

Lt Col Iqbal Bahadur Tegh Bahdur ... vs Dr Dentist Mrs Ann S Dutt on 6 May, 2019

Author: K.M.Thaker

Bench: K.M.Thaker, Sangeeta K. Vishen

C/FA/694/2019

ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 694 of 2019

With

R/CROSS OBJECTION NO. 20 of 2019

In FIRST APPEAL NO. 694 of 2019

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LT COL IQBAL BAHADUR TEGH BAHDUR DUTT(RETD)

Versus

DR DENTIST MRS ANN S DUTT

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Appearance:

NOTICE SERVED(4) for the Defendant(s) No. 1

PARTY IN PERSON(5000) for the Defendant(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE K.M.THAKER

and

HONOURABLE MS. JUSTICE SANGEETA K. VISHEN

Date : 06/05/2019

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE K.M.THAKER) In light of the earlier order, more particularly in view of the submission by the mother of the child that she would not be available till 12.5.2019 and having regard to the fact that before 12.5.2019, the Court would close for Summer Vacation, we considered it appropriate (since though the appeal is listed in today's cause list the cross objection are not listed/placed alongwith the appeal) to direct the registry to list the Cross Objection and place the papers before us today. Accordingly, the office has, in response to the direction, listed and placed the Cross Objection.

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2. Against the order dated 31.1.2019 passed by learned Family Court in Civil Misc. Application No.101 of 2016, the original applicant as well as original opponent have taken out captioned proceedings in First Appeal No.694 of 2019 and cross objection No.20 of 2019. The original

applicant has filed captioned First Appeal No.694 of 2019 whereas the original opponent has filed captioned Cross Objection No.20 of 2019.

2.1 The appellants in First Appeal No.694 of 2019 i.e. original applicants in Civil Misc. Application No.101 of 2016 before learned Family Court are grand-parents of 7 years old child who, now, will commence her study in 3rd standard.

2.2 The opponent in the First Appeal is the mother of the child.

2.3 So far as parents (father and mother of the child) are concerned, they are prosecuting divorce petition.

The father of the child is serving in Indian Army. Presently, he is posted out side Gujarat State. The mother has separated and she stays with her parents and not at the matrimonial house.

2.4 In this background, the grand-parents filed Page 2 above mentioned Civil Misc. Application No.101 of 2016 and prayed for visitation right with the child.

The title/subject matter of the said Civil Misc. Application No.101 of 2016 (as described by present appellants) reads thus:-

"APPLICATION FOR GRANT OF CUSTODY UNDER THE GUARDIANS AND WARDS ACT, 1890, Sec 8, 10 & 17 AND THE HINDU MINORITY AND GUARDIANSHIP ACT, 1956 AND OTHER APPLICABLE PROVISIONS OF LAW for visitation rights"

2.5 In the said application, present appellants prayed, inter alia, that:-

"4(A) granted access and visitation rights to an hour or two every day at petitioner's place of residence minor Dhairya Saurabh Dutt for.

B) Grant overnight stay at petitioner's place on week ends.

C) Hear and adjudicate the separate application for interim measures which is filed with the petition. D) direct the respondent to pay the cost of this Petition.

2.6 After hearing the parties, the Court passed order dated 31.1.2019. The operative part of the final order reads thus:-

"FINAL ORDER

1. The present application is partly allowed.

2. It is hereby order that the applicant's grand parents of minor "Dhairya" shall have right of visitation to meet and to see her on every first Saturday of every month at the Mediation Center of the Family Court, Ahmedabad, during 02.00 p.m. to 04.00 p.m. till 1 years from the date of this order and thereafter, they shall permitted to take her with them for outing on aforesaid day and period.

3. It is also directed to opponent that during the visitation hour she shall handover the custody of minor child to applicants in Mediation Centre and facilitate them to meet minor child in her absence.

4. Both the parties would take proper care and would maintain interest of the minor during visitation period.

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5. Necessary yadi to sent the Mediation Center of Family Court, Ahmedabad.

Pronounced in the open Court on 31st day of January, 2019."

3. The appellants seek that the time for visitation granted by learned Family Court may be enhanced and even number of days may also be enhanced. The appellants (grand-parents) have prayed, inter alia, that:-

"20B] Enhance the visitation granted by the Family Court in its final judgment dated 31.01.2019 and grant visitation as prayed as under:

i. grant access and visitation rights to the minor granddaughter Dhairya Saurabh Dutt for 1 to 2 hours every day and overnight stay on Saturdays and Sundays at their place of residence.

ii. grant visitation to make Dhairya participate in celebrating testivities like Deepawali, Dusehra, Baisakhi, Holi, etc., our birthdays/marriage anniversary/ her birth day etc., at the place of residence of petitioner-grandparents.

iii. Grant access to their granddaughter on telephone/computer (Skype etc.) as and when required.

C] direct the respondent to respect and honour the judiciary and not cancel the visitation unilaterally or create any hurdles in implementation of the Court order in its letter and spirit."

4. The mother of the child has filed Cross Objection. She has challenged the decision dated 31.1.2019 and prayed that the relief granted by the learned Family Court may be set aside. She has set out the grounds in justification for the request made in the Cross Objection.

5. In past certain proceedings with regard to similar relief have ensued. The details are Page 4 mentioned in the memo of the Appeal as well as Cross Objection. At this stage, it is not necessary to advert to the said details.

6. With regard to compliance of the order/s granting visitation rights several allegations and counter allegations are made by both sides.

7. We tried to take opportunity of interacting with the child. However, in light of the reply by the mother of the child, it could not materialized. Thus, at this stage, we do not have benefit of interaction with the child and to know her reaction to this entire situation.

8. Having regard to the facts and circumstances which appear from the pleadings and from the order as well as from the fact that the said final order is challenged by both sides and also having regard to the fact that, (a) the divorce petition (filed by the father of the child) is pending; (b) in the said divorce proceedings, the husband has, by means of separate application, prayed (for himself) visitation hours/days with the child; (c) with regard to the interim order which was passed by learned Family Court during the pendency of Civil Misc. Application No.101 of 2016, certain execution application filed by the grand-parents (i.e. the appellants) is also Page 5 pending; and (d) the fact that the appellants have raised grievance about the place fixed by trial Court for visiting the child on the ground of distance and infrastructure / place, we pass following order:-

[a] The Appeal and the Cross Objections are ADMITTED.

[b] So far as issue with regard to interim relief is concerned, in light of the facts and circumstances of the case, we are of the view that during pendency of the Appeal and Cross Objections, there is no need or justification to modify/enhance the visitation hours.

Therefore, so far as direction contained in para No.4 of final order is concerned, we do not make any alteration/modification at this stage.

We, however, clarify that this order can be reviewed at later stage during pendency of the Appeal, if such circumstances are made out by either side in appropriate application.

[c] So far as place for visiting the child by grand-parents is concerned, in para No.3 of the order it is stated that grand parents can meet the child at Mediation Centre of learned Family Court during the time and on the date mentioned in para No.2 of the order. As mentioned above, Page 6 the appellants have made grievance with regard to place.

We find the said grievance justified. Therefore, we consider it appropriate to change the place of visit by grand parents with the child from Mediation Centre, Family Court to Mediation Centre, Gujarat High Court.

Other directions shall remain the same.

(K.M.THAKER, J) (SANGEETA K. VISHEN,J) KAUSHIK D. CHAUHAN Page 7