

Pushpa Singh vs Inderjit Singh on 5 September, 1988

Equivalent citations: JT1989(1)SC43, 1990SUPP(1)SCC53, AIRONLINE 1988 SC 76, (1989) 15 ALL LR 207, 1990 SCC (SUPP) 53, (1989) 1 JT 43.1, 1990 SCC (CRI) 609, AIRONLINE 1988 SC 140

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Bench: A.P. Sen, M.P. Thakkar, S. Natarajan

ORDER

A.P. Sen, J.

1. Special leave granted. Heard both sides.

2. We have considered all the facts and circumstances in totality. We are firmly of the view that the paramount interest of the child lies in giving his custody to the mother. The age of the child is admittedly less than five years. The child undoubtedly needs affection of his mother for which there is no adequate substitute. We feel that the High Court has not approached the problem in the correct perspective. The High Court was clearly in error in observing that the proviso to Section 6A of the Minority and Guardianship Act, 1956 cannot be attached with importance. The view of the High Court ignores the very mandate of the legislature and runs counter to the mandate. Accordingly, the appeal; succeeds and is allowed. We set aside the judgment and order of the High Court giving custody of the child to the father (Respondent No. 1). We grant the prayer made by the mother for securing the custody of the child, and direct the Respondent No. 1. Inderjit Singh to present himself before the learned Registrar of the Lucknow Bench of the High Court along with the child (Abhishekh) at 2.00 P.M. on 12th September, 1988 and hand over the custody of the child to the appellant Pushpa Singh, the mother. Failure to comply will constitute contempt of court the appellant Pushpa Singh shall be at liberty to move the court for further directions in case of non-compliance, We, however, make it clear that Respondent No. 1 Inderjit Singh can meet his child twice a month at his in-laws' place at Lucknow on dates intimated by him well in time to the appellant.

3. We also wish to make it clear that this order will not preclude the Respondent from moving the appropriate court under the Hindu Marriage and Guardianship Act in future, if so advised to secure such relief as is warranted by law if the facts and circumstances so warrant having regard to paramount consideration of the welfare of the child.

4. Appeal disposed of accordingly. No costs.