

AMYRA DWIVEDI (MINOR) THROUGH HER MOTHER, SMT. POOJA SHARMA DWIVEDI A

v.

ABHINAV DWIVEDI AND ANOTHER

(Civil Appeal No. 2067 of 2020) B

MARCH 06, 2020

[DEEPAK GUPTA AND ANIRUDDHA BOSE, JJ.]

Family Law: Custody of child – Visitation and contact rights – In the instant case, appellant-mother had filed Habeas Corpus petition before High Court for custody of her child – High Court dismissed the petition, however granted visitation rights allowing the mother to meet the child for two hours once a month at a place mutually agreed by the parties and in case of disagreement on such place, it was directed that meeting would be held at the Office of Secretary, District Legal Services Authority during office hours for two hours on a day and time agreed to by the parties or as directed by the Secretary on any day preferably Saturday once in a month – Challenge against – Held: When a court grants visitation rights, these rights should be granted in such a way that the child and the parent who is granted visitation rights can meet in an atmosphere where they can be like parent and child and this atmosphere can definitely not be found in the office of District Legal Services Authority – It atmosphere may be found in the home of the parent or in a park or a restaurant or any other place where the child and the parent are comfortable – In view of this, directions passed regarding visitation and contact rights whereby mother is allowed to meet the child on Saturdays and Sundays and take the child from grandparents home at 10 a.m. and drop her back at 5 p.m. – Mother also allowed to spend time with the child on festivals, vacations, child's birthday and attend school functions. C D E F

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2067 of 2020. G

From the Judgment and Order dated 13.05.2019 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Habeas Corpus No. 24675 of 2018.

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A Vishwajit Singh, Pankaj Singh, Ms. Ridhima Singh, Ms. Vijaya Singh, Vignesh Singh, Ms. Veera Kaul Singh, Shail Kumar Dwivedi, Siddharth Krishna Dwivedi, Ms. Vibha Dwivedi, Ms. Nidhi Dwivedi, Andleeb Naqvi, Ms. Garima Prashad, Advs. for the appearing parties.

The Judgment of the Court was delivered by

B **DEEPAK GUPTA, J**

1. Leave granted.

2. This appeal arises out of an order dated 13 May 2019 passed by the High Court of Judicature at Allahabad, Lucknow Bench, in Habeas Corpus No.24675 of 2018, whereby the petition filed by the appellant (the mother) for custody of her child was dismissed, but she was granted visitation rights in the following terms:

D “(I) The petitioner (Smt. Pooja Sharma) is granted visiting rights to meet her daughter, who is presently residing with the opposite party No.1. The meeting of the petitioner with her daughter (corpus) would be at the place as agreed by the parties and in case of their inability to agree on any place such meeting shall be held at the office of the Secretary, District Legal Services Authority, Lucknow during office hours i.e. 10:00 am to 4:00 pm for two hours on a day and time agreed into by the parties or as directed by the Secretary, District Legal Services Authority, Lucknow, on any day preferably Saturday, once in a month.

E (II) During meeting hours, the petitioner would be free to give any kind of gifts to her daughter of her choice and liking and the same would not be objected to by the opposite party No.1. F However, the petitioner will not take the corpus with her anywhere beyond the boundaries of the Office of Secretary, District Legal Services Authority, Lucknow. Such meeting will be held in a secured atmosphere and it shall be the duty of the Secretary, District Legal Services Authority, Lucknow to provide cordial atmosphere and security to the parties.” G

3. We are not at all happy with the manner in which the visitation rights have been granted in the present case. The High Court has directed that the mother can meet the child for two hours once a month, that too, in the Office of Secretary, District Legal Services Authority, Lucknow or at a place, mutually agreed to by the parties and in case of disagreement, H

before the District Legal Services Authority, Lucknow. However, it has been ordered that the meeting would be held in a secured atmosphere and it will be the duty of the Secretary to provide cordial atmosphere and security to the parties.

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4. In *Yashita Sahu v. State of Rajasthan* 2020 AIR 577, this Court held that the welfare of the child is of paramount consideration in matters relating to custody of children. In this context, we may refer to paragraph 22 of the judgment, which reads as follows:

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“A child, especially a child of tender years requires the love, affection, company, protection of both parents. This is not only the requirement of the child but is his/her basic human right. Just because the parents are at war with each other, does not mean that the child should be denied the care, affection, love or protection of any one of the two parents. A child is not an inanimate object which can be tossed from one parent to the other. Every separation, every re-union may have a traumatic and psychosomatic impact on the child. Therefore, it is to be ensured that the court weighs each and every circumstance very carefully before deciding how and in what matter the custody of the child should be shared between both the parents. Even if the custody is given to one parent the other parent must have sufficient visitation rights to ensure that the child keeps in touch with the other parent and does not lose social, physical and psychological contact with any one of the two parents. It is only in extreme circumstances that one parent should be denied contact with the child. Reasons must be assigned if one parent is to be denied any visitation rights or contact with the child. Courts dealing with the custody matters must while deciding issues of custody clearly define the nature, manner and specifics of the visitation rights.”

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5. When a court grants visitation rights, these rights should be granted in such a way that the child and the parent who is granted visitation right, can meet in an atmosphere where they can be like parent and child and this atmosphere can definitely not be found in the office of District Legal Services Authority. That atmosphere may be found in the home of the parent or in a park or a restaurant or any other place where the child and the parent are comfortable.

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6. As far as the present case is concerned, the admitted facts are that the child lives with her grand parents in Lucknow, U.P. and the

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A father is working in National Capital Region (NCR). The child attends school and is in lower KG. We, therefore, issue the following direction with regard to the visitation and contact rights:

- (I) The mother shall be entitled to meet the child both on the Saturdays and Sundays for a period of eight weeks at the first instance. She will take the child from the grand parents' home at 10:00 am and drop her back at 5:00 pm in the evening. In case, the Saturday is a school working day, then the mother will be entitled to pick the child up from school and stay with her till 8:00 pm and then drop her to the grand parents' home.
- (II) After the period of eight weeks is over and the child becomes familiar with her mother and gets to know her better, the mother will be entitled to keep the child on weekends from 10:00 am in the morning on Saturday till 5:00 pm in the evening on Sunday. In case, Saturday is a school working day, the mother will pick up the child immediately after school and drop her back to the grand parents' house at 5:00 pm in the evening on Sunday.
- (III) On festivals, such as, Holi, Diwali, etc., the child may spend time with the grand parents in the morning, but in the evening, she will be permitted to go with the mother for at least four hours on every festival.
- (IV) As far as summer vacations are concerned, if the vacations are for more than fifteen days, the mother will be entitled to take the child for seven days, but only after 30th April. In case the vacations are for more than one month, then she will be entitled to keep the child for fifteen days. During the vacations, the mother can take child out for holidays to any place wherever she feels comfortable.
- (V) On the birthday of the child, we hope and expect that both the parents should spend some time together with the child leaving their differences apart, but if they cannot do so, then the mother can have custody of the child in the first half of the day for at least eight hours and the grand parents in the second half.

(VI) We permit the mother to attend all the school functions, such as, annual day, foundation day, sports day or parents teacher meeting. We direct the school concerned to ensure that on the production of the order of this Court, the name of the appellant be entered into the school records as mother of the child and she be called for all the functions when other parents are called. She shall also be apprised about the progress of the child in the school. A B

(VII) As far as the contact rights are concerned, since the mother and child live in same town, the mother can either make video call or telephone call with the child every day for ten minutes between 7:30 pm to 8:30 pm in the evening. C

7. We dispose of this appeal with the aforesaid directions.

8. We make it clear that the appellant wife is at liberty to move the appropriate court for custody of the child under the Guardians and Wards Act 1890. We further direct that in line of the order which we have passed today, if the need arises, the court concerned can increase the period of visitation rights of the mother, pending disposal of the custody petition. D