2022 it was recorded that it appears the parties are not inclined to enter into a dialogue for settling their dispute. This Court recorded that attempt can be made to modify the arrangement to the extent that the father is permitted to take the child during the period of visitation to this residence and to ensure that the child is returned to the mother/grandparents by strictly adhering to the time period of visitation rights. The mother has expressed apprehension that giving control of the child to the father for the entire period of visitation rights may cause hurt to the child. In the order dated 01.03.2022 it was recorded that the Court is unable to appreciate as to why such an apprehension is being expressed and the Court proposes to modify the arrangements of enjoying visitation only for that week subject to further orders. The father of the child was permitted to take the child and the mother was directed to hand over the child to the father during the period of enjoyment of visitation rights. It was further directed that the handing over and taking over of the child was taking place in the premises of the Court. The father of the child was granted liberty to enjoy the visitation rights between 4:00pm to 7:00pm on Tuesday, Friday and Saturday, i.e. 03.03.2022, 04.03.2022 and 05.03.2022. It was directed that

the child be handed over to the father at the High Court premises and he shall be entitled to take the child at his residence for the period of visitation. He shall ensure that the child is handed over back to the mother or her parents at 7:00pm on the dates mentioned above without any delay, in the premises of the Court. The arrangement was made only for that weekend subject to the feedback which the party shall come to the Court on the next date of hearing. On 07.03.2022 the parties informed the Court that the arrangement for visitation for the father of the child directed as per order dated 01.03.2022 had worked out smoothly. The petitions were listed on 08.03.2022 for further consideration. Suggestions and counter-suggestions were made by the advocates appearing for the parties. This Court recorded that in the interest of justice and after taking into consideration the suggestions given by rival parties, it is directed that in future, the father of the child will be permitted to enjoy visitation rights on Wednesdays, Fridays and Sundays. On Wednesdays and Fridays, the timing for visitation shall be from 4:00pm to 7:00pm and Sundays it shall be from 10:00am to 1:00pm. The father shall arrange for collecting the child from the parental house of the wife at Guirim and he shall arrange for dropping the child back at the same address after the

timing of visitation rights in over. On 26.06.2023, the Court considered the issue relating to the school of the child. Vide order dated 13.07.20223 it was recorded that the parties are inclined to adopt a conciliatory approach and matter was referred for mediation by appointing advocate for mediation. The Mediator has submitted a report which is on record.

19. From the tenor of the aforesaid orders it is apparent that the visitation rights were granted to the father. Subsequently, there was mediation with regard to the nature of visitation rights. The child was with the father during the visitation rights. The child was taken to his residence by the father. The child is acquainted with the father. Other than the period of visitation rights, the child was with the mother. Both the parents are educated. It is expected that they would understand that ultimately the welfare of the child is important. Disharmony between the parents should not affect the child. The child should develop acquaintance with both the parents. The child needs father and mother. The child would grow. Various future aspects such as education, all round development of child is required to be noted for future prospect of child. Considering these circumstances, the visitation rights or weekend custody of

the child cannot be denied to the father. Hence, I pass the following Order:-

ORDER

Impugned order dated 3.1.2022 passed by the District Judge, North Goa, Panaji in Misc. Civil Application No. 50/2021 is modified as under:-

- a. Father will have visitation rights of the child on Tuesday, Wednesday and Thursday between 12.30 pm to 7.00 pm.
- b. Father shall pick up the child from the school on Tuesday, Wednesday and Thursday at 12.30p.m and shall handover custody of the child to the mother at 7.00p.m. at her residence. The father shall maintain the timeline fixed for visitation right.
- c. Father will have overnight access of the minor child on week end. Father shall pick up the child from the school on Friday at 12.30p.m and shall have overnight custody of the child till Saturday at 7.00p.m. If Friday is holiday, father shall pick up the child from residence of mother. This arrangement shall continue for a period of six months. Thereafter father will have overnight custody of the minor child on week end from Friday at 12.30p.m till Sunday at 1.00p.m. Father shall handover custody of the minor child to the mother on Sunday at 1.00p.m. at her

residence. This order with regards to overnight custody will come into effect from 17.11.2023.

d. During the ensuing Diwali vacation which comes to an end on 26.11.2023, father will have visitation rights of child on 13th, 15th, 21st and 23rd November 2023 between 11.00 am to 5.00p.m. It is clarified that father will have overnight custody of child on 17th November 2023 from 4:00PM to 19th November 2023 1:00PM and 24th November 2023 4:00PM to 26th November 2023 1:00PM. Father shall pick up the child from residence of mother and handover custody of child to mother at her residence.

2. Writ Petition No. 360 of 2023, Writ Petition No. 433 of 2023, Misc. Civil Application Nos. 105 of 2023, 239 of 2023, 520 of 2023 and 1626 of 2022-F stand disposed of.

3. At this stage, learned Counsel for the respondent/mother prayed for stay of this order on the ground that respondent/mother wants to challenge the order before the Hon'ble Supreme Court. I do not find reason to stay this order. Request for stay is rejected.

(PRAKASH D. NAIK, J.)

MARIA SUZANA REBELLO Digitally signed by MARIA SUZANA REBELLO
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