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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of decision: 11th October, 2023***

+ **MAT. APP.(F.C.) 34/2023 & CM APPLs. 5464/2023, 5465/2023**

NARAYAN SINGH & ANR.

..... Appellants

Through: Mr. Sunil Mittal, Sr. Advocate with
Ms. Seema Seth, Advocate with
appellants in person.

versus

POOJA BHASKAR & ANR.

..... Respondents

Through: Mr. Kamlesh Kr. Mishra, Ms. Renu,
Ms. Shivani Verma, Mr. Aditya, Mr.
Bibhuti Bhushan Mishra, Mr. Kailash
Kr. Jha & Mr. Sanjeev, Advocates
with respondent in person.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT (oral)

1. The appellant No. 1, the paternal grandfather and the appellant No. 2/Naveen, the paternal uncle of the children have filed the present Appeal under Section 19 of the Family Courts Act, 1984 on behalf of the appellants to set aside/modify the Order dated 18.01.2023 passed by the learned Judge, Family Court, West District, Tis Hazari, Delhi granting the custody of the child under Section 12 of the Guardians and Wards Act, 1890 filed by the respondent No. 1/Pooja Bhaskar in her Guardian Petition under Section 25 of Guardians and Wards Act, 1890 to the respondent



No. 1/mother.

2. The marriage between the respondent No. 1/Pooja Bhaskar and the respondent No. 2/Vikas Kumar was performed on 23.11.2014 according to the Hindu rites and customs at the Arya Samaj Mandir, Yadav Market, Naharpur, Sector-7, Rohini, Delhi. One daughter, Baby Jiya was born from their wedlock on 07.06.2015. In September, 2015, the respondent No.1 shifted to the house of the appellant No. 1/Narayan Singh, father of the respondent No. 2 and after about one year, one son, namely, Master Krishna @ Monu was born on 25.08.2016.

3. The respondent No. 2/Vikas Kumar, father of the minor children, was arrested and remanded to the judicial custody in July, 2020 for the offence under Section 302 of the Indian Penal Code, 1860 registered *vide* FIR No. 351/2020. The respondent No. 1 had asserted that after the marriage, the respondent No. 1 was shocked to know that the respondent No. 2/Vikas Kumar, her husband, was a habitual drunkard and she had been trapped by him by making false claims and promises. The respondent No. 1/Pooja Bhaskar also claimed that she had been subjected to various acts of cruelty and atrocities.

4. The respondent No. 1/mother immediately thereafter, filed the Petition under the Guardians and Wards Act, 1890 on 11.12.2020 seeking permanent custody of her two children. She also filed an Application under Section 12 of the Guardians and Wards Act, 1890 seeking immediate custody of her two minor children who were in the custody of paternal Grandfather and paternal uncle/appellants (respondents in the main Guardianship Petition).

5. On 08.12.2019, when the respondent No. 1/Pooja Bhaskar returned to



her matrimonial home, she was attacked with a knife. Though, she was able to escape and return to her parental home but since then the minor children were in care and custody of the appellant Nos. 1 and 2.

6. The contentions of the respondent No.1/mother were controverted by the appellant Nos. 1 and 2 who had asserted that while they were residing together, the respondent No. 1/mother used to beat the children. The Petition seeking Permanent Custody of the children was filed by her only to extort the money. In fact, on 18.12.2019, she herself had quarrelled and tried to attack the appellant No. 1/father of the respondent No. 2/Vikas Kumar with a knife, who out of fear had entered the kitchen and closed the door to save himself.

7. It was claimed that the respondent No. 1/mother had abandoned the two children and left the matrimonial home. Since then, the children have been in the care and custody of the appellant Nos. 1 and 2, the grandfather and the uncle of the children who have been taking good care of them. It was admitted by them as well that the respondent No. 2/Vikas Kumar, father of the children is not only a drug addict and alcoholic but is also facing a trial under Section 302 of the Indian Penal Code, 1860. The claim of the respondent No.1/mother for the custody of the children, was resisted.

8. The two minor children are now are aged about eight and seven years. They had been in the joint custody of the mother and the appellant Nos.1 and 2 till 18.12.2019, since then, the respondent No. 1/mother has been contending for the custody of her two children.

9. The learned Judge, Family Court observed that the appellant Nos. 1 and 2 herein as per their own submissions had engaged a maid servant to take care of the children and to get them ready for the school.



10. Learned Judge, Family Court had also interacted with the children in the Court who confirmed that they are being taken care of by the maid servant.

11. As rightly observed by the learned Judge, Family Court that there can be no substitute for the love and affection of the parents. Admittedly, the respondent No. 2/Vikas Kumar, father of the children, is facing a trial under Section 302 of the Indian Penal Code, 1860 and is presently confined to jail. When it comes to take care of the two minor children, the maid may do the household chores but cannot be a substitute to love and affection of respondent No. 1/mother.

12. If in exceptional circumstances, the maid servant is able to develop an emotional bond with the children, then too, the emotions of the maid cannot be of same level that of the mother. Good values, love and affection can be instilled in the children only by their mother, more so when the second parent i.e., the father is confined in jail.

13. The appellant No. 1/Grandfather and the appellant No. 2/Uncle of the children may be better placed financially and may have more money to spend, but the less financial capacity of the respondent No. 1/mother can never be a determining factor.

14. During the course of the arguments, when a question was put to the appellant No. 1/Grandfather of the children, whether he was willing to continue to pay anything for the educational expenses of the two children, he outrightly declined, in case the custody of them was handed over to the respondent No. 1/mother. It was clarified by the respondent No. 1/mother that she has sufficient financial resources as she is doing some work and also taking tuitions. She also has the support of her family to meet all the



educational and other expenses of the two children. She may have filed the Petition under Protection of Women from Domestic Violence Act, 2005 subsequently, but to claim financial support can in no way be inferred her incapability to take care of the children.

15. The respondent No. 1/mother had also claimed that the respondent No. 2/Vikas Kumar, husband of the respondent No. 1/Pooja Bhaskar and father of the children was a drug addict and alcoholic, a fact not denied by the appellants. Two Police Complaints dated 18.02.2019 and 04.07.2019 had been filed by the appellant No. 1/Grandfather and in both the two complaints, it was mentioned that the respondent No. 2/Vikas Kumar, the father of the children, was a drug addict and alcoholic.

16. The appellants had asserted that the respondent No. 2/Vikas Kumar was an alcoholic and not suited to have the custody of the children. There were various other complaints post separation of the parties, wherein several allegations have been made against the respondent No. 1/mother about being of quarrelsome nature, but none of the complaints was it mentioned that she was an alcoholic.

17. There is *prima facie* no evidence at this stage to show that the respondent No. 1/mother is incapable of taking care of the two children or suffering from vices which can be detrimental to the children, if she is handed over the custody of the two children.

18. It was also claimed by the appellant Nos. 1 and 2 that it is the respondent No.1/mother who herself had abandoned the children. However, some fight/incident had happened on 08.12.2019 and merely because the respondent No. 1/mother was compelled to leave the matrimonial home can be no testament to her intention to abandon the children.



19. The appellant Nos. 1 and 2 had also placed reliance on various videos recorded on 25.12.2021, 05.02.2022, 19.02.2022, 26.02.2022, 22.10.2022 and 07.01.2023 to claim that the respondent No. 1/mother was beating the children. However, the learned Judge, Family Court has clearly observed that in all the videos, it was the children who are seen hitting their mother and not vice versa. It was observed that such conduct of the children rather reflected upbringing being given to the children by the appellant Nos. 1 and 2. Moreover, the children during the court's interaction with the learned Judge, Family Court did not make any complaint of being beaten by the respondent No. 1/mother.

20. While determining the issues of custody, it is the paramount welfare of the children which is the sole criteria. In the present case, the two children are aged about eight and seven years, their father, respondent No. 2/Vikas Kumar being unable as he is in judicial custody, it would not be in their interest and welfare if they are deprived of the love and affection of the respondent No. 1/mother who is not only available but is also capable of well suited to take care of their needs. There is no disqualification of the respondent No. 1/mother that could be shown to disqualify her from having the interim custody.

21. The children are in the exclusive custody of the appellant Nos. 1 and 2 since December, 2019. Though the respondent No. 1/mother has been given visitation rights from time to time, but it is not unnatural to note that the children may have got a little alienated from their mother as was also projected from the various videos that have been relied upon by the appellant Nos. 1 and 2.

22. One cannot overlook the propensity of the parents/grandparents who



have the custody of the children to tutor them against the alienated parents. It is extremely unfortunate for a parent or grandparent to alienate the children as it does not serve any purpose towards the welfare of the children, except to boost ego of the parents/grandparents causing much harm to the emotional and healthy development of the children.

23. We find that the learned Judge, Family Court has passed a well-reasoned order and has granted the interim custody of the children to the respondent No. 1/mother while ensuring sufficient access to the appellants to meet the children.

24. We, therefore, find no merit in the present Appeal and direct that the custody of the children be handed over to the respondent No. 1/mother in the Children's Room at Tis Hazari Courts, Delhi in the presence of the Counsellor on 21.10.2023. In the interim, the appellant Nos. 1 and 2 are directed to prepare both the children for transfer of their custody to the respondent No. 1/mother. The visitation rights as agreed by the parties in the Court shall be as under:

- (i) That the children be handed over to the appellant Nos. 1 and 2 on first and third Saturdays at 11:00 A.M. who, thereafter, shall return the custody of the children to the respondent No. 1/mother on the next day i.e., Sunday at 04:00 P.M. at the residence of the respondent No. 1/mother.
- (ii) That the respondent No. 1/mother shall permit the two children to interact with the appellant Nos. 1 and 2 every day on video call depending upon the time the children are willing and available to interact with them over video call.
- (iii) That the respondent No. 1/mother shall share the regular



progress of the two children in the school with the appellant Nos. 1 and 2 and shall also provide them with the copy of the Report Cards as and when it is received by her.

(iv) That the respondent No. 1/mother shall also inform the appellant Nos. 1 and 2 in case, the children are indisposed.

25. In the aforesaid terms, the present Appeal along with pending applications is disposed of.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 11, 2023
S.Sharma