

Shoba D/O Gunasekaran v A Rajandran and Another
[2001] SGHC 138

Case Number : D 807/2000, RAS 720094/2000
Decision Date : 19 June 2001
Tribunal/Court : High Court
Coram : Lee Seiu Kin JC
Counsel Name(s) : Engelin Teh, SC and Koh Geok Jen (Engelin Teh & Partners) for the appellant;
Ignatius Joseph (A Rajandran Joseph & Nayar) for the respondent
Parties : Shoba D/O Gunasekaran — A Rajandran; Ramanathan Theyvendran

JUDGMENT:

Grounds of Decision

1 This is an appeal by the Petitioner against the decision of District Judge Hamidah Ibrahim on 14 December 2000 in SIC 750532/2000 and 750536/2000 granting interim custody, care and control of the child of marriage to the Respondent. Further the judge ordered that the Petitioner shall have access to the child on Tuesday from 1:00 to 7:00 pm and on weekends from 6:00 pm on Friday to 8:00 pm on Saturday. The Petitioner was also ordered to pay costs to the Respondent fixed at \$1,500.

2 The Petitioner appealed against this decision and, after hearing counsel for the parties on 23 April 2001, the court made the following orders:

"Order below varied as follows:

(1) Interim custody and control and care to remain with Respondent.

(2) Interim access to Petitioner as follows:

37. From Friday after school (or at 1 pm if there is no school on that day) to Sunday 10 am. Petitioner to pick child on Fridays and Respondent on Sundays.

38. School holidays:

Petitioner to have access on 1st and 3rd weeks of the mid-year holidays, and 1st, 3rd and 5th weeks of the year-end holidays. Respondent and Petitioner to pick up child at 6 pm and Sunday at 10 am from each other. For the September and March holidays, Petitioner to have access from Sunday 10 am to Friday 1 pm but for the weekend before school reopens (from Friday 1 pm), child to remain with Respondent.

39. Public holidays:

Deepavali and New Year: Petitioner to have access from 9 am to 3 pm, Petitioner to pick child from Respondent in morning and Respondent to pick child from Petitioner in the afternoon.

Other public holidays: alternative public holidays (not counting Deepavali and New Year), from 6 pm the previous day to 6 pm of the public holiday.

40. Child's birthday: each parent to have child on his birthday in alternate year from 1 pm (or after school as the case may be) to 8 pm, starting with Petitioner in May 2001.

41. Parent's birthday: each parent to have child on his/her birthday from 1 pm (or after school as the case may be) to 8 pm.

42. Mother's day: child to remain with Petitioner until 8 pm.

43. Father's day: child to be returned to Respondent at 8 am on Sunday.

(3) Liberty to apply.

(4) No order as to costs."

3 On 18 May 2001 the Petitioner filed a Notice of Appeal against the whole of my decision and I now give my written grounds of decision.

4 The Petitioner and Respondent registered their marriage on 17 March 1995. After a traditional wedding ceremony, they lived with the Petitioner's parents from June 1995 until August 1998. A son, Sanathraj Rajandran, was born on 14 May 1996. He is the subject of the present dispute. In August 1998 the Petitioner and Respondent and Sanathraj moved to their own flat at Yio Chu Kang Road. Sanathraj was then about 27 months old.

5 Sometime into the marriage, the parties encountered some marital problems.

6 In March 2000 the Petitioner collapsed and was hospitalised for a week. Upon her discharge she did not return home but went to stay with her parents. There was a tussle between the parties in relation to Sanathraj which resulted in the Respondent taking Sanathraj to live with his parents on 18 March 2000. On 23 March 2000, the Petitioner filed this petition for divorce.

7 On 24 March 2000, the Petitioner filed SIC 750532/2000 to apply for interim custody, care and control of Sanathraj.

8 The application for interim custody came up before District Judge Hamidah Ibrahim on 14 April 2000. She directed the Welfare Officer of the Ministry of Community Development ("MCD") to conduct an investigation and submit a welfare report to the court. Pending that, she granted care and control of Sanathraj to the Respondent with access to the Petitioner on Tuesday from

1:00 pm to 6:00 pm and on weekends from 6:00 pm on Friday to 7:00 pm on Saturday. The Petitioner appealed against this order. Woo, JC dismissed the Petitioner's application for custody, but varied the access by extending it by one hour, i.e. the Petitioner was to have Sanathraj up to 7:00 pm on Tuesday and 8:00 pm on Saturday.

9 The welfare report was submitted by the MCD in November 2000. The parties appeared before District Judge Hamidah Ibrahim on 14 December and she ordered interim custody, care and control of Sanathraj to be given to the Respondent with the access unchanged. It is against that order that the Petitioner appealed before me.

10 Among the Petitioner's grounds for this appeal is that the judge below had placed too much reliance on the welfare report without giving the parties an opportunity to address her on it. The Petitioner submitted that if she had, her decision would have been different. Before the hearing I had directed the parties to be furnished with the welfare report on condition of confidence. Counsel for the Petitioner did make submissions to me in respect of that report and listed a detailed set of complaints about it.

11 On my part, while I had the welfare report in mind, it did not constitute a substantial factor in the decision I arrived at. Also, I had borne in mind the submissions of counsel for the Petitioner in relation to the report. My decision was based mainly on the affidavits of the parties and the facts of the matter as can be ascertained from the court documents.

12 Section 125(2) of the Women's Charter dictates that the paramount consideration in a custody order is the welfare of the child, but the court is to have regard to the wishes of the parents and also of the child if he is of an age to express an independent opinion. As Sanathraj was one month short of 5 years, he was too young to express an independent opinion as his view might be shaped by the parent with whom he had the most contact at the time (which would have been the Respondent).

13 As both parents are fighting tooth and nail for custody, their wishes are clear. My decision would have to be based on a consideration of all the circumstances of the case, including an assessment of who is the parent better able to devote the time and effort and provide the proper environment for Sanathraj's upbringing.

14 The Petitioner claimed that she and her parents were the main care-givers in the first 27 months of the child's life. However I note that she had returned to work shortly after giving birth and Sanathraj was in the care of the Petitioner's mother at first, and when the latter also returned to work, he was looked after by a maid during the day. The Respondent produced evidence from other witnesses, including the Petitioner's father, that she was occupied with her career and had not been able to spend much time with Sanathraj.

15 The Petitioner claimed that the Respondent was himself too occupied with his career at that time to care for Sanathraj. However the Respondent claimed that he was the parent who had spent more time with him and produce affidavits from the maid and some neighbours in this respect.

16 The Petitioner had suffered a bout of depression. Even though she claimed that this was the fault of the Respondent, nevertheless it is a factor that I have to take into consideration in deciding who is the more appropriate party to have custody of the child.

17 The Petitioner had submitted that she is now better able to care for Sanathraj because she had given up full-time work and had taken a part-time job. This would enable her to spend her afternoons with the child. However I am not satisfied with the sincerity of the Petitioner's statements. Her affidavits showed that she made statements inconsistent with the evidence of other witnesses. I find the Respondent's affidavits to be more balanced and consistent. At the hearing I remarked to the parties that given that the Respondent worked during the week and the Petitioner was available on the afternoon, a win-win solution would be for the Petitioner to have the child during the week and I could give the Respondent very generous access during the weekend from Friday night to Sunday night. However his counsel, upon taking instruction from the Respondent, said that the Respondent would rather forgo the weekends, i.e. have the child go to the Petitioner for the entire weekend, because he wanted to spend his week nights coaching Sanathraj. This gesture indicated to me his sincerity.

18 In a hotly disputed custody application such as this one, it is always difficult to make a decision based purely on the

affidavits which contain contradictory accounts of the facts. However on balance I have no doubt that the Respondent is the parent better able to care for the child and made the custody order set out above. Nevertheless I believed that both parents have an important role in the upbringing of Sanathraj, and hence gave generous access to the Petitioner. Although she had asked for longer weekend access, i.e up to Sunday night, I took into account that the father and son must also share some substantive weekend time. Accordingly I ordered that the child be returned by 10 am on Sundays. As for school holidays the split between the parties is virtually half and half.

Sgd:

Lee Seiu Kin
Judicial Commissioner

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