

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2024.PHHC.107279-DB



(126)

CM-11634-CII-2024 in/and
FAO No.2806 of 2023
Decided on :20.08.2024

Xelene Aguiar

.....Applicant/Appellant(s)

Versus

Amit Dabas

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MRS.JUSTICE MEENAKSHI I. MEHTA**

Present: Mr. Pradeep Norula, Advocate (through video conferencing)
and Mr. Bhupinder Singh, Advocate for the applicant/appellant.

Mr. Gagandeep Rana, Advocate &
Ms. Sonu Giri, Advocate for the respondent.

G.S. Sandhawalia, J.(Oral)

CM-11634-CII-2024

Application for listing the case in the urgent matters has been
filed.

With the consent of counsel for the parties, the main case itself is
taken on board today.

CM stands disposed of.

FAO-2806-2023

1. Challenge in the present appeal is to the order dated 16.03.2023
whereby the Family Court, Gurugram has disposed off the application filed by
the appellant-mother under Section 38 of the Special Marriage Act, 1954 (for
short '1954 Act') for modification of the order dated 17.08.2017 pertaining to
the custody of the child Jaiansh aged about 7 years at that point of time, when

the application was filed on 30.07.2018(Annexure P-3).

2. The Family Court had framed the following issues:-

“1. Whether the order dated 17.08.2017 regarding custody and visitation of the minor child needs to be modified in view of the assertions made in the application? OPA

2. Whether the applicant/mother is estopped by her own act and conduct from filing the present application? OPR

3. Whether the applicant/mother is not fit to get permanent custody of the minor child in view of her alleged mental condition? OPR

4. Relief.”

3. Issues No.1 & 3 were, accordingly, disposed off that changing of custody after a period of 7 years would adversely affect the minor child psychologically, as he is already taking education at Gurugram and shifting the minor child to the applicant-mother who is residing at Mumbai would result in shifting the school of the minor child also and there is no ground to change the custody. Regarding visitation it was ordered that the applicant-mother would have the right to meet the minor child once in a month i.e. on last Sunday of every month from 11:00 AM to 2:00 PM at a public place nearby the house of the respondent-husband. The respondent was to remain present during the visitation, but at the distance of 10 feet away from the child and the mother. Issue No.2 regarding the estoppel that the mother was estopped from filing the present application was decided in her favour that there was no such bar.

4. It is pertinent to notice that counsel for the parties as such have consented and both are agreed to the fact that one visit per month can be increased to two visits.

5. It is not disputed that vide order dated 17.08.2017, petition filed under Section 28 of the 1954 Act has been allowed and a decree of divorce has been granted by dissolving the marriage between the parties, whose marriage was registered before the Marriage Officer-cum-District Magistrate, Rohtak on

13.02.2009. The child Jaiansh was born on 19.08.2011 and the appellant-wife

has received Rs.45 lakhs from the husband. As per the terms and conditions of the settlement, the custody of the child was to remain with the father-respondent and the appellant-mother would have the visitation rights to meet the minor son, as per the convenience of the child. Repeated applications have been filed before the Family Court for modification by the mother/appellant, as at one point of time she was residing at Bangalore and vide order dated 04.03.2020 (Annexure P-7) as interim arrangement the Family Court had fixed the schedule of visitation on first, third and fifth Sunday, at some mutually agreed public place from 10:00 AM to 1:00 PM in the presence of the father, apart from giving the right to the appellant-mother to talk to the child through video call or audio call on alternate non-visiting Sundays for 20-30 minutes, with the convenience of the child. On the application dated 08.02.2021 (Annexure P-10) being filed for overnight custody, the final disposal has now been done, as noticed on 16.03.2023, by giving the access to the mother to meet the child once in a month i.e. on last Sunday of every month from 11:00 AM to 2:00 PM.

6. Considering the age of the child who is now 13 years old and the status of the parties, we are of the considered opinion that it would be in the interest of the child and for his psychological growth as such that he should also interact with his mother on more frequent occasions. Resultantly, we are of the view that the offer which has been given by counsel for the parties is justified that instead of one visit to interact with the child there should be two visits on first Sunday and third Sunday of every month, on the same terms and conditions, as has been ordered by the Family Court, vide order dated 16.03.2023.

7. Accordingly, we dispose of the present appeal with the aforesaid modification.

(G.S. SANDHAWALIA)
JUDGE

20.08.2024
Naveen

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No