

2024 PLRonline 018 (SC)

Supreme Court of India

Present : Justice Vikram Nath and Justice Prasanna B. Varale

SUGIRTHA

Versus

GOWTHAM

Civil Appeal No. 14833 Of 2024

Hindu Marriage Act, 1955 - S.13(1)(ia), S.26 - Child - Visitation - Interest of the minor child is paramount - In the process of adjudicating upon the rights of the parents, the health of a child aged 2 years cannot be compromised - While the respondent has the right to visit the child, it cannot be at the cost of the child's health and wellbeing - Keeping in mind the best interest of the child and the interests of the parents, we agree with the High Court to the extent of granting certain visitation rights to the respondent, but the directions and set up to enable the same appear to be adversarial to the child and require to be modified.

The appellant challenged the Family Court's judgment, affirmed with modifications by the High Court, permitting the respondent (father) visitation rights for their minor daughter, citing the adversarial effect of travel and health concerns. The appellant contended that the respondent, a stranger to the child due to prolonged separation, poses a potential threat to the safety and welfare of the child, owing to a history of domestic violence and negligence.

The High Court, acknowledging the father's rights as a natural guardian, directed the appellant to facilitate weekly visitations in Karur, 150 kilometers from her residence in Madurai. However, the appellant challenged this arrangement as detrimental to the child's best interests, particularly given her tender age (two years).

The Supreme Court, recognizing the paramount importance of the child's welfare, found the High Court's directions imposing unnecessary hardship on the minor. While affirming the respondent's visitation rights, the Court held that such rights must be exercised without compromising the child's health and well-being. The Court relocated the visitation venue to Madurai. Visitation to take place in a public space, with the appellant maintaining a supervised distance of 10 feet to safeguard the child's comfort and security.

JUDGEMENT

VIKRAM NATH, J. - (20.12.2024) -

1. Leave granted.
2. The present appeal arising from the Special Leave Petition No. 18240 of 2024 challenges

the validity of the judgment dated 21.03.2024 passed by the Madras High Court's Madurai Bench in C.M.A. (MD) No. 118 of 2024. The High Court, through the impugned order, has dismissed the appellant-mother's miscellaneous appeal and upheld the interim visitation rights granted to the respondent- father and modified the directions passed by the Family Court.

3. Facts giving rise to the present appeal are that the parties herein got married on 09.09.2021 and a daughter was born to them on 06.06.2022. Shortly after birth of the child, in June 2023, the appellant filed a petition for dissolution of marriage under Section 13(1)(ia) of the Hindu Marriage Act, 1955 In short, the "HMA", on the ground of cruelty. Appellant in her petition contended that the respondent had continuously been committing domestic violence on her as well as the child. He had deserted them on 01.07.2022, and when he returned later, he attempted to kill them on 16.08.2022. She has also asserted that he would also beat up the child for absolutely no reason. She further submitted that the parties have been living separately since 18.08.2022.

4. Respondent in October 2023, had preferred an application under Section 26 of the [HMA](#) in the divorce proceedings, seeking visitation rights during the pendency of the proceedings. The Family Court allowed the respondent's application and in its order dated 10.11.2023 directed that the appellant should take the child to Karur, Tamil Nadu, every Sunday in the morning from 10:00 hours to 12:00 hours, and hand over the child to the respondent in the campus of the Kalyana Pasupatheswarar Temple, Karur.

5. Appellant approached the High Court against the above judgment of the Family Court on the ground that she is now residing in Madurai and the distance between Madurai and Karur is 150 kilometers, and thus the long travel of 300 kilometers every Sunday would be adversarial to the health of the child. Further, she has also contended that there is continuous death threat to the life of the appellant and the child; the respondent has never taken care of the child, the child has never been in his company, and thus, respondent is effectively a stranger for the child. Therefore, such visits would only be a source of mental agony to her.

6. The High Court, while dismissing the miscellaneous appeal filed by the appellant, observed that since the father is also the natural guardian of the child, he is also entitled to have the custody of the child. The High Court made attempts at uniting the parties in the interest of the child, but the reconciliation attempts have failed. Thus, the High Court while noting its disappointment towards the failed attempts at reconciliation, observed that the agony of missing the early childhood of one's offspring cannot be prolonged for any of the parties. Thus, the High Court modified the directions of the Family Court and directed the appellant to take the child to Karur on every Sunday and hand over to the respondent between 10:00 AM to 02.00 PM, at the place mentioned in the application before the Court below or any other place in Karur which is convenient due to the summer condition, taking into consideration the tender age of the child, for a period of two months and thereafter, hand over the child for alternative weekends till the Guardian Wards Original Petition is decided.

7. The appellant is before us challenging the above judgment of the High Court on the ground that this set up envisages a travel of about 300 kilometers, to and from Karur, every Sunday, causing great difficulty and hardship to the minor child. She has further submitted that the respondent is a stranger to the child. It is natural that a minor child of such tender age i.e., two years will get extremely uncomfortable from the presence of the respondent. That the daughter was born on 06.06.2022 and the parties have been living separately since 18.08.2022, and thus, the respondent has never stayed with or cared for the child. Owing to the history of domestic violence, threat to life, and negligence of the respondent, such visitation rights to the respondent would be completely averse to the best interest of the minor daughter.

8. This Court, while issuing notice, had noted that the limited grievance raised by the appellant in the present appeal is that while passing the impugned order, the Division Bench of the High Court did not take into consideration the fact that the venue for the respondent to have access to the two years old minor child of the parties is situated 150 Kilometers away from the place of the residence of the appellant, which is at Madurai.

9. We have heard the learned counsel for the appellant, whereas no one has entered appearance for the respondent, despite service of notice.

10. It is also on record that the mediation proceedings between the parties have failed.

11. It is an admitted fact that the minor daughter was born to the parties on 06.06.2022 and they have been living separately since 18.08.2022. Further, it is also admitted that both the parents are doctors by profession, and while the appellant resides in Madurai with the minor daughter, the respondent is a resident of Karur. The distance between the two places is about 150 kilometers.

12. While the observation of the High Court that the father being the natural guardian cannot be denied of the care and custody of the child and that his agony of missing his child's childhood cannot be prolonged, is sound and fair, but the same cannot override the interest of the child.

13. The submissions on behalf of the appellant pertaining to the history of domestic violence and threat to life cannot be gone into at this stage of deciding interim visitation rights. These are serious allegations which require careful consideration, both on facts and evidence.

14. We also recognise that the child has effectively been in the care of the respondent for approximately two months only, as the parents started living separately shortly after her birth. But this does not compromise the respondent's rights as a father to visit and enjoy the company of his daughter. The matrimonial disputes and grave allegations between parents should not be an impediment to a child's right to have care, company, and affection of both the parents. It is evident from multiple failed attempts at mediation that the parties are not inclined to reconcile. While no guardianship or custody petition has been preferred by the respondent, the visitation rights of the father, as prayed in the application, require a careful and empathetic consideration during the pendency of the divorce

proceedings.

15. In all of this, the interest of the minor child is paramount. In the process of adjudicating upon the rights of the parents, her health cannot be compromised. Further, while the respondent has the right to visit the child, it cannot be at the cost of the child's health and wellbeing. Keeping in mind the best interest of the child and the interests of the parents, we agree with the High Court to the extent of granting certain visitation rights to the respondent, but the directions and set up to enable the same appear to be adversarial to the child and require to be modified.

16. The directions passed by the High Court as well as the Family Court are not supported by any cogent reasons for allowing the visitation to take place at Karur. These orders do not provide any justified reasons and do not appear to have kept the best interest and welfare of the child as paramount. Thus, keeping the interest and well being of the child as the priority, we deem it appropriate and just to move the place of visitation from Karur to Madurai.

17. Considering the best interest of the child, her tender age, and health, we direct that:

- i. Respondent shall be allowed to visit the minor daughter every Sunday between 10:00 AM and 02:00 PM.
- ii. Such visits shall take place in Madurai, in a public park or a temple premises, and in the presence of the appellant considering the child's tender age. The appellant, though must be present, shall stay at a distance of approximately 10 feet.
- iii. The child shall be handed over to the respondent at the place of visit in Madurai at 10:00 AM on Sundays and be returned to the appellant by 02:00 PM.

18. The appeal is accordingly partly allowed, in respect of the limited question of place of visitation, and the judgment of the High Court is modified to the extent of the above directions.

19. Pending application(s), if any, shall stand disposed of.