



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

% **Reserved on: July 12, 2023**

Pronounced on: August 17, 2023

+ **MAT.APP.(F.C.) 168/2023**

SIDDHARTH GOVINDANI

..... Petitioner

Through: Mr. Aniket Jain & Mr. Vidyut
Kayarkar, Advocates with appellant
in person

Versus

LEEPAKSHI

.....Respondent

Through: Mr. Rajesh Yadav, Senior Advocate
with Ms. Joshini Tuli, Advocate with
respondent in person

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT

SURESH KUMAR KAIT, J

1. The present appeal under Section 19 of the Family Court Act, 1984 has been preferred by appellant-husband against the impugned order dated 16.05.2023 passed by the learned Judge, Family Court, Saket Court Complex, New Delhi in Guardianship Petition No.17/2022 (renumbered from Guardianship Petition No.2/2019).
2. The facts in nutshell are that the appellant-husband and respondent-



wife got married on 29.11.2006. At the time of marriage, appellant-husband was residing with his mother in United States of America and after marriage, respondent-wife also shifted to US. The respondent-wife thereafter also became a US citizen. The parties to the present appeal started living in the house owned by the mother of the appellant-husband, however, after some time they shifted to a rented apartment to live separately. On 06.11.2008, the parties were blessed with a son, namely, Samvit.

3. The appellant-husband has averred that the conduct of respondent-wife was abusive and aggressive and in the year 2009 and 2012, respondent-wife visited India and stayed here for a prolonged period. Appellant-husband has alleged that in the year 2012, respondent-wife physically assaulted him and she always disliked his mother and kept her away from their son and deprived the minor child from the grandmother's love. She even did not permit the appellant-husband to take care of his old aged ailing mother, who was living in a separate accommodation. The appellant has further averred that the temperament issue of respondent-wife had aggravated and she manifested extreme paranoia and suspicion.

4. The appellant-husband has averred that in March, 2013, he was forced to call Child Protective Services of Virginia's Department of Social Services to discuss the overall adverse situation concerning the child. The situation worsened, which led to filing of complaints by the parties against each other. According to the appellant-husband, the respondent-wife returned to her parental home with her parents and her parents lived with them in their house for a very long time. Again in year 2015, the parents of respondent-wife visited the parties and stayed in their marital home.



5. The appellant-husband has averred that respondent-wife without his knowledge transferred 50% of the joint bank account balance to her personal account and frequently demanded large sum of money from the appellant. According to appellant-husband, respondent-wife persuaded and convinced the appellant to sign OCI in respect of their child, so that she could migrate to India.

6. In 2014, respondent-wife shifted to India. Appellant-husband was not aware that the respondent-wife had no intention to come back to US, so on 16.01.2015 via an e-mail, appellant-husband asked respondent-wife to provide information relating to the child's schooling (name of the school, grade/class he is enrolled in, school timings, mode of transportation, etc.), health (name, address and phone numbers of physicians who have treated the minor, illnesses, if any, medications etc.), his extracurricular interests, his addresses and copies of his OCI card and passport.

7. In July, 2015, respondent-wife expressed her desire to separate from appellant-husband and both the parties prepared Separation and Property Settlement Agreement, however, according to appellant-husband, respondent-wife declined to sign the same. In November, 2016, appellant-husband informed respondent-wife about his visit to India and that he expected to meet his son. Appellant-husband claims to have visited the last known address of respondent-wife and his child at C-256, Vikaspuri, New Delhi, however, the house was locked and upon enquiry from the neighbours, he could not find out the new address of respondent-wife and his minor son. Even the phone calls made by appellant-husband were unanswered by respondent-wife.



8. In November, 2017, appellant-husband claims to have come to know the whereabouts of his son through a social media online portal and thus, he visited India in February, 2018. He again asked respondent-wife via e-mail 03.02.2018 to meet his child on 06.02.2018. Appellant-husband though met his child but the conduct of respondent-wife was such that she never wanted him to meet his son. Appellant-husband upon his return to US vide e-mail 12.02.2018 informed respondent-wife that he intended to visit his son more frequently, however, he did not receive any reply. Similar attempt was made by him in June, 2019. Again respondent-wife did not answer.

9. The appellant filed a petition seeking visitation rights in Fairfax County Juvenile and Domestic Relations District Court, Virginia in November, 2018. However, summons of the suit could not be sent to the respondent due to non availability of address and according to appellant, all efforts to trace out address particulars of respondent-wife failed.

10. Thereafter, respondent-wife filed a Guardianship Petition No.2/2019 seeking declaration that she was the sole guardian of the child and in the sole custody. Upon being served, appellant-husband appeared in the said petition and the matter was referred for mediation. A Settlement dated 27.07.2019 was signed between the parties wherein the parties agreed as under:

- a) The Appellant will pay maintenance of ₹75,000/- per month;*
- b) The Appellant will sign necessary documents for passport renewal of the child, and;*
- c) The parties, along with the child, will meet in the month of December, 2019 during the vacation of the child and travel to a mutually agreeable place in India for one week, unless the minor son*



expresses his unwillingness to do so.

11. Appellant-husband has averred that he tried to contact respondent-wife seeking to plan vacations to spend time with the son as per settlement arrived between the parties. However, his e-mails remained unanswered. Also, the learned Family Court in Maintenance Petition No.8/2019, directed the appellant to pay maintenance @ Rs.75,000/- per month to respondent-wife, which he continuously paid, though the respondent-wife was interested in receiving maintenance @ Rs.75,000/- per month, but not interested in permitting the appellant to meet their son as per their settlement.

12. Appellant-husband claims that due to COVID-19 pandemic, the case could not proceed further. However, since he was directed by the learned Family Court to comply with the Settlement dated 27.07.2019 passed in Maintenance Case No.8/2019, he continued to pay maintenance @ Rs.75,000/- per month to respondent-wife.

13. In January, 2021, appellant-husband filed an application under Section 17 of the Guardianship & Wards Act, 1890 read with Section 151 CPC seeking temporary custody of his minor child during summer and winter vacations every year in terms of mediated settlement reached between the parties. The appellant-husband also filed an application dated 25.07.2022 seeking implementation of Settlement dated 27.07.2019 for temporary joint custody of the minor son during vacations. Though the first application under section 17 of the Guardianship & Wards Act, 1890 was pending, the learned Family Court dismissed appellant's second application dated 25.07.2022 but allowed the appellant to have "video or phone call



with the child every Saturday at about 10 a.m. for 10 to 15 minutes, during winter vacations and also on Sundays.”

14. Appellant-husband filed an application seeking modification of the order dated 26.11.2022 stating that speaking on phone is not an efficacious alternative of meeting. The Family Court decided the said application vide order dated 21.12.2022 permitting the appellant to meet minor child between 25.12.2022 to 31.12.2022, however, the respondent-wife declined to this by sending a Whatsapp message, which is as under:

“Siddharth, I am letting you know right away so you don’t travel unnecessarily don’t waste resources and travel in covid times. Both cases are subjudice and I am not inclined to meet you.”

15. Thereafter, the respondent-wife claims that she and their son Samvit were down with Flu and isolated, and could not meet him. Thereby the respondent-wife in contravention of order dated 21.12.2022 did not permit appellant - husband to meet their son.

16. Even though, appellant-husband claims to have got an opportunity to meet his minor son on 29.12.2022 at the residence of the respondent but she did not permit him to take their son out to any mall, restaurant or theatre as was permitted by the learned Family Court. Yet again, appellant-husband filed another application dated 01.02.2023 for temporary custody of the minor son Samvit which was dismissed by the learned Family Court vide impugned order dated 16.05.2023 inter-alia held as under:-

“By way of application, under consideration



which should have been moved under Section 12 and not under Section 17 of the Act, as rightly pointed out by the learned counsel for the petitioner, the respondent is praying to have temporary custody of the minor child for the entire duration of his summer and winter vacations every year which prayer is too vague to be given any indulgence in the given facts and circumstances. The respondent is advised to start having conversations with the minor son over phone / video call in terms of the order dated 26.11.2022 in order to repair the broken ties and earn trust of the minor son. During summer vacations, the respondents will talk with the minor son on every Saturday and Sunday at about 10: a.m. for about 10 to 15 minutes. The respondent is at liberty to move appropriate application for physical visitation with the minor son and when he arrives in India.

7. Hence, the request of the respondent for temporary custody of the minor son for the entire duration of summer and winter vacations every year is declined.”

17. The aforesaid impugned order dated 16.05.2023 has been challenged before this Court in the present appeal on the ground that the respondent has attempted to scuttle the opportunity granted to the appellant by the Court to meet his child and that the distance which has occurred due to separation of many years, could be overcome only after a heart to heart conversation with the child. Learned Family Court has failed to consider that a week long visitation right had already been given to the appellant but the respondent-wife did not permit appellant-husband to take an advantage thereof. The appellant has contended that the learned Family Court has failed to appreciate that even though appellant-husband is a US citizen, however, he



has been visiting India to meet his minor child time and again and has resorted to the legal process in the country to have custody of the child. He has been continuously paying maintenance of Rs.75,000/- per month as per the Settlement Agreement entered between the parties, still he has been deprived of his right to spend time with the minor child as per the Settlement Agreement dated 27.07.2019. During the course of hearing, learned counsel appearing on behalf of the appellant has submitted that the learned Family Court has failed to observe that disliking of the child towards his father and his being unavailable with the appellant, is a deliberate attempt at the hands of the respondent to prevent a father – son bond. Learned counsel for the appellant submitted that the minor son is already 14 years old and that the prayer to keep the minor son during summer and winter vacations every year was only for years 2023 – 2026, which is specific for the Court to give its appropriate indulgence.

18. Learned counsel for the appellant submitted that Section 12 of the Act deals with the situation where the production of the minor is necessary for temporary arrangement of custody of the child, however, section 17 provides the guidelines and principles in deciding such prayer. Learned counsel for the appellant submitted that use of words “temporary custody” is not determinative for just disposal. Hence, a prayer is made to grant appellant custody of the minor son Samvit.

19. In support of the case of the appellant, learned counsel for the appellant relied upon decision of Honb'ble Supreme Court in *Nil Ratan Kundu Vs. Abhijit Kundu* (2008) 9 SCC 413; *Smriti Madan Kansagra Vs. Perry Kansagra* (2021) 15 SCC 717 and *Vivek Singh Vs. Romani Singh*



(2017) 3 SCC 231.

20. On the other hand, learned senior counsel appearing on behalf of the respondent-wife submitted that the minor child is in IXth Class and is residing with her mother and he has never interacted with the father in person, on phone or through video call and so he is a totally stranger for him. Also submitted that the child is not willing to meet his father and therefore, the Family Court after interacting with the child has passed the impugned order dated 16.05.2023.

21. It was submitted on behalf of respondent-wife that the child is now 14 years and 8 months of age and he is well established in education, school and friends and though the child had reached India with his mother in the year 2014, till the year 2016 no efforts were made by the father to meet his son and no financial assistance was given till the year 2019. His intention is clear from the fact that despite 10 opportunities given, appellant-husband failed to file his income affidavit before the Family Court.

22. Learned senior counsel further submitted that the son of the parties has not attracted with appellant-father for last nine years and appellant is a stranger for him and in such circumstances, the learned Family Court has rightly declined interim custody of the child to the appellant and this order calls for no interference by this Court.

23. Submissions heard.

24. The undisputed fact of the present case is that the marriage between the parties has irrevocably failed. The parties have been living separately since the year 2014, when the respondent-wife returned to India and settled



here. The custody of the minor child has remained with the mother. The appellant-father vide e-mail dated 16.01.2015 sought some information regarding the son of the parties. Vide another e-mail dated 29.11.2016, he showed his intention to meet the child. Vide email dated 03.02.2018, the appellant-husband showed his willingness to spend time with the child. However, having no reply from respondent-wife, the appellant vide e-mail dated 07.10.2018, informed her of his visit to India and intention to meet the child as he could not meet him for all these years. However, his emails remained unanswered by the respondent-wife and so, on 14.12.2018 the appellant-husband being desperate to meet his child, reached his school. The respondent-wife reached and reacted it and a series of e-mail conversations were exchanged. The appellant-husband also filed a custody case in respect of child of the parties in Juvenile and Domestic relations District Court, Fairfax County, Virginia, United States in the year 2018.

25. In the year 2019, the respondent-wife also filed a petition under Guardian and Wards Act, 1890 for permanent and sole custody and guardianship of minor child in India.

26. In respect of both the cases filed on by appellant and respondent, a mediated settlement dated 27.07.2019 was entered into and signed between the parties to ensure just benefits of their son. As per the settlement, appellant-husband was required to pay a sum of Rs.75,000/- per month to the respondent-wife; sign documents for passport renewal of the child and the parties shall meet during vacation of the child and travel mutually to an agreed place in India for one week, unless the child expresses his willingness otherwise.

27. The appellant has placed on record copies of e-mail sent to



respondent-wife. One such e-mail dated 28.11.2019 reads as under:-

“Dear Leepakshi

I need to make my plans for next month. I understand Samvit’s winter break starts on Dec 21. I’m thinking about coming on the 22nd and depart around Jan 5. I’m open to whatever plans you would have in mind. I would like for three of us to go to the Ashram around Dec.25 for a few days. The SBTSS function will be concluding on Dec.29. It will be taking place in the newly constructed hall that can hold thousands of people. It think it will be quite an experience for Samvit.

After the Ashram visit, we can visit some places in the South or wherever else before returning to Delhi. Please let me know your thoughts.”

28. A reminder e-mail dated 01.12.2019 was again sent by the appellant to respondent-wife, which reads as under:-

“Please let me know about this immediately as I have to buy my ticket for peak season and plan accordingly.”

29. The respondent-wife vide email dated 20.12.2019 sent the following response to these e-mails:-

“In reference to your email about vacation plans.

Samvit appeared for formal mid yearly 1:30 hr exam in all subjects for the first time since he started school.

I could not reply earlier since he was overwhelmed by the preparations and it was not right on my part to stress him further with any other discussion.

He also appeared in 2 exam, one national and the other international (NSO and IMO) in November and



December.

In lieu of recent advisory from the Government of India and US, it is not good idea to travel these 2 weeks since there could be protests or traffic jams.

XXXXX

It is best we meet in March during Samvat's spring break. We can plan to coincide it with Poojya Swami Ji's visit to CIRD vasundhara ashram.

Hope your are considering postponing/ cancelling your yearly visit to Kerala in wake of the advisory from the US consulates".

30. On perusal of further e-mail of 01.01.2020 shows that appellant-husband did not travel to India due to Covid and vide another e-mail dated 21.01.2020 appellant-husband informed the respondent-wife that the settlement agreement was no longer valid in the circumstances.

31. In the petition preferred by the respondent-wife (G.P.17/22), vide order dated 26.11.2022, the learned Family Court allowed the appellant-husband to have a video or phone call with the child every Saturday at about 10 AM for 10-15 minutes and for the duration of winter vacations and also on Sundays at the same time. The aforesaid order was modified vide order dated 21.12.2022 by the learned Family Court observing and holding as under:-

"As stated, the respondent residing in USA, has arrived in India on 15.12.2022 and now he wants to meet physically with the child Samvit. As observed earlier also, the child Samvit would also require the love and affection of the father which should not be denied in a tender and formative age of the child. Even



otherwise the care, protection and love and affection of both the parents is essential for overall development of personality of the child.

Having heard the submissions on both sides, I deem it fit to allow the application and modify the order dated 26.11.2022 to the effect that the respondent is allowed to meet the child Samvit between 25.12.2022 to 31.12.2022 from 12:00 Noon to 04:00 PM. everyday in presence of the petitioner (mother) as per the convenience of the child. During such period the child Samvit along with the petitioner and the respondent may visit to any shopping mall or any movie theater situated in Gurugram, if he so wishes.”

32. Despite afore-noted directions of this Court, the respondent-wife has constrained appellant-father to meet their son, which has resulted in filing of the present appeal.

33. When this petition was taken up for hearing by this Court, on 04.07.2023 this Court had extensive interaction with the parties and the child. The child agreed to voluntarily stay with appellant-father for three days i.e. from 07.07.2023 to 09.07.2023 and it was mutually agreed that parties i.e. the child along with parents, shall have dinner together. An interim arrangement was scheduled to enable the appellant-husband meet his son, though in the presence of respondent-wife during dinner hours.

34. The order dated 04.07.2023 passed by this Court was not complied with by the respondent-wife. This Court took serious note of this fact and since respondent-wife failed to appear on the next date i.e. 10.07.2023, show cause notice was directed to be issued to the respondent-wife to explain on affidavit as to why contempt proceedings under the Contempt of Courts Act, 1971 be not initiated against her. On the next date, finding no resolution to



the dispute, the appeal was finally heard on merits.

35. Having considered the rival submissions and on the basis of material placed on record, this Court finds that marital discord between the parties has resulted in disagreement in respect custody of the child. Though the petition with regard to permanent custody of the child is pending adjudication before the learned Family Court. Vide order dated 26.11.2022; partly modified on 21.12.2022, the learned Family Court granted interim custody of the child to appellant-father. The said orders were never complied with by the respondent-wife. The order dated 16.05.2023 passed by the learned Family Court observes that no efforts were made by the respondent-father to interact with the son through phone or video call and in view of the fact that the child had not conversed with the father for last more than 04 years and was unwilling to meet him, the prayer of appellant to seek interim custody of the child was too vague. By observing so, the learned trial court permitted the appellant to talk with minor son on phone on Saturdays and Sunday at around 10:00 am for 10-15 minutes; though liberty has been given to move an application for physical visitation of the minor when in India.

36. The Supreme Court in a catena of decisions has held that a child has right to the affection of both the parents and directed the Family Courts to make arrangements for visitation / interim custody in the interest of the minor child. In the considered opinion of this Court, Family Courts have to be cautious while deciding permanent custody of the minor child and at the same time, has to ensure that child is not deprived of eternal affection and love of either of the parent. The Supreme Court in ***Ruchika Abbi Vs. State (NCT of Delhi)*** (2016) 16 SCC 764 has held as under:-



“9. In our view, both the parties being young and highly educated should realise such things for the welfare of their own child and make sincere efforts to come to mutual terms so that everyone is able to live happily and enjoy family life. Such steps, if taken, will always be in the interest of everyone including the child who needs protection, guidance, care, love and affection of both mother and father, who were responsible to bring her in this world.”

37. In the present case, the respondent-wife has been in custody of the minor child since the year 2014 and appellant-husband despite his best efforts, even after having benefit of court orders in his favour, has not been able to interact and meet his minor son. The parties have miserably failed to comply with the mediated settlement dated 27.07.2019.

38. The child in the present case is now more than 14 years of age and has had limited interaction with his father who is based in the U.S. It is in the interest of the child that he should have guidance and affection of his father in his formative years for which he should have access to his father to develop affection. Yet it cannot be overlooked that spatial distance on account of father being based in U.S., limits the extent of physical interaction.

39. It can also not be overlooked that though based in U.S., appellant-father has not shirked from his financial responsibility towards the child, and he simultaneously needs access to develop affection with the child.

40. Accordingly, the appellant-father is allowed interaction with the child through video conferencing on every Saturday & Sunday from 11:00 am to 12:00 noon (Indian time). The days of interaction may be mutually adjusted in the light of the individual commitments. Further, the application under



Section 12 and 17 of the Court of Wards Act, 1879 is still pending disposal. The Ld. Principal Judge, Family Court, is hereby directed to expeditiously dispose of the application preferably within four months and consider drawing a co-parenting plan to ensure effective and meaningful interactions between the father & the son.

41. With directions as aforesaid, the present appeal is accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 17, 2023
r/rk