

Shikha Kanwar vs Rajat Kanwar on 28 March, 2023

Author: Jasmeet Singh

Bench: Jasmeet Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.REV.P. 64/2023 & CRL.M.A. 1751/2023, CRL.M.A. 7923/2023

SHIKHA KANWAR

..... Petitioner

Through: Mr. Prabhjit Jauhar, Ms. Rosemary
Raju, Advs.

versus

RAJAT KANWAR

..... Respondent

Through: Mr. Prosenjeet Banerjee, Mr. Liza M
Baruah, Mr. Abhinandan Jain, Mr. Akriti Anan
Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

% 28.03.2023 CRL.M.A. 7924/2023-EX.

Allowed subject to all just exceptions.

The application stands disposed of.

CRL.REV.P. 64/2023 & CRL.M.A. 1751/2023, CRL.M.A. 7923/2023

1. This is a petition seeking setting aside of the order dated 20.12.2022 passed by the learned ASJ, South-East District, Saket Courts, Delhi in CA No. 121/2022 in „Shikha Kanwar vs. Rajat Kanwar , wherein the learned Sessions Court had upheld the order of the learned MM granting visitation to the respondent for first and last Saturdays from 11 AM to 1 PM at Children s Room, Family Court, Saket Courts.

2. Ms. Raju, learned counsel for the petitioner has assailed the order primarily on two grounds. She states that the learned MM as well as the learned Sessions Court should have interacted with the children who are 13 and 7 years old as per the dicta of "Gaytri Bajaj vs. Jiten Bhalla", [(2012) 12 SCC 471] and more particularly para 14 which reads as unde:-

"14. From the above it follows that an order of custody of minor children either under the provisions of the Guardians and Wards Act, 1890 or the Hindu Minority and Guardianship Act, 1956 is required to be made by the court treating the interest and welfare of the minor to be of paramount importance. It is not the better right of either

parent that would require adjudication while deciding their entitlement to custody. The desire of the child coupled with the availability of a conducive and appropriate environment for proper upbringing together with the ability and means of the parent concerned to take care of the child are some of the relevant factors that have to be taken into account by the court while deciding the issue of custody of a minor. What must be emphasised is that while all other factors are undoubtedly relevant, it is the desire, interest and welfare of the minor which is the crucial and ultimate consideration that must guide the determination required to be made by the court."

3. In addition to the above, Ms. Raju, learned counsel states that in the present case, the respondent is guilty of flouting the orders of the maintenance. The learned MM (Mahila Court) had granted ad interim maintenance at the rate of Rs. 50,000/- per month in favour of the petitioner. In addition, the learned MM has also directed that the school fee of children be paid on time by the respondent.

4. Ms. Raju, learned counsel further states that in the present case, the respondent is in arrears of more than Rs. 6 lakhs towards ad interim maintenance and further around Rs. 9 lakhs towards arrears of school fee of the children.

5. I have heard learned counsel for the parties.

6. As far as the judgment of "Gaytri Bajaj" (supra) is concerned, the Hon ble Supreme Court has indicated the factors to be kept in mind at the time of deciding the final custody of the minor children.

7. The present order under challenge is only an ad interim measure permitting the respondent to meet his children 2 days in a month for 2 hours. I am of the view that meeting of the children with their father is necessary for their complete growth and development and for having love and affection of both the parents.

8. The second and another important question is with regard to arrears.

9. Mr. Banerjee, learned counsel for the respondent has handed over 2 Demand Drafts (DDs) bearing Nos. 102377 and 102378 both dated 27.03.2023 drawn on Punjab and Sindh Bank for Rs. 1 lakh each in favour of Step By Step School. The same is handed over to the learned counsel for the petitioner.

10. In addition, Mr. Banerjee, learned counsel states that the entire arrears of school fee will be cleared within 1 week from today by the respondent No.2 using his credit card. The same is acceptable to the Court and the statement of the respondent No.2 who is present in Court is taken on record.

11. The Step By Step School is directed to permit the respondent No.2 to deposit the entire arrears of the 2 children, namely, Reyaan Kanwar and Ranvir Kanwar without insisting on the password by use of credit card.

12. In case the respondent does not comply with the said directions, the petitioner is at liberty to file for modification of the order passed today.

13. With these observations and directions, the petition is disposed of upholding the order dated 20.12.2022 passed by the learned ASJ, South-East District, Saket Courts, Delhi in CA No. 121/2022 in „Shikha Kanwar vs. Rajat Kanwar .

JASMEET SINGH, J MARCH 28, 2023 / (MS) [Click here to check corrigendum, if any](#)