

[2019] 6 S.C.R. 461

NUTAN GAUTAM

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v.

PRAKASH GAUTAM

(Civil Appeal Nos. 3409-3410 of 2019)

APRIL 05, 2019

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[R. BANUMATHI AND R. SUBHASH REDDY, JJ.]

Child and family welfare: Child custody – Interest and welfare of the child – Divorce between the parties – Direction/order by the High Court that the father to take the son and get him admitted at Boarding House in Public School in New Delhi and the mother to take custody of the boy in the summer vacation and to ensure that he returns to Boarding House after summer vacation – Case of the mother that after summer vacation son not willing to study in the boarding school and intends to study in the old school in Shahjanpur – Held: High Court ascertained the views of the boy and recorded that he is very much attached and has more affiliation towards his mother – Boy has expressed his desire to continue his studies only in the old school – It is natural, that a boy aged 10 years would be willing to continue in his old school as much as he is acclimatised with the environment of such school where he has started his studies – In the interest of the welfare of the child, the child cannot be compelled to join the Boarding House – Child be allowed to continue to study in the old school – Father given visitation rights – Hindu Marriage Act, 1955.

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Allowing the appeals, the Court

HELD: 1.1 In the interim order dated 21.05.2018, the respondent was permitted to take the son and get him joined at Boarding House in Public School in New Delhi, and the appellant-wife was permitted to take custody of the boy in the summer vacation and to ensure that he returns to the Boarding House after summer vacation. It is also not in dispute that the child was earlier studying in the same school where he is admitted now for further studies. The child has now completed 3rd standard and is aged about 10 years. It is natural, a boy of that age who has studied earlier in the school at Shahjanpur, willing to continue in the same

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- A school as much as he is acclimatised with the environment of such school where he has started his studies from 1st standard onwards. This Court also interacted with the boy and the boy expressed his desire to continue his studies only in Shahjanpur school. When the boy is not inclined to study in Public School in New Delhi, and stay in the Boarding House, in the interest of the welfare of the child, he cannot be compelled to admit in Public School in New Delhi, attached with the Boarding House. In such view of the matter, it cannot be said that the appellant-wife has violated the direction issued by the High Court. [Para 12] [465-B-F]
- B 1.2 From the perusal of the impugned order, it appears that the High Court has ascertained the views of the boy and has recorded that he is very much attached and has more affiliation towards his mother-appellant. In the interest and welfare of the child, the child shall be allowed to continue his study in the old School, Shahjanpur. Further, in the impugned order, the appellant-wife is directed to elect one forum from which she wants to get the maintenance. As the same is also not in conformity with the law, the said direction is set aside. [Para 13, 14][465-G-H; 466-A-B]
- C 1.3 As the respondent-husband is a natural father of the child, he is also entitled to visitation rights. The respondent-husband is permitted to visit his child and he is entitled to take the child from the House of the appellant on any Sunday's and public holiday's whenever he visits Shahjanpur. The orders passed by the High Court are set aside [Para 15, 16][466-C; E]
- F CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 3409-3410 OF 2019
 - G From the Judgment and Orders dated 21.05.2018 and 20.08.2018 of the High Court of Judicature at Allahabad in First Appeal No. 316 of 2018.
 - H Harikumar V., Anupam Mishra , Advs. for the Appellant.
R. Basant, Sr. Adv., Prakash Gautam, Vivek Ojha, Gazab Singh Chauhan, Ms. Harsh Lata, Advs. for the Respondent.

The Judgment of the Court was delivered by A

R. SUBHASH REDDY, J.

1. Leave granted.

2. These appeals are filed by the wife of the respondent herein aggrieved by orders dated 21.05.2018 and 20.08.2018 passed by the High Court of Judicature at Allahabad in First Appeal NO.316 of 2018. B

3. The marriage of the appellant-wife and the respondent-husband was solemnized in the year 2006. In the year 2009 a son was born to them who is named Krish alias Master Krishav Gautam. In the year 2012, respondent-husband filed a petition for divorce under Section 13(1)(ia)(iii) of the Hindu Marriage Act, 1955. The said divorce petition is decreed ex-parte by the Trial Court in favour of the respondent-husband. The Trial Court also directed that the son of the appellant, namely, Krish alias Master Krishav Gautam, should be admitted in Col. Satsangi's Kiran Memorial Public School, New Delhi. C

4. Aggrieved by the ex-parte order, the appellant herein filed First Appeal NO.316 of 2018 before the High Court of Judicature at Allahabad. Pursuant to order of the Family Court, the son of the parties has been admitted in Col. Satsangi's Kiran Memorial Public School, New Delhi, and he has been put in a Boarding House of the School. By way of an interim order dated 21.05.2018, which is impugned in these appeals, the respondent-husband was permitted to take the boy with him to Delhi and to leave him in the Boarding House till the start of the summer vacations of 2018. Further, the appellant-mother was permitted to take the child in summer vacations and leave him in the School/Boarding House before the reopening of the School. D

5. The Family Court has also awarded an amount of Rs.10,000/- per month towards maintenance for the appellant-wife. In view of the plea of the respondent-husband that the appellant-wife is entitled for maintenance only from one forum, appellant-wife is directed to elect one forum to which she wants to get maintenance. E

6. After reopening of the School in the summer vacation, it appears that the boy, Krish @ Master Krishav Gautam, was not willing to go to study in the Boarding House in Col. Satsangi's Kiran Memorial Public F

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A School, New Delhi. Further, fifteen days' time was granted by the High Court to the appellant-mother vide Order dated 20.08.2018 to comply Order dated 21.05.2018.

7. We have heard Mr. Harikumar V., learned counsel appearing for the appellant-wife, and Mr. R. Basant, learned senior counsel B appearing for the respondent-husband.

8. It is contended by learned counsel for the appellant-wife that the boy is not willing to study in the Col. Satsangi's Kiran Memorial Public School, New Delhi, as he is attached to his mother very much and intends to study in his old school. Accordingly, he was admitted in

C Global International School, Shahjanpur, where he is comfortable with his studies. It is submitted at the Bar that as welfare of the child is the paramount consideration and he is good at studies by pursing his study in Global International School also at Shahjanpur, and requested to set aside the impugned order and permit the boy to continue in the same school at Shahjanpur.

D 9. On the other hand, Shri R. Basant, learned senior counsel appearing for the respondent, has submitted that the respondent is willing to join his son in the best school of Delhi by paying more than Rs.2,00,000/- (Rupees Two Lakhs) towards fees and it is in the interest and welfare of the child to allow him to study only at Col. Satsangi's Kiran Memorial

E Public School, New Delhi. Further, It is submitted that there was a specific direction for joining the boy in the Boarding House/School at New Delhi after reopening, the appellant-wife has violated Order dated 21.05.2018 and further Order dated 20.08.2018. It is submitted that wish of the child itself is not a criteria and the welfare of the child will be

F best served by admitting him in Col. Satsangi's Kiran Memorial Public School, New Delhi.

10. We have heard learned counsel on both the sides, perused Orders dated 21.05.2018 and 20.08.2018 and other materials placed on record.

G 11. It is clear from the materials placed on record, in view of the differences cropped up between the parties, respondent-husband has filed petition for divorce under Section 13(1)(ia)(iii) of the Hindu Marriage Act, 1955, in the year 2012 which is decreed ex-parte and appeal against that order is pending before the High Court. The appellant-wife is

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presently residing at her parental house at Shahjanpur, Uttar Pradesh. The boy is studying in Global International School, Shahjanpur, Uttar Pradesh, while granting ex-parte decree it appears that the Trial Court directed that their son should be admitted in Col. Satsangi's Kiran Memorial Public School, New Delhi. In view of such direction, it appears, the boy was admitted in the said School at New Delhi and was allowed to be taken by the appellant-wife in the summer vacation of 2018.

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12. It is true that in Order dated 21.05.2018, the respondent was permitted to take the son and get him joined at Boarding House in Col. Satsangi's Kiran Memorial Public School, New Delhi, and the appellant-wife was permitted to take custody of the boy in the summer vacation and to ensure that he returns to the Boarding House after summer vacation. It is the case of the appellant that after summer vacation the boy was not inclined to go to the Boarding House/School and wanted to study only in his old school, namely, Global International School, Shahjanpur. It is also not in dispute that the child was earlier studying in the same school where he is admitted now for further studies. We are informed now that he has now completed 3rd standard and is aged about 10 years. It is natural, a boy of that age who has studied earlier in the school at Shahjanpur, willing to continue in the same school as much as he is acclimatised with the environment of such school where he has started his studies from 1st standard onwards. This Court also interacted with the boy and the boy expressed his desire to continue his studies only in Shahjanpur school. When the boy is not inclined to study in Col. Satsangi's Kiran Memorial Public School, New Delhi, and stay in the Boarding House, we are of the view that in the interest of the welfare of the child, he cannot be compelled to admit in Col. Satsangi's Kiran Memorial Public School, New Delhi, attached with the Boarding House. In such view of the matter, it cannot be said that the appellant-wife has violated the direction issued by the High Court vide Orders dated 21.05.2018 and 20.08.2018.

13. From the very perusal of the order impugned, it appears that the High Court has ascertained the views of the boy and has recorded that he is very much attached and has more affiliation towards his mother (appellant herein). In that view of the matter we are of the opinion that the child, namely, Krish @ Master Krishav Gautam cannot be compelled to join in Col. Satsangi's Kiran Memorial Public School at New Delhi.

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- A We are further of the view that in the interest and welfare of the child, Krish @ Master Krishav Gautam shall be allowed to continue his study at Global International School, Shahjanpur.
- B 14. Further, in the impugned order, the appellant-wife is directed to elect one forum from which she wants to get the maintenance. As the same is also not in conformity with the law, the said direction is liable to be set aside. Ordered accordingly.
- C 15. As the respondent-husband is a natural father of the child, namely, Krish @ Master Krishav Gautam, he is also entitled to visitation rights. We permit the respondent-husband to visit his child and he is entitled to take the child from the House of the appellant on any Sunday's and public holiday's whenever he visits Shahjanpur. The appellant-wife shall allow the child to leave along with the respondent-father at 09:00 a.m., and the respondent-husband to return the child at the house of the appellant-wife before 06:00 p.m. on the same day. For any further modification of visitation rights respondent-father is at liberty to move the High Court with appropriate application and the same shall be considered in accordance with law, keeping in view the welfare of the child.
- E 16. For the aforesaid reasons, Orders dated 21.05.2018 and 20.08.2018 passed by the High Court of Judicature at Allahabad in First Appeal No.316 of 2018 are set aside. We request the High Court to dispose of the appeal itself as expeditiously as possible in accordance with law.
- F 17. In the result, the appeals are allowed with the direction's as indicated above. No costs.

Nidhi Jain

Appeals allowed.