

## Pankaj Jain vs Parul Jain on 28 March, 2022

**Author: Subramonium Prasad**

**Bench: Subramonium Prasad**

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IN THE HIGH COURT OF DELHI AT NEW DELHI  
CONT.CAS(C) 392/2021  
PANKAJ JAIN

Through:

Mr. Prosenjeet B  
Bansal, Mr. Yash  
Ms. Himashu Malh

versus

PARUL JAIN

Through:

Ms. Malavika Raj  
Ramakant Sharma  
Krishnamurthy, A

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD  
ORDER

% 28.03.2022 CM APPL. 13743/2022 in CONT.CAS(C) 392/2021

1. This contempt petition has been filed by the Petitioner/Father seeking directions to the Respondent/Wife alleging that the Respondent/Mother has violated the Order dated 19.04.2021 passed by the learned Family Court while hearing a petition under the Guardians and Wards Act, 1890.

2. Though only CM APPL. 13743/2022 is listed today for hearing but with the consent of both the parties, the contempt petition itself is being taken up for hearing for final disposal.

3. By Order dated 19.04.2021, the learned Family Court had issued certain directions, inter alia, apropos the visitation between the father and his 8-year-old daughter. The relevant paragraphs of the said Order have been reproduced as follows:

"13. The petitioner also seeks sharing of school holidays, festivals and special occasions. However, it was conceded during arguments that each of the parties is already able to get custody of the child for almost half period each during vacations of the child. It cannot be directed that for all festivals, the child would always remain with her lather. The child remains with the petitioner for at least four days in a month. It may happen that the child would be with the petitioner while a festival falls on any of these four days i.e. second and fourth Friday to Sunday of the month. Thus,

the petitioner would be able to celebrate festivals with the child during these days. I am of the opinion that insofar as festivals other than Mahavir Jayanti, Diwali, Holi, Raksha Bandhan and Dusshera are concerned, no further order is called for and the existing system should continue.

14. There is substance in the contention of the petitioner about the festival of Mahavir Jayanti. The petitioner is a member of Jain Community while the respondent is a follower of Sanatan Hindu Dharma. Thus, it is directed that the petitioner shall be entitled to have custody for one day during Mahavir Jayanti festival which is always a school holiday. The custody be handed over to the petitioner in the evening on the earlier day at 6:00 PM and the petitioner shall hand over the custody of the child to the respondent in the evening of day of Mahavir Jayanti at 6:00 PM.

15. For the four major festivals namely Dusshera, Diwali, Holi and Raksha Bandhan, it is directed that henceforth the child will remain with the petitioner from 6:00 PM of the Preceding evening till 5:00 PM on the day of festival with the petitioner and from 5:00 PM onwards child will remain with the respondent. This arrangement shall be followed by the parties even if any of these festivals fall on second and fourth Friday to Sunday of a month. This way, the child would get benefit of living with both her parents and their families on the day of these festivals. It is no doubt true that Holi is mainly celebrated during morning hours and at the time, the child would be with her father. However, it also needs to be noted that Diwali is mainly celebrated in the evening and the child would be with her mother in the evening of Diwali. Further for the evening of chhoti Diwali (the day before. the Diwali), the child would be with her father.. It would be open for the parties to seek modification of this arrangement for festivals, if special circumstances arise.

16. For school vacations, it is directed that winter and summer vacations and other vacations of more than one week of the school would be shared in equal measures. For the first half, the child would remain with the petitioner while for the second half, the child will live with the respondent. There would be no difficulty in the event, the number of holidays are even (divisible by two). However, in case, the number of holidays are odd (not divisible by two), the petitioner would be entitled to have one day more of custody than the respondent. To illustrate, if the number of holidays happens to be seven, the petitioner would be entitled for custody for four days while the respondent would have custody for three days. However, if the number of holidays happen to be eight days, each of the parents would have custody for four days.

17. As far as birthdays are concerned, the petitioner will be entitled for custody of the child on his own (petitioner's) birthday between 4:00 PM to 8:00 PM of the same day. For the birthday of the child, the petitioner would be entitled to have the custody of the child for the year 2022, 2024 and so on from 4:00 PM to 8:00 PM while the respondent would be entitled to have custody for the year 2023, 2025 and so on. No

further order is called for about birthdays of other relatives of the petitioner. The child is a school going child.

18. It would be the responsibility of the petitioner to collect the child from residence of the respondent and to leave the child at the residence of the respondent on all occasions as per prevailing arrangement."

4. It is stated that an appeal had been filed by the Respondent/Mother, bearing C.M.(M.) No. 376/2021, before this Court, partially challenging the Order dated 19.04.2021 passed by the learned Family Court, however, the same is pending and no notice has been issued in the said appeal till date. It is stated that thereafter, claiming violation of the Order dated 19.04.2021, the Petitioner/Husband has time and again approached various forums seeking compliance of the said Order.

5. It is stated that the Petitioner/Father filed C.M.(M.) No.359/2021 before this Court seeking interim visitation of the minor child for the summer vacation and the same has been granted to him vide Order dated 04.05.2021. Thereafter, challenging an Order granting the Respondent/Mother two weeks to file a reply in C.M.(M.) No.359/2021, the Petitioner/Father filed an SLP, bearing SLP No.7134/2021, before the Supreme Court.

6. It is stated that the Supreme Court vide Order dated 25.05.2021 directed the Petitioner/Father to move the Vacation Bench of the learned Family Court and closed the proceedings in C.M.(M.) No. 359/2021. Consequently, the Petitioner/Father filed an application before the Vacation Bench of the learned Family Court seeking compliance of the Order dated 19.04.2021, and the learned Family Court vide Order dated 28.05.2021 directed the Respondent/Mother to comply with the Order dated 19.04.2021. The relevant paragraph of Order dated 28.05.2021 reads as under:-

"The order regarding custody of child has already been passed by learned Additional Principal Judge on 19.04.2021. The application filed by petitioner is disposed off by giving directions to respondent to make compliance of the directions of the court dated 19.04.2021 with respect to custody of the minor child during the summer vacations, 2021."

7. Now, the Petitioner/Father by way of the instant application alleges yet another violation of the Order dated 19.04.2021 by the Respondent/Mother and seeks directions to the Respondent/Mother to duly comply with the directions enumerated in the Order dated 19.04.2021.

8. At the outset, this Court observes that three years have passed since the institution of the Guardianship Petition under Sections 7 & 25 of the Guardians and Wards Act, 1890, being GP No.54/2018, for the custody of the minor girl child, and that there has been no progress in the said matter. This Court, without going into the nitty-gritty of the issue at hand and being cognizant of the impact that such prolonged proceedings may have on the psyche of a child, directs the learned Trial Court to complete the proceedings in GP No.54/2018 within eight months from the date of this Order.

9. The learned counsel for the Petitioner has submitted that there are three-four witnesses from the Petitioner's side who need to be examined, and the learned counsel for the Respondent has submitted that there are two witnesses from the Respondent's side whose examination is pending. This Court directs for the Petitioner/Father and Respondent/Mother to be examined in Court. For the rest of the witnesses, evidence be recorded by the Local Commissioners appointed by the Ld. Trial Court.

10. In the interregnum, the parties are directed to duly comply with the Order dated 19.04.2021 passed by the learned Family Court.

11. This order has been passed with the consent of both the parties.

12. In view of the above, the petition is disposed of along with the pending applications.

SUBRAMONIUM PRASAD, J MARCH 28, 2022 Rahul