



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

FAO-2296-2022 (O&M)
Date of Decision: 21.05.2024

GAUTAM KAUSHAL

...Appellant

Versus

NAMRATA

...Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE HARSH BUNGER**

Present : Mr. Sukesh Kumar Jindal, Advocate
for the appellant.

Mr. Vishwajeet Bedi, Advocate
for the respondent.

HARSH BUNGER, J.

CM-7337-CII-2024

This is an application for placing on record reply along with
Annexures R-1 to R-4, filed on behalf of the respondent.

Civil Misc. Application is allowed and the reply along with
Annexures R-1 to R-4, filed on behalf of the respondent, is taken on record
subject to all just exceptions.

FAO-2296-2022

By way of present appeal, the appellant seeks setting aside
of order dated 27.08.2021 passed by the learned Family Court, Ludhiana

(Camp at Khanna), whereby, an application filed by him under Sections 151, 152 and 153 of the Code of Civil Procedure (for short 'the CPC'), seeking correction of clerical/accidental mistake in judgment dated 06.12.2019 as regards custody and visitation rights of the appellant in respect of minor namely, Shiven; was dismissed.

2. Succinctly, the marriage between the appellant and the respondent was solemnized on 03.02.2014 at Zirakpur as per Hindu rites and ceremonies. Out of the said wedlock, a son (Shiven) was born on 23.01.2015. It transpires that on account of marital discord between the appellant and the respondent, they started living separately since 10.10.2017. Subsequently, the parties decided to part ways by dissolving their marriage by way of mutual consent. Accordingly, both the parties filed a joint petition under Section 13-B of the Hindu Marriage Act, 1955 (in short 'the 1955 Act') before the Family Court, Ludhiana (Camp at Khanna). The statements of the parties on first motion were recorded on 22.11.2018. It was agreed between the parties that the appellant would give an amount of Rs.26,30,000/- to the respondent as permanent alimony; which is stated to have been paid. It appears that on 06.12.2019, a compromise deed dated 06.12.2019 (Annexure A-3) was executed between the parties, which was placed on record before the trial Court as Exhibit PA1. As regards the issue of custody and visitation rights in respect of the minor son (Shiven), the parties had arrived at a consensus and the terms thereof were also recorded in the afore-said compromise (Annexure A-3) in Clauses 3 to 6, therein.

3. On 06.12.2019, the statements of the parties on second motion

were recorded before the learned Family Court, which read as under :-

“Statement of Petitioner no.2 Gautam Kaushal aged 32 years son of Subhash Kaushal, resident of house no.347, sector 12, Panchkula (Haryana).

On SA.

Stated that despite best efforts made by us in the past six months and despite the efforts made by our family and friends, we could not reconcile with each other and have mutually agreed to get our marriage dissolved. So my marriage with petitioner No.1 may please be dissolved under Section 13-B of the Hindu Marriage Act.

Minor son Shiven will remain in the care and custody of petitioner no.1. A compromise has been effected between me and petitioner no.1 regarding the custody of the minor child which bears my signatures and the same is Ex.PA1.

I have given remaining amount of Rs.10 lac in cash today to petitioner no.1 towards her past, present, future maintenance, permanent alimony. I have made this statement out of my free will and without any coercion.”

xxx

“Statement of Petitioner no.1 Namrata aged 31 years wife of Gautam Kaushal and daughter of Sh. Balram Kumar at present resident of 50/4, Near Vishavkarma Mandir Nai Abadi, Khanna District Ludhiana.

On SA.

Stated that despite best efforts made by us in the past six months and despite the efforts made by our family and friends, we could not reconcile with each other and have mutually agreed to get our marriage dissolved. So my marriage with petitioner No.2 may please be dissolved under Section 13-B of the Hindu Marriage Act.

Minor son Shiven will remain in my care and custody and petitioner no.2. A compromise has been

effected between me and petitioner no.2 regarding the custody of the minor child which bears my signatures and the same is Ex.PA1.

I have received remaining amount of Rs.10 lac in cash today towards my past, present, future maintenance, permanent alimony. Now nothing is due against petitioner no.2. I shall not claim any right in the property of petitioner no.2 in future nor shall claim any maintenance. I am accompanied by my father Balram Kumar today. I have made this statement out of my free will and without any coercion.”

A perusal of the above extracted statements of the parties would manifest that both of them duly acknowledged the execution of the compromise (Exhibit PA/1).

4. The Family Court, Ludhiana (Camp at Khanna), vide order dated 06.12.2019 (Annexure A-4) accepted the joint petition filed by the parties under Section 13-B of the 1955 Act and passed a decree of divorce dissolving the marriage of the parties by observing as under:-

“6. All the matrimonial disputes between the parties have been settled. Petitioner no.1 has already received all her istridhan, jewelry and today in court has also received the remaining amount of Rs.10,00,000/- towards her past, present and future maintenance and permanent alimony and that of the minor child. Petitioner no.1 undertook not to claim any right in the property of petitioner no.2 in future nor shall she claim any maintenance. Both the petitioners further undertook not to initiate any sort of legal proceedings against each other in future and further to withdraw their respective cases. It has been settled between the petitioners that the minor child Shiven would remain under the care and custody of petitioner no.1 and petitioner no.2 would not

claim the custody or visitation rights of the minor child from petitioner no.1. Now nothing is due towards each other.

7. *It is also satisfied that there is no collusion between the parties and that being so, there appears to be no impediment in grant of decree of divorce, as prayed.*

8. *Resultantly, petition succeeds and is, hereby, accepted with no order as to costs and a decree of divorce dissolving the marriage of the parties which took place on 03.02.2014 is hereby passed in terms of Section 13-B of the Hindu Marriage Act, 1955. However, the parties shall remain bound by their statements. Decree sheet be drawn accordingly. File be consigned to record room.”*

5. Appellant claims that he applied for the certified copy of the judgment dated 06.12.2019, which was delivered to him on 21.12.2019 and on perusal thereof, he learnt that while passing the afore-said judgment, a factually wrong and incorrect observation was made by the learned Family Court, in para No.6 to the following effect :-

“6.It has been settled between the petitioners that the minor child Shiven would remain under the care and custody of petitioner no.1 and petitioner no.2 would not claim the custody or visitation rights of the minor child from petitioner no.1. Now nothing is due towards each other.”

Since the above-extracted observations made by the learned Family Court in para No.6 of judgment dated 06.12.2019, were contrary to the settled terms between the parties; accordingly, the appellant filed an application under Sections 151, 152 and 153 of the CPC, seeking correction/rectification in the said judgment dated 06.12.2019.

6. It appears that the said application seeking correction/rectification in the said judgment dated 06.12.2019 was dismissed by the learned Family Court, vide impugned order dated 27.08.2021 by *inter-alia* observing that the mistake sought to be rectified, cannot be termed as clerical mistake and that the same would amount to review of the order.

7. In the afore-mentioned circumstances, the present appeal has been filed before this Court.

8. Learned counsel for the appellant submits that the Family Court below has erred in law and fact in dismissing the application under Sections 151, 152 and 153 CPC, filed by the appellant, seeking correction / rectification of the judgment dated 06.12.2019. It is submitted that the Family Court had made the observations in para No.6 of the judgment, as noticed above; due to oversight or on account of accidental slip/omission and/or mistake, despite the fact that the said observation was not in consonance with the terms and conditions settled between the parties as regards the issue of custody and visitation rights in respect of minor (Shiven). It is further submitted that the above referred omission/mistake is apparent and patent from the records, therefore, the Family Court below should have allowed the application filed by the appellant seeking correction / rectification of the judgment dated 06.12.2019. It is, yet, further submitted that till date, there has been no challenge to the compromise deed dated 06.12.2019 (Annexure A-3) and/or any of the terms and conditions mentioned therein. It is contended that the order dated 27.08.2021 is untenable in law; accordingly, it is prayed that the impugned order dated 27.08.2021, be set aside and the application seeking rectification of the judgment dated 06.12.2019 be allowed to the extent that the observations

made in para No.6 thereof, as noticed above, be deleted and the terms and conditions appearing in Clauses 3 to 6 of the compromise deed dated 06.12.2019, be read as a part of judgment dated 06.12.2019 as regards the custody and visitation rights in respect of minor (Shiven). It is further prayed that an appropriate direction be issued that the terms and conditions of the compromise deed dated 06.12.2019 be read as a part of the decree dated 06.12.2019.

9. Per contra, learned counsel for the respondent has opposed the prayer made on behalf of the appellant by submitting that the present appeal was not maintainable against the order dated 27.08.2021 as the same has been passed on an application under Sections 151, 152 and 153 CPC. It is further submitted that the issue regarding visitation rights/meeting rights has to be decided by the Family Court under the Guardians and Wards Act, 1890 and not under the proceedings under Section 13-B of the 1955 Act. Learned counsel for the respondent would submit that the Family Court below has passed a well reasoned and comprehensive order dated 27.08.2021, which does not call for any interference by this Court. It is further contended that even otherwise, while adjudicating the issue regarding visitation rights of a child, it is the welfare of the child which is a paramount consideration. It is submitted that the appellant has already re-married and is having children from the said second marriage. It is further submitted that the appellant is a habitual criminal and there are number of criminal cases registered against him; therefore, the grant of visitation rights to the appellant would not be in the best interest of the minor (Shiven). In support of the said contention, learned counsel for the respondent has filed application bearing ***CM No.7337-CII-2024***, for placing on record Annexures R-1 to R-4, along

with a short reply, wherein, Annexure R-1 is a copy of the information supplied under the Right to Information Act, 2005, indicating the cases against the appellant, as under:-

- “1. Case No.72 dated 25.02.2007 Section 160 IPC. Police Station Sector 5 Panchkula has been registered in which accused Gautam Kaushal etc.was presented before Hon’ble Court Panchkula was fined Rs.100 on 25.05.08.*
- 2. Case No.256 dated 04.08.2007 Section 148, 149, 323, 506, 325, 307 IPC. Police Station Sector 5, Panchkula has been registered, in which convicts Gautam Kaushal etc. were sentenced to four years and fined Rs.700/- and is on bail.*
- 3. Case No.508 dated 23.12.16 Section 147, 149, 323, 506, 332, 353, 186 IPC. Police Station Sector 5 Panchkula has been registered in which accused Gautam Kaushal etc. was presented before Hon’ble Court Panchkula. All the culprits from Panchkula were acquitted on 18.12.2017.*
- 4. Case No.610 dated 14.11.2017 Section 420, 467, 468, 471, 120-B has been registered at P.S. Sector 5 Panchkula.”*

It is yet further submitted that the instant appeal has been filed by the appellant only to harass the respondent. Learned counsel for the respondent has gone to the extent of saying that no agreement was effected between the parties with regard to the visitation rights of the child and the compromise (Annexure A-3) as attached with the appeal, was executed before the Women Cell, Khanna; when the police officials had asked the respondent to enter into a compromise for early disposal of the divorce petition. It is submitted that the terms and conditions mentioned in the compromise (Annexure A-3) are totally illegal, arbitrary and one sided.

Accordingly, prayer for dismissal of the appeal has been made.

10. We have heard learned counsel for the parties and perused the paper-book with their able assistance.

11. Upon considering the rival contentions of the parties, the following issues would arise for consideration by this Court:-

- (i) Whether the present appeal is maintainable in the context of provisions contained in the Family Courts Act?
- (ii) Whether the impugned order dated 27.08.2021 passed by Family Court, rejecting an application under sections 151, 152 and 153 CPC for correction/ rectification of the judgment dated 06.12.2019 requires any interference?
- (iii) Whether the issue regarding visitation rights/meeting rights in respect of a child has to be decided by the Family Court under the Guardians and Wards Act, 1890 and not under the proceedings under Section 13-B of the 1955 Act?

12. In respect of issue no. (i) concerning maintainability of the present appeal against the order dated 27.08.2021, rejecting the application for correction / rectification of the judgment dated 06.12.2019; it is relevant to refer to Sections 10, 14, 19 and 20 of the Family Courts Act, which are quoted below:-

"10. Procedure generally._(1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings [other than proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)], before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be

deemed to be a Civil Court and shall have all the powers of such court.

(2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973, (2 of 1974) or the rules made there under, shall apply to the proceedings under Chapter IX of that Code before a Family Court.

3) Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subjectmatter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other.

14. Application of Indian Evidence Act, 1872.*A Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872.*

19. Appeal.*(1) Save as provided in sub-section (2) and notwithstanding anything contained in Code of Civil Procedure, 1908 (5 of 1908) or in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law, an appeal shall lie from every judgment or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law.*

(2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties 2[or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) :

Provided that nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) before the commencement of the Family Courts (Amendment) Act, 1991.]

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of judgment or order of a Family Court.

²*[(4) The High Court may, of its own motion or otherwise, call for and examine the record of any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure, 1973 for the purpose of satisfying itself as to the correctness, legality or propriety of the order, not being an interlocutory order, and, as to the regularity of such proceeding.]*

(5) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, order or decree of a Family Court.

(6) An appeal preferred under sub-section (1) shall be heard by a Bench consisting of two or more Judges.

20. Act to have overriding effect. *The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. "*

13. From a bare perusal of Section 10, it emerges that the provisions of the Code of Civil Procedure are applicable to the proceedings under the Family Courts Act. However, the provisions of CPC are subject to other provisions of the Family Courts Act and the Rules framed, thereunder. Therefore, the provisions of the CPC are applicable to the proceedings before the Family Court but these provisions are subject to and circumscribed by the provisions of the Family Courts Act itself as also the rules framed thereunder. It is further noticeable that in terms of sub-section (3) of Section 10 of the Family Courts Act, a Family Court can lay down its own procedure, with a view to arrive at a settlement in respect of the subject

matter of the suit or proceedings or at the truth of the facts alleged by one party and denied by the other. It may also be noticed that Section 14 of the Family Courts Act, empowers the Family Court to receive as evidence any report, statement, documents, information or matter, which in its opinion, assists the Court to deal effectually with the dispute whether or not the same is relevant or admissible under the Indian Evidence Act, 1872. Still further, Section 20 of the Family Courts Act, provides overriding effect of the Act on other laws or instrument, having effect of law. Therefore, for the purposes of “procedure”, the Family Court adopts a less formal procedure.

14. Sub-section (1) of Section 19 of the Family Courts Act provides for an appeal against every judgment or order (not being an interlocutory order) passed by Family Court. The same contains a non-obstante clause, namely, "***notwithstanding anything contained in the Code of Civil Procedure or Code of Criminal Procedure or any other law***" and is further saved by sub-section (2) of Section 19. It therefore necessarily follows that an appeal lies against every order passed by the Family Court, which is not an interlocutory order, despite any provision of the CPC to the contrary.

15. In our considered view, the order dated 27.08.2021, rejecting the application under Sections 151, 152 and 153 CPC filed by appellant to seek rectification of a patent and obvious mistake in the judgment dated 06.12.2019, cannot be termed as an “*interlocutory order*” as it seals the fate of the appellant as regards the relief sought in the application for rectification. The impugned order dated 27.08.2021, if allowed to stand, shall affect vital and valuable rights of the appellant as regards his visitation rights in respect of his son (Shiven), which in turn would cause serious injustice to the appellant. Therefore, it is held that the order dated

27.08.2021, rejecting the application seeking rectification of a patent and obvious mistake in the judgment dated 06.12.2019; is appealable.

16. Furthermore, Section 19(2) of the Family Court Act specifically bars an appeal against a consent decree/order; however, in the peculiar facts and circumstances of the case, it is observed that the challenge herein is not to the consent decree of divorce under Section 13-B, rather the challenge is to the order passed on an application seeking rectification of the judgment dated 06.12.2019 passed under Section 13-B only in respect of a factually incorrect observation made by the Family Court as regards the visitation rights in respect of minor (Shiven). Therefore, the bar under Section 19(2) of the Family Court Act would also not be *stricto sensu* applicable to the facts of this case.

Even otherwise, it is well settled that when substantial justice and technicalities are pitted against each other then it is always the cause of substantial justice, which is to be preferred.

Accordingly, the objection of the respondent as regards the non-maintainability of the instant appeal, is hereby rejected. Issue no. (i) is decided accordingly.

17. As regards issue no. (ii), it would be apposite to consider the scope/ambit of Sections 151 of the CPC and also the power of court to rectify the mistake it has committed. In that regard, reference to a few judicial pronouncements is inevitable.

18. In *M/s Ram Chand & Sons Sugar Mills Pvt. Ltd. Barabanki (U.P.) v. Kanhayalal Bhargava and others, AIR 1966 Supreme Court 1899*; while discussing the scope of Section 151 Civil Procedure Code,

Hon'ble Apex Court, after considering various previous judgments on the point, held thus:

"The inherent power of a court is in addition to and complementary to the powers expressly conferred under the Code. But that power will not be exercised if its exercise is inconsistent with, or comes into conflict with, any of the powers expressly or by necessary implication conferred by the other provisions of the Code. If there are express provisions exhaustively covering a particular topic, they give rise to a necessary implication that no power shall be exercised in respect of the said topic otherwise than in the manner prescribed by the said provisions. Whatever limitations are imposed by construction on the provisions of Section 151 of the Code, they do not control the undoubted power of the Court conferred under Section 151 of the Code to make a suitable order to prevent the abuse of the process of the court."

19. In **S. Satnam Singh and Ors. v. Surender Kaur and Anr., reported in 2009(1) RCR (Civil) 600**; Hon'ble Apex Court held as follows:-

"21. The court may not have a suo motu power to amend a decree but the same would not mean that the court cannot rectify a mistake. If a property was subject matter of pleadings and the court did not frame an issue which it ought to have done, it can, at a later stage, when pointed out, may amend the decree.

22. The power of amendment, in a case of this nature, as notice hereinbefore, would not only be dependent upon the power of the court but also the principle that a court shall always be ready and willing to rectify the mistake it has committed."

20. In **Ajanta LLP v. Casio Keisanki Kabushiki Kaisha, 2022(1)**

RCR (Civil) 882; Hon'ble Apex Court observed as under:-

“13. A consent decree would not serve as an estoppel, where the compromise was vitiated by fraud, misrepresentation, or mistake. The Court in exercise of its inherent power may rectify the consent decree to ensure that it is free from clerical or arithmetical errors so as to bring it in conformity with the terms of the compromise. Undoubtedly, the Court can entertain an Application under section 151 of the CPC for alterations/modification of the consent decree if the same is vitiated by fraud, misrepresentation, or misunderstanding. The misunderstanding as projected by the learned Senior Counsel for the Appellant between parties relates to use of "FX" or "991" as separate marks in the Settlement Agreement. The understanding between the parties was with respect to "FX-991ES PLUS" as a whole and not with reference to "FX". A close scrutiny of the correspondence between the parties would show that the Settlement Agreement was arrived at after detailed consultation and deliberations. Thereafter, the parties were communicating with each other and they took six months to arrive at a settlement. The final Settlement Agreement was approved by the mediator. The High Court applied its mind and passed a decree in terms of the Settlement Agreement dated 16.05.2019. Though, the High Court dismissed the Application by refusing to entertain the Application on the ground that it was filed under section 152 of the CPC, we have considered the submissions of the parties to examine whether the Appellant has made out a case for modification of the decree by treating the Application as one under the proviso to Order 23, Rule 3 read with section 151 of the CPC. There is no allegation either of fraud or misrepresentation on the part of the Respondent. We are

unable to agree with the Appellant that there was a mistake committed while entering into a settlement agreement due to misunderstanding. Correspondence between the advocates for the parties who are experts in law would show that there is no ambiguity or lack of clarity giving rise to any misunderstanding. Even assuming there is a mistake, a consent decree cannot be modified/ altered unless the mistake is a patent or obvious mistake. Or else, there is a danger of every consent decree being sought to be altered on the ground of mistake/ misunderstanding by a party to the consent decree...”

21. Having noticed the legal position as indicated above, the stage is set to examine the case in hand, wherein the following facts are not disputed by either of the parties:-

- (a) The marriage between the appellant and the respondent was solemnized on 03.02.2014.
- (b) Both the parties filed a joint petition under Section 13-B of the Hindu Marriage Act, 1955 for dissolution of their marriage by way of mutual consent.
- (c) The statements of the parties on first motion were recorded on 22.11.2018.
- (d) On 06.12.2019, a compromise was arrived at between the parties and the terms of settlement were recorded in a compromise deed dated 06.12.2019 (Annexure A-3), which was placed on record before the trial Court as Exhibit PA/1.
- (e) On 06.12.2019, the statements of the parties on second motion were recorded before the learned Family Court, wherein

they both acknowledged the execution of compromise (Exhibit PA/1).

(f) The Family Court, Ludhiana (Camp at Khanna), vide its judgment dated 06.12.2019 (Annexure A-4), passed a decree of divorce under Section 13-B of the 1955 Act, thereby dissolving the marriage of the parties. It was also ordered that the parties shall remain bound by their statements.

22. Further, learned counsel for the respondent has not disputed the fact that in the aforesaid compromise deed dated 06.12.2019 (**Annexure A-3**), the parties had mutually agreed to the below mentioned terms as regarding the custody and visitation rights to the minor (Shiven):

“3. That out of the wedlock of the parties, a son Shiven was born whose date of birth is 23.01.2015 and his age is only 4 years as on date. At this time, the child needs party No.1 more, due to which, the child is with party No.1 and he shall remain with her only. However, with the consent of both the parties, party No.1 shall take the child at 09:00 AM on every 2nd Saturday of the month and party No.2 shall take him from outside the Court Complex, Khanna, and on the next day on Sunday, the party No.2 shall drop the child at the Hotel of party No.1 at Zirakpur at 05:00 PM. Apart from this, during the summer vacation of the child in the months of May/June, the party No.1 shall give custody of the child to party No.2 during the first 10 days of the holiday, and then, party No.2 shall handover the child to party No.1. Likewise, during the winter vacation which take place in the month of December, party No.1 shall give the custody of the child to party No.2 for the first 5 days of the holidays and after that, party No.2 shall give back custody of the child to party No.1. On the birthday of the

child, party No.2 shall be allowed to meet the child outside Court Complex, Khanna, for three hours in the afternoon after the school is over and after three hours, party No.2 shall handover custody of the child back to party No.1 outside the Court Complex, Khanna.

4. *That if party No.2 has to talk to the child on phone, then, the maternal grandfather of the child, namely, Balram Chikarsaal, whose mobile No.94170-29654, shall be bound to let party No.2 to talk to the child and as and when, party No.2 comes to Khanna to take the child, then, he shall come only after calling at the aforesaid mobile number. If the child gets ill in the future, then, the maternal grandfather of the child shall be bound to intimate party No.2.*

5. *That if party No.1 gets married anywhere or if she shifts elsewhere with the child (Shiven), then also, party No.2 shall take the child from the Court Complex, Khanna, District Ludhiana, from her on every 2nd Saturday and in the summer and winter holidays.*

6. *That if party No.1 gets the passport of the child or tourist visa or sends him abroad or she herself goes abroad with him, then, she shall not do so without the written consent of party No.2. If party No.1, without written consent, takes him abroad, then, party No.2 can take civil and criminal action against party No.1. If party No.1 takes the child abroad without the written consent of party No.2, then, custody of the child shall immediately be given to party No.2.”*

23. Having noticed the aforestated facts, we are of the considered view that once the execution of the compromise deed dated 06.12.2019 (which is Ex. PA1 on the trial court record) is not disputed and neither there is any challenge to the settled terms of said compromise; there was no occasion for the Family Court to go contrary to the settled terms of

compromise dated 06.12.2019 as regards custody and visitation rights pertaining to minor (Shiven) and to make following observation in para no. 6 of the judgment dated 06.12.2019:

“It has been settled between the petitioners that the minor child Shiven would remain under the care and custody of petitioner no.1 and petitioner no.2 would not claim the custody or visitation rights of the minor child from petitioner no.1.”

24. Apparently, the above-extracted observation by the Family Court in para no. 6 of the judgment dated 06.12.2019 is either due to oversight or due to an accidental slip or omission and the same would fall within the realm of a patent or obvious mistake; therefore the same was required to be corrected so as to bring the judgment dated 06.12.2019 in conformity with the terms of the compromise deed dated 06.12.2019 (Annexure A-3) executed between the parties. Consequently, the order dated 27.08.2021 requires interference by this Court so as to prevent abuse of process of court and also to meet the ends of justice by bringing the judgment dated 06.12.2019 in conformity with the terms of the compromise deed dated 06.12.2019 (Annexure A-3) executed between the parties.

Issue no. (ii) is answered accordingly.

25. We have delved into Issue no. (iii), however in our view the said issue is no more res-integra, especially in view of the observations made by Hon'ble Supreme Court in case of ***Vikram Vir Vohra v. Shalini Bhalla, 2010(2) RCR (Civil) 521***; which reads thus: -

“16. In a matter relating to custody of a child, this Court must remember that it is dealing with a very sensitive issue in considering the nature of care and affection that a child requires in the growing stages of his or her life.

That is why custody orders are always considered interlocutory orders and by the nature of such proceedings custody orders cannot be made rigid and final. They are capable of being altered and moulded keeping in mind the needs of the child.

*17. In **Rosy Jacob v. Jacob A Chakramakkal** -[(1973) 1 SCC 840], a three judge Bench of this Court held that all orders relating to custody of minors were considered to be temporary orders. The learned judges made it clear that with the passage of time, the Court is entitled to modify the order in the interest of the minor child. The Court went to the extent of saying that even if orders are based on consent, those orders can also be varied if the welfare of the child so demands.*

*18. The aforesaid principle has again been followed in **Dhanwanti Joshi v. Madhav Unde, 1998(1) RCR (Civil) 190 : [(1998) 1 SCC 112]**.*

19. Even though the aforesaid principles have been laid down in proceedings under the Guardians and Wards Act, 1890, these principles are equally applicable in dealing with the custody of a child under Section 26 of the Act since in both the situations two things are common; the first, being orders relating to custody of a growing child and secondly, the paramount consideration of the welfare of the child. Such considerations are never static nor can they be squeezed in a strait jacket. Therefore, each case has to be dealt with on the basis of its peculiar facts...”

26. Keeping in view the above referred observations in case of **Vikram Vir Vohra (supra)**; we proceed to consider the submission on behalf of the respondent that since the appellant is involved in several criminal cases, therefore, to grant visitation rights to the appellant in respect of minor (Shiven), would not be in the interest and welfare of the child.

27. True it is that while considering the issue as regards the custody and/or visitation rights in respect of a child, it is only the welfare of the child which is the paramount consideration. However, in the peculiar facts and circumstances of this case, although the appellant may have been involved in several criminal cases, but that does not lead to the necessary conclusion of him being a bad father.

28. From a bare perusal of the information under the RTI Act (Annexure R-1), which is sought to be relied upon by the respondent to portray the appellant as a bad person; it is observed that in one case i.e. FIR No.72 dated 26.02.2007, the appellant along with 11 others were fined for Rs.100/-. In the other case FIR No.508 dated 23.12.2016, appellant already stands acquitted on 18.12.2017. In another case FIR No.256 dated 04.08.2007, the appellant along with others is stated to have been sentenced to undergo 4 years imprisonment; however, it is also stated that presently the appellant is on bail granted by this Court.

It is also observed from Annexure R-1 (RTI information) that the said information was obtained by one Sh. Balram Kumar, who is none other but the father of the respondent and the said information was apparently sought in the year 2018, whereas, compromise (Annexure A-3) was executed on 06.12.2019, which is much later. It is, therefore, evident that at the time of execution of the compromise, the respondent was very well aware of the cases pending against the appellant and no objection in that regard has been shown to ever been raised, much less at the time of execution of compromise deed dated 06.12.2019.

29. Be that as it may, as of now; we are of the view that once the parties had voluntarily agreed for visitation rights of the appellant in respect

of minor (Shiven), by executing a compromise deed dated 06.12.2019 (Annexure A-3) and the said document was not only exhibited before the Family Court as Exhibit PA1 but also duly acknowledged by the parties by recording their statements on 06.12.2019 on second motion in proceedings under Section 13-B of the 1955 Act; therefore the parties must abide by the same. However, we deem it appropriate to add a caveat here that as regards the future visitation rights in respect of minor (Shiven), the parties shall be at liberty to take recourse to their remedies (if so advised), in consonance with the observations made by Hon'ble Supreme Court in case of *Vikram Vir Vohra (supra)*.

Accordingly, issue no. (iii) is answered in aforestated terms.

30. No other point has been urged.

31. Keeping in view the above discussion, the instant appeal is disposed of with the following directions: -

- (i) The impugned order dated 27.08.2021 is set aside;
- (ii) The judgment dated 06.12.2019 passed by Family Court, Ludhiana; shall stand modified to the extent that the below mentioned observation in para no. 6 of judgment dated 06.12.2019, shall stand deleted therefrom:-

“It has been settled between the petitioners that the minor child Shiven would remain under the care and custody of petitioner no.1 and petitioner no.2 would not claim the custody or visitation rights of the minor child from petitioner no.1.”

- (iii) As of now, the parties shall abide by clauses (3) to (6) of the compromise deed dated 06.12.2019 (Annexure A-3) relating to custody and visitation rights in respect of

minor (Shiven); however with a caveat that as regards the future visitation rights in respect of minor (Shiven), the parties shall be at liberty to take recourse to their remedies (if so advised), in consonance with the observations made by Hon'ble Supreme Court in case of *Vikram Vir Vohra (supra)*.

32. All pending application/s (if any) shall also stand closed.

(SUDHIR SINGH)
JUDGE

(HARSH BUNGER)
JUDGE

May 21, 2024
gurpreet

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