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SHEOLI HATI

v.

SOMNATH DAS

(Civil Appeal Nos. 5388-5389 of 2019)

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JULY 11, 2019

[ASHOK BHUSHAN AND NAVIN SINHA, JJ.]

Guardian and Wards Act, 1890:

- ss.7 and 12 – Application under – By father (respondent) – Seeking custody of minor girl-child – Alleging that mother (appellant) was obstructing his visiting rights granted by the Court, pursuant to divorce between the parties – Later the respondent gave up the claim of custody and sought direction to admit the child in any reputed boarding school in India at his expenses – Family Court directed that custody of the child would be with mother alongwith visiting rights of father and that the child would be admitted to boarding school after attaining the age of 12 years i.e. for academic session 2019-2020 – Cross-appeals by the parties – High Court by interim order dated 26.4.2018, directed the child to be admitted in a reputed residential school at Ooty for the session 2018-2019 – Pursuant to direction of the High Court, the child was admitted to the residential school at Ooty – Appeal to Supreme Court – Held: While taking a decision regarding custody or issues pertaining to a child, welfare of the child is of paramount consideration – The courts in exercise of parens patriae jurisdiction have to consider the welfare of the child as of paramount importance – It is evident from the record that father’s intention had always been that the child got best education at a neutral environment – The Court has to take extra caution to ensure that the child is kept away from negative influences – What is in the best interest of the child depends on the facts and circumstances of each case – It would be appropriate that the High Court finally decides the appeals after taking into consideration subsequent materials.*

Disposing of the appeals, the Court

HELD: 1. When the child has to go in the environment, where there is marital discord between her parents affecting the

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peace of mind of all including the parents and children, child suffers physical and mental distress. The ill consequences of the discord between mother and father effect the child in her normal upbringing and is a negative factor on child's personality and upbringing. [Para 16] [224-E-F] A

Vivek Singh v. Romani Singh (2017) 3 SCC 231 – relied on. B

2. While taking a decision regarding custody or other issues pertaining to a child, welfare of the child is of paramount consideration. Every child has right to proper health and education and it is the primary duty of the parents to ensure that child gets proper education. The Courts in exercise of *parens patriae* jurisdiction have to decide such delicate question. It has to consider the welfare of the child as of paramount importance taking into consideration other aspects of the matter including the rights of parents also. What is in the interest of the child depends on the facts and circumstances of each case and has to be decided on its own merits without adhering to any fixed formula or rule. [Paras 18, 19 and 22] [225-E; 225-F-G; 230-F] C D

Gaurav Nagpal v. Sumedha Nagpal (2009) 1 SCC 42 : [2008] 16 SCR 396 ; *Thrity Hoshie Dolikuka v. Hoshiam Shavaksha Dolikuka* (1982) 2 SCC 544: [1983] 1 SCR 49; *Nutan Gautam v. Prakash Gautam* (2019) 4 SCC 734 – relied on. E

3. In the present case, it is the respondent-father, who is bearing all expenses of the child in the boarding school at Ooty, which are more than Rs.10 lakhs p.a. In addition to the above expenses of the school, the respondent also offered to bear expenses of flight charges and stay of the appellant-mother when she visits the child at Ooty from Jamshedpur. From the material on record, the Court is satisfied that the respondent's intention has always been that the child should get best education at a neutral environment, which may help in developing her personality. The appellant has right from beginning opposing the prayer of the respondent to send the child in the boarding school and tried to find fault with the school at Ooty. In the circumstance in which the child is there, the Court has to take F G

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A extra caution and precaution to ensure that the child is kept away from negative influences. Even the Family Court has directed for admitting the child in boarding school but from Academic Session 2019-2020. The High Court initially directed that the child to be admitted in Sacred Heart Convent School, Jamshedpur and after receiving a report from the said School, the High Court
B directed for admission of the child in Good Shepherd International School, Ooty for the Academic Session 2018-2019, which order is under challenge in these appeals. [Paras 13, 14] [223-E-H; 224-A-B]

C 4. The order dated 26.04.2018 passed by the High Court, impugned in the present appeals, has been given effect to and both the appeals being still pending in the High Court awaiting final decision, it would be appropriate that the High Court may finally decide the appeals after hearing the parties. There is no justification in interfering with this order at this stage.
D [Para 15] [224-C]

E 5. The High Court, while deciding the appeals finally, should also take into consideration subsequent materials which may be brought before it by the parties including the progress report of the child from Good Shepherd International School, Ooty. It is also open for the High Court to take decision on the medical issues and if necessary to obtain medical reports as may be required. The High Court during hearing of the appeals had already interacted with the child on many occasions and it is for the High Court to take a decision with regard to interacting with the child. [Para 22] [230-F-H]
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Case Law Reference

	(2017) 3 SCC 231	relied on	Para 16
	[2008] 16 SCR 396	relied on	Para 18
G	[1983] 1 SCR 49	relied on	Para 19
	(2019) 4 SCC 734	relied on	Para 21

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos.5388-5389 of 2019.
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From the Judgment and Order dated 26.04.2018 of the High Court of Jharkhand, at Ranchi in F.A. No. 59 of 2016 with F.A. No. 68 of 2016

Prashant Bhushan, Sudeep Dey, Navdeep Jain, Nikilesh Ramachandran, Advs. for the Appellant.

Ashok Panigrahi, Anmol Tayal, S. Vinay Ratnakar, Advs. for the Respondent.

The Judgment of the Court was delivered by

ASHOK BHUSHAN, J. 1. Leave granted.

2. The appellant aggrieved by the judgment dated 26.04.2018 passed by a Division Bench of the High Court of Jharkhand at Ranchi has come up in these appeals. The impugned judgment of the High Court was passed in First Appeal No.59 of 2016 filed by the appellant and First Appeal No.68 of 2016 filed by the respondent both challenging the order dated 31.03.2016 passed by the Principal Judge, Family Court, Jamshedpur in Guardianship Case No.11 of 2012 filed by the respondent under Sections 7 and 12 of the Guardian and Wards Act, 1890.

3. The brief facts and circumstances giving rise to these appeals are:

3.1 The appellant and the respondent were married in the year 2003. There has been matrimonial dispute between the parties since the year 2006. A girl child was born to the appellant and the respondent on 09.04.2007, named as Aditi. The appellant filed complaint against the husband before various authorities, employer of the respondent as well as National Human Rights Commission. A petition for seeking restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955 was filed by the respondent at Bengaluru where the respondent was residing. In the year 2008, the appellant lodged FIR against the respondent under Section 498A of the IPC being Case No.204 of 2008. In the year 2008, the respondent filed an application for seeking a decree of divorce before the Family Court, Bengaluru which was registered as Matrimonial Case No.3358 of 2008.

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- A 3.2 The respondent filed an application before the High Court of
Jharkhand at Ranchi seeking anticipatory bail in connection with
Kadma PS Case No.204 of 2008 in which case parties were
referred to mediation and conciliation to amicably resolve their
issues. On 11.09.2009, the Principal Judge, Family Court at
Bengaluru granted ex parte decree of divorce dated 11.09.2009.
B During the pendency of the Anticipatory Bail Application being
No.518 of 2009, the parties amicably settled all their disputes
before Jharkhand Legal Services Authority. A Settlement dated
19.12.2009 between the parties was communicated to the High
Court. As per the terms of the settlement, the respondent agreed
C to pay an amount of Rs.5,00,000/- as permanent alimony to the
appellant. Further, the respondent agreed to deposit a sum of
Rs.5,00,000/- in the name of Aditi for her all time maintenance.
The appellant further agreed not to challenge ex parte divorce
decree. The appellant also agreed to allow the respondent to
D meet their child once in every two months starting from January,
2010. The High Court disposed of the matter in terms of the
settlement.
- E 3.3 The respondent alleging obstruction by the appellant in his
visiting rights filed an application seeking custody of the child,
Aditi under Sections 7 and 12 of the Guardian and Wards Act,
1890 at Bengaluru. The said proceedings under Guardian and
Wards Act were transferred to Family Court at Jamshedpur
under order of this Court dated 27.03.2012. The appellant filed
written statement in Guardianship Case No.11 of 2012. The
respondent made an amendment application before the Family
F Court, Jamshedpur praying for an alternative relief for addition
of a prayer in his application in Guardianship Case, i.e., for
directing the child to be admitted in any reputed residential/
boarding school in India at the expenses of the respondent, which
amendment application was allowed by an order dated
16.05.2013. The Principal Judge, Family Court by order dated
G 31.03.2016 decided the Guardianship Case No.11 of 2012. It is
to be noted that in the Guardianship proceedings the respondent
has given up his claim of the custody of child and confined his
case to alternative prayer, i.e., direction to admit the child in a
boarding school. The Family Court, Jamshedpur in paragraph
H 41 of the judgment directed:

“41. Thus, in view of the discussions made above, I come to the conclusion that minor daughter of the petitioner and respondent Aditi Bishaskha Das shall continue in the care, custody and guardianship of her mother till she reaches the age of 11 years and shall continue to pursue her education from Jamshedpur along with her mother. However, the petitioner shall have the visitation right as is continuing since before i.e. during the pendency of the case. However, the petitioner shall be entitled to the custody of the child for half of each vacation of the school where Aditi is or shall be studying and for the first half of vacation Aditi shall be in the care and custody of her father i.e. petitioner and for the second half of the vacation she shall be under the care and custody of her mother. The vacations referred to above are the Summer and Winter vacations in every school. Further, Aditi upon attaining the age of 12 years i.e. for the academic session 2019-2020 she shall be sent to a boarding school of repute where she qualifies and is able to get admission. The entire cost of such Boarding School shall be borne by the petitioner and once Aditi gets into the Boarding School then the respondent shall have the right to visit her daughter as permitted by the School calendar but at the cost of the petitioner and the petitioner shall pay such cost which shall include the travelling air-fare and other expenses in advance. Issue No.V is decided accordingly. The custody in course of vacation shall continue as before.”

3.4 The Family Court directed that Aditi shall continue in the custody and guardianship of her mother till she reaches the age of 11 years and continue to pursue her education from Jamshedpur. The respondent was allowed visitation right and also allowed custody of the child for half of each vacation of the school. First half of the vacation be in the care and custody of her father and second half be in the custody of the mother. The Family Court further directed that for the academic session 2019-2020 she shall be sent to a boarding school of repute where she qualifies and is able to get admission.

3.5 Aggrieved by the judgment of the Family Court both the parties have filed appeals in the High Court. The appellant filed First Appeal No.59 of 2016 and the respondent filed First Appeal No.68 of 2016. The High Court interacted with the child on

- A several occasions. The High Court in the aforesaid appeals passed an order dated 17.11.2016 proposing to the parties that the minor child be admitted in Sacred Heart Convent School, Jamshedpur which is a very good school for girls in Jamshedpur. On 28.11.2016, the High Court directed that Aditi be admitted in Sacred Heart Convent School, Jamshedpur. The High Court
- B also increased the visiting hours of the respondent and also permitted the respondent to get the child registered for admission in La Martiniere Girls School, Kolkata. Against the order dated 28.11.2016, the appellant filed SLP(C)Nos.37915-37916 of 2016 which were dismissed by this Court by order dated 23.12.2016.
- C By the subsequent order dated 26.04.2018 which is impugned in the present appeals, the High Court directed the child to be admitted in Good Shepherd International School, Ooty in Class IV which is a residential institution affiliated to ICSE for the Session 2018-2019, which commenced from 21.07.2018. These appeals were taken by this Court on 10.07.2018. In its order
- D dated 10.07.2018 following observations were made by this Court:
- E “After hearing the learned counsel for the parties yesterday as well as today, we are of the opinion that there is no need to stay the directions of the High Court in the impugned order whereby the High Court has directed that the child Aditi Bisakha Das be admitted in Good Shephard International School, Ooty in Class V where the respondent has already secured admission for her. This arrangement, as per the High Court’s order, is made for the Academic Year 2018-19. We
- F also find that the High Court has passed this order after weighing and discussing all the alternatives and 2 pros and cons of the matter and has formed its opinion that it is one of the most suitable solutions.
- G We feel that once such an order is given on objective considerations, it is better that the child is admitted in the said School in the current academic year in order to find out as to how she is able to cope up with and studies in the said School at Ooty and what kind of progress she is able to make on shifting her from the present atmosphere to a boarding School.”
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3.6 In pursuance of the order of the High Court dated 26.04.2018, ultimately, the child, Aditi was admitted in Good Shephard International School, Ooty reluctantly by the appellant. With regard to the visiting rights of the respondent orders were passed for the winter vacation by this Court on 12.12.2018. After spending second half of the winter vacation with father the child went to Jamshedpur to attend birthday of her mother on 13.01.2019. After attending birthday she was to catch a flight for Bengaluru from Ranchi. Father along with an Advocate was to take the child. On 14.01.2019 at the Airport child complained to the CISF personnel that she did not want to go along with father to Bengaluru. The CISF officer informed the concerned Police Station and the lady Police personnel interacted with the child. Although the appellant and her father were telephonically informed but they did not come to take the child and the child was ultimately lodged in a shelter home. The Child Welfare Committee, Ranchi (Jharkhand) also interacted with the child. This Court vide order dated 21.01.2019 directed following:

“The child being student in a good school and her session coming to close, we are of the view that first thing to be done is to direct the Child Welfare Committee to send the child to the school. Respondent/father will bear all expenses for traveling of the child along with one woman companion which may be deputed by the Child Welfare Committee to take the child and handover the child to the Principal of the School. This order shall be complied by the Child Welfare Committee within three days from the date of production of this order. All other issues between the parties shall be taken care subsequently. We further direct that report of the Child Welfare Committee be submitted in a sealed cover before this Court. The Principal of the school also submit an interim report of the academic session in a sealed cover before this Court. Reports be submitted within two weeks. The school may also send detail report by the end of this academic session.

Accordingly, I.A. is disposed of.

List the matters after four weeks.”

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- A 3.7 After aforesaid order dated 21.01.2019, the child was handed over to the School to complete her session. Further, on 21.02.2019, the report from Child Welfare Committee, Ranchi, Jharkhand and on 29.01.2019 and 02.02.2019 report from Good Shepherd International School, Ooty were received. By order dated 03.05.2019 on the request of the mother she was permitted to have the custody of the child during the entire vacation with effect from 22.05.2019. Thereafter, the matter was heard on 01.07.2019.
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- C 4. Learned counsel for the appellant submits that the child is not doing well at Good Shepherd International School, Ooty and she has suffered medical issues also. The appellant submits that proper medical care was not taken by the School. Learned counsel submits that the appellant has always contended that child shall be allowed to get her education at Jamshedpur where the mother is residing. An I.A.No.74433 of 2019 has been filed by the appellant where the second prayer is that
- D Aditi to be admitted in some reputed school for the Academic Session 2019-2020 in Jamshedpur or alternatively Aditi be admitted in some boarding school near Jamshedpur. In the application, the appellant has referred to La-Martiniere Girls School, Kolkata and Loreto Convent Entally, Kolkata.

- E 5. Learned counsel for the appellant has also referred to medical prescription dated 20.05.2019 of one Dr. Devi Prasad Rao, Child Specialist, Hospital Road, Ooty and one further prescription dated 07.06.2019 of Aditi from Zila Mansik Swasthaya Karyakaram, Jamshedpur, East Singhbhoom, Jharkhand.

- F 6. Learned counsel for the respondent refuting the submissions of the counsel for the appellant contends that child Aditi has done very well in the institution, Good Shepherd International School, Ooty. In reply filed by the respondent, the respondent has referred to various progress reports and certificates issued by the Good Shepherd International School of the child for Academic Session 2018-2019. Learned counsel submits
- G that the child has shown over all development and her participation in all the activities inside the classroom and outside, there is no complaint of health issues. She participated in several competitions and got prizes and certificates. The weight and height has specially increased. In the reply affidavit, learned counsel has referred to co-curricular report card

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of the child. In her progress report, she has been promoted to Class VI. A
It is submitted that it is the appellant, who has always been creating
hindrance in normal development of the child. She has always been
from day one poisoning the child against the respondent. The child has
always been tutored to make complaint against the respondent. The
child is treated in a manner by the appellant so as to alienate her from B
father. The child was in neutral environment and has done well in the
school in all fields which instead of being appreciated by the appellant,
she still wants that child be taken out from the School for which several
tricks have been played by the appellant.

7. We have heard the learned counsel for the parties and perused C
the records.

8. Before we proceed to enter into the submissions of the parties,
it is useful to refer to the order passed by the High Court on 26.04.2018,
which is impugned in the present appeals. As noted above, the child was
initially studying in the institution, where appellant is a teacher, i.e., Motilal D
Nehru Public School, Jamshedpur. Now, pursuant to the orders of the
High Court, the child was admitted for the Academic Session 2017-2018
in Sacred Heart Convent School, Jamshedpur. The High Court has noticed
the report of Sacred Heart Convent School, Jamshedpur, which was
received from the School on 21.03.2018. The report has been extracted
by the High Court in paragraph No.16 of the judgment, which is to the E
following effect:

“”Sub:-School Performance Report of Aditi
Bishakaha Das.

Sir,

With reference to CASE No.-Cont.(Cr.)-08/2017 dated 4600/ F
17.03.2018, Aditi Bishakaha Das, who is presently studying is Std.
V, having Admission No.16510, is trying her best to come up to
the average level.

In the year 2017 when Aditi was admitted in Sacred Heard G
Convent School she was below average in her studies. Whenever
her mother was called by the class teacher her heath was not
permitting to visit the class teacher and the co-ordinator of the
Primary School. It seems home atmosphere is not contutive for
the child to perform well in her studies.

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A The child is in the school only for six hours and the rest of the time the child is at home. Aditi is an intelligent girl. Parents co-operation is very important. It is up to the parents to help the child and to co-operate with the school authorities. Environment is very important for the child's performance and to do well in her studies. It is up to the parents to decide her further. Residential school might help her to do well in her future studies.

B Sister Mridula Ac.
Principal,
Sacred Heart Convent School, Jamshedpur.”

C 9. Another factor which has been taken into consideration by the High Court is the report of the District Probation Officer, East Singhbhum, Jamshedpur which was called for by the Court. By letter dated 10.04.2018, the District Officer, Jamshedpur has submitted that report regarding well being of the child Aditi. in paragraph No. 5 with regard to

D Educational condition, following was opined:

“5. Educational condition:- Now Aditi is in Std.5 in Sacred Heart School in Jamshedpur. According to her School progress report card, she is an average student but talking with Aditi, this investigator found that she is an intelligent girl. In the better educational atmosphere and without any type of stress or tension she will do better for her future.”

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10. The High Court in paragraph 21 ultimately said:

“21. Considered thus, in the totality of the facts and circumstances, we are inclined to accede to the request of the father to allow the child to be admitted to a reputed school i.e. Good Shepherd International School, Ooty in Class-V which is affiliated to ICSE. The session 2018-19 commences from 21.07.2018. In that way, the girl would not lose any valuable period of the session as it is yet to commence. As informed by the father, aptitude test and personal interview is to be held before 10.05.2018. Good Shepherd International School, Ooty as its brochure shows was established in 1977 and has the facilities of best teaching and learning practices, services and opportunities provided by a team of committed mentors and facilitators. It has a knowledge village, a reputed Finishing Schools for girls along with 9-hole golf course, hospital, bank,

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vegetable farms, dairy and poultry. It is spread over 150 acres of verdant land in Nilgiris in Tamil Nadu, India. Avowedly, it has a state of art infrastructure for academic and boarding talent to deliver world class education. There are houses for the students from Class VI to XII. The Institution is a Member of the Council of International Schools, a benchmark of world class school education. It has a distinguished faculty who are exposed to global developments and reside within the Global Village to devote complete time to make the learning experience for the students an enriching one.”

11. The order impugned indicates that the High Court has not finally decided both the appeals filed against the order dated 31.03.2016 of the Family Court. The matter has been kept pending by the High Court. The High Court had directed that after child is admitted in the school the matter should again be posted before the High Court to file compliance report.

12. As noted above, the application which was filed by the respondent before the Family Court under the Guardian and Wards Act, 1890 was confined only to the consideration of the issue as to whether child Aditi should be directed to be admitted in a boarding school. The respondent has given up his claim of custody of the child and has only pressed his prayer of sending the child to the boarding school.

13. It is also relevant to note that it is the respondent, who is bearing all expenses of the child in the boarding school at Ooty, which are more than Rs.10 lakhs p.a. In addition to the above expenses of the school, the respondent also offered to bear expenses of flight charges and stay of the appellant when she visit the child at Ooty from Jamshedpur. From the material on the record, we are satisfied that the respondent's intention has always been that the child should get best education at a neutral environment, which may help in developing her personality. It is also to be noticed that the appellant has right from beginning opposing the prayer of the respondent to send the child in the boarding school and tried to find fault with the school at Ooty. In the circumstance in which the child is there, the Court has to take extra caution and precaution to ensure that the child is kept away from negative influences.

14. As noted above, even the Family Court has directed for admitting the child in boarding school but from Academic Session 2019-

A 2020. The High Court initially directed that the child to be admitted in Sacred Heart Convent School, Jamshedpur and after receiving a report from the said School, the High Court directed for admission of Aditi in Good Shepherd International School, Ooty for the Academic Session 2018-2019, which order is under challenge in these appeals.

B 15. As noted above, we in our order dated 10.07.2018 declined to stay the directions of the High Court for admission of Aditi in Good Shepherd International School, Ooty in Class V. The order passed by the High Court, impugned, in these appeals, has been given effect to and both the appeals being still pending in the High Court awaiting final decision, we are of the view that the High Court may finally decide the appeals after hearing the parties. Order dated 26.04.2018 having been given effect to, we see no justification in interfering with this order at this stage. Learned counsel for the parties submitted that this Court may itself decide all the issues finally but the appeals against the order of the Family Court being awaiting the final decision of the High Court. it is appropriate that the High Court may be requested to decide the appeals finally.

E 16. Before we close, few observations on the issues which have arisen before us need to be made. The present is a case, where limited issue has arisen regarding giving education to the child in boarding school or to permit the status quo regarding education of the child as was on the date when the Family Court passed order dated 31.03.2016. When the child has to go in the environment, where there is marital discord between her parents affecting the peace of mind of all including the parents and children, child suffers physical and mental distress. The ill consequences of the discord between mother and father effect the child in her normal upbringing and is a negative factor on child's personality and upbringing. This Court in **Vivek Singh vs. Romani Singh, (2017) 3 SCC 231**, has discussed the term "Parental Alienation Syndrome". In paragraph No.18 of the judgment, following was observed:-

G "18.Psychologists term it as "The Parental Alienation Syndrome". It has at least two psychological destructive effects:

H (i) First, it puts the child squarely in the middle of a contest of loyalty, a contest which cannot possibly be won. The child is asked to choose who is the preferred parent. No matter whatever is the choice, the child is very likely to end up feeling

painfully guilty and confused. This is because in the overwhelming majority of cases, what the child wants and needs is to continue a relationship with each parent, as independent as possible from their own conflicts. A

(ii) Second, the child is required to make a shift in assessing reality. One parent is presented as being totally to blame for all problems, and as someone who is devoid of any positive characteristics. Both of these assertions represent one parent's distortions of reality. B

17. In the above case also there was bitter fight between father and mother. The Family Court has allowed the custody of the minor girl child to the father by dismissing the petition of the respondent-mother for custody. The High Court on appeal decided the entitlement of the custody of the child to the mother. Aggrieved by the order of the High Court, father had filed the appeal in which backgrounds the above observations were made by this Court. The ill effect on child, due to discord between the parents with negative feeling against each other has natural effect, which hinders the child's normal development. C D

18. It is well settled that while taking a decision regarding custody or other issues pertaining to a child, welfare of the child is of paramount consideration. This Court in **Gaurav Nagpal vs. Sumedha Nagpal, (2009) 1 SCC 42**, had occasion to consider the parameters while determining the issues of child custody and visitation rights, entire law on the subject was reviewed. This Court referred to English Law, American Law, the statutory provisions of Guardian and Wards Act, 1890 and provisions of Hindu Minority and Guardianship Act, 1956, this Court laid down following in paragraph Nos. 43, 44, 45, 46 and 51: E F

“43. The principles in relation to the custody of a minor child are well settled. In determining the question as to who should be given custody of a minor child, the paramount consideration is the “welfare of the child” and not rights of the parents under a statute for the time being in force. G

44. The aforesaid statutory provisions came up for consideration before Courts in India in several cases. Let us deal with few decisions wherein the courts have applied the principles relating to grant of custody of minor children by taking into account their interest and well-being as paramount consideration. H

A **45.** In *Saraswathibai Shripad Ved v. Shripad Vasanji Ved*, ILR 1941 Bom 455 : AIR 1941 Bom 103; the High Court of Bombay stated;

B “...It is not the welfare of the father, nor the welfare of the mother, that is the paramount consideration for the Court. It is the welfare of the minor and of the minor alone which is the paramount consideration.....”

(emphasis supplied)

C **46.** In *Rosy Jacob v. Jacob A. Chakramakkal*, (1973) 1 SCC 840, this Court held that object and purpose of the 1890 Act is not merely physical custody of the minor but due protection of the rights of ward’s health, maintenance and education. The power and duty of the Court under the Act is the welfare of minor. In considering the question of welfare of minor, due regard has of course to be given to the right of the father as natural guardian but if the custody of the father cannot promote the welfare of the children, he may be refused such guardianship.

D 51. The word “welfare” used in Section 13 of the Act has to be construed literally and must be taken in its widest sense. The moral and ethical welfare of the child must also weigh with the Court as well as its physical well- being. Though the provisions of the special statutes which govern the rights of the parents or guardians may be taken into consideration, there is nothing which can stand in the way of the Court exercising its *parens patriae* jurisdiction arising in such cases. “

E 19. Every child has right to proper health and education and it is the primary duty of the parents to ensure that child gets proper education. The Courts in exercise of *parens patriae* jurisdiction have to decide such delicate question. It has to consider the welfare of the child as of paramount importance taking into consideration other aspects of the matter including the rights of parents also. In reference to custody of a minor, this Court had elaborated certain principles in **Thrity Hoshie Dolikuka vs. Hoshiam Shavaksha Dolikuka**, (1982) 2 SCC 544, where this Court again reiterated that welfare of the child is of paramount importance. In paragraph No.17, following was laid down:

F “17. The principles of law in relation to the custody of a minor appear to be well-established. It is well-settled that any matter

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concerning a minor, has to be considered and decided only from the point of view of the welfare and interest of the minor. In dealing with a matter concerning a minor, the Court has a special responsibility and it is the duty of the Court to consider the welfare of the minor and to protect the minor's interest. In considering the question of custody of a minor, the Court has to be guided by the only consideration of the welfare of the minor.”

20. In the above case, the issue of minor girl came for consideration in the context of custody. The mother, who was school teacher wanted to send the child to boarding school, which was opposed by the father, who wanted to have custody of the minor girl. It is to be noted that in the said case the minor girl has expressed her wish not to go to boarding school. This Court held that in embittered relationship between the parents and the attempt of one spouse poisoning the mind of the child against the other spouse has disastrous effect. In paragraph Nos. 32 to 35 following was laid down:

“32. The effect on the little girl of the embittered relationship between her parents and the attempt of the father to poison the mind of the daughter against her mother and to alienate her from the mother has been simply disastrous. The intelligent and sensible girl, distressed at the acrimony between her parents, who wanted to spend her time with each of her parents as she is deeply attached to both, as recorded by Lentin, J. in his order dated June 28, 1979, was on the verge of near nervous break-down as noted by the Division Bench in its judgment dated July 31, 1981. The various orders passed in between which we have set out at length also, indicate what great mental strain and agony the little girl had suffered because of the acrimonious dispute between her parents. During this period of two years, the girl had been under home influence, as she had been staying with her quarrelling parents in terms of the various orders of the High Court. The little girl also had been compelled to make her appearances in Court from time to time. The facts and circumstances clearly establish that the effect of home influence on the minor in the present case has been to reduce a bright, happy and sensible child to a state of complete misery; and, the extreme psychological strain on the sensible mind of the little girl has caused almost a near nervous breakdown. When the atmosphere in a house, vitiated and rendered surcharged with tension as a result of bitter squabbles

- A between husband and wife causes misery and unhappiness to a child, who has to live in constant psychological strain in such a broken home in view of the bitter relationship between her parents for each of whom she has great affection, the healthy and normal growth of the child is bound to be seriously affected.
- B In the interest and for the welfare of the child in such a case, the child is necessarily to be removed from such unhealthy environment of a broken home surcharged with tension. In such a case, the proper and best way of serving the interest and welfare of the child will be to remove the child from such atmosphere of acrimony and tension and to put the child in a place where the embittered relationship between her parents does not easily and constantly effect her tender mind.
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- 33.** In the facts and circumstances of the present case the best way to serve the welfare and interest of the child will be to remove the child from the unhealthy atmosphere at home which has caused a very great strain on her nerves and has certainly affected her healthy growth, to a place where she can live a normal healthy life and will have a good opportunity of proper education and healthy growth. We note with satisfaction that the view that we have taken is fully supported by the report of the Social Welfare Expert. The report of the Social Welfare Expert, though not binding on the Court is entitled to weighty consideration. In the instant case, the Expert has made a very careful study of the entire matter and has given a well -reasoned report.
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- 34.** Pursuant to the order passed by the Division Bench of the Bombay High Court the mother got the child admitted into Kimmins Boarding School at Panchgani. By an interim order passed by this Court in the stay application in this appeal, the child was directed to continue her stay in the said Boarding institution. By the interim order passed by us on the conclusion of the hearing we directed that the child should continue her study in the Boarding School.
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- 35.** On a consideration of all the facts and circumstances of this case and bearing in mind the paramount consideration of the welfare of the child, we are of the opinion that the child's interest and welfare will be best served by removing her from the influence of home life and by directing that she should continue to remain in
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the Boarding School. It is not in dispute that Kimmins Boarding School at Panchgani to which the child has been admitted is a good institution.” A

21. In the above case, the child was allowed to continue in the boarding school. We notice one more decision of this Court in **Nutan Gautam vs. Prakash Gautam, (2019) 4 SCC 734**, which was a case where appeal was filed by mother of a child against the order of the High Court passed in First Appeal. While decreeing the divorce petition of the husband ex parte the trial court had directed the son, the minor boy, to be admitted in a boarding school at New Delhi. Ex parte order passed by the trial court was challenged by the mother in the High Court, which matter was pending before the High Court. The High Court by interim order had permitted the father to take the boy to boarding school. The said interim order was challenged in this Court. This Court interacted with the boy and took the view that in the facts of the case, the child should not be compelled to go to boarding school. This Court allowed the child to continue his studies at Global International School, Shahjahanpur, where he was earlier studying in the interest of the child. Every case where issue pertaining to custody of child and education is decided depends upon the facts of each case. No hard and fixed formula can be found out which can be applied to each and every case. Each case has to be examined in its own facts. We may again refer to the judgment in **Thrity Hoshie Dolikuka (supra)**, where also this Court noticed that child has expressed his wishes not to go to boarding school. This Court in the said case took the view that the minor is not fit to form an intelligent preference, which may be taken into consideration in deciding her welfare. In paragraph No.26, following was laid down: B
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“26. In the facts and circumstances of this case we are however, not inclined to interview the minor daughter, as we are satisfied in the present case that the minor is not fit to form an intelligent preference which may be taken into consideration in deciding her welfare. We have earlier set out in extenso the various orders passed by the various learned Judges of the Bombay High Court after interviewing the minor and the learned Judges have recorded their impressions in their judgments and orders. The impressions as recorded by the learned Judges of the Bombay High Court, go to indicate that the minor has expressed different kinds of wishes at different times under different conditions. It also appears from the report of the Social Welfare Expert that these interviews cast F
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- A a gloom on the sensitive mind of the tender girl and caused a lot of strain and depression on her. Torn between her love for both her parents and the acrimonious dispute between them resulting in the minor being dragged from court to court, we can well appreciate that the sensitive mind of the minor girl is bound to be sadly affected.
- B Though the girl is quite bright and intelligent as recorded by the learned Judges of the Bombay High Court in their orders after their interviews with the girl who is of a tender age and is placed in a very delicate and embarrassing situation because of the unfortunate relationship and litigation between her parents for both of whom she has great deal of affection, she is not in a position to express any intelligent preference which will be conducive to her interest and welfare. Mature thinking is indeed necessary in such a situation to decide as to what will enure to her benefit and welfare. Any child who is placed in such an unfortunate position, can hardly have the capacity to express an intelligent preference which may require the Court's consideration to decide what should be the course to be adopted for the child's welfare. The letters addressed by the daughter to her mother from Panchgani and also a letter addressed by her to her aunt (father's sister) also go to show that the minor cannot understand her own mind properly and cannot form any firm desire. We feel that sending for the minor and interviewing her in the present case will not only not serve any useful purpose but will have the effect of creating further depression and demoralisation in her mind."
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22. We, thus, are of the view that what is in the interest of the child depends on the facts and circumstances of each case and has to be decided on its own merits without adhering to any fixed formula or rule. The appeals being pending before the High Court, we are of the view that while deciding the appeals finally, High Court should also take into consideration subsequent materials which may be brought before it by the parties including the progress report of the child from Good Shepherd International School, Ooty. Learned counsel has also raised certain medical issues pertaining to the child. It is also open for the High Court to take decision on the said issues and if necessary to obtain medical reports as may be required. In so far as interacting with the child, the High Court during hearing of the appeals had already interacted with the child on many occasions and it is for the High Court to take a decision with regard to interacting with the child.
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23. The reports received from Child Welfare Committee, Jharkhand and Good Shepherd International School, Ooty by this Court on 29.01.2019 and 02.02.2019 respectively be remitted to the High Court for consideration in sealed cover. After we closed the hearing on 01.07.2019, another report dated 08.07.2019 has been received from Good Shepherd International School, Ooty in sealed cover which has not been opened. Let all the above reports in a sealed cover be transmitted to the Jharkhand High Court by a special Messenger, to be considered in the pending first appeals.

24. In view of the foregoing discussion, we do not find any good ground to interfere with the impugned judgment of the High Court. The High Court is requested to decide First Appeal No.59 of 2016 and First Appeal No.68 of 2016 after hearing the parties keeping in view the observations as made above. The appeals are disposed of accordingly.

Kalpana K. Tripathy

Appeals disposed of.