

APHC010532462023



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3470]

WEDNESDAY ,THE TENTH DAY OF JULY
TWO THOUSAND AND TWENTY FOUR

**PRESENT
THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY**

**IA 1 OF 2023
IN
CIVIL MISCELLANEOUS APPEAL NO: 453/2023**

Between:

Shaik Aslam Latheef

...APPELLANT

AND

Madanapalli Shafia Mariyam

...RESPONDENT

Counsel for the Appellant:

1. SIVAPRASAD REDDY VENATI

Counsel for the Respondent:

1. AYESHA AZMA S

The Court made the following:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE SRI JUSTICE NYAPATHY VIJAY

I.A.No.1 of 2023
In
C.M.A. No. 453 of 2023

ORDER: (per Hon'ble Sri Justice Ravi Nath Tilhari)

Heard Sri Sivaprasad Reddy Venati, learned counsel for the petitioner and Ms. Ayesha Azma S, learned counsel for the respondent.

2. The petitioner/appellant is the father of the minor ward, aged about 7 years, namely, Ayaan Latheef, and the respondent is the mother of the minor.

3. The petitioner/appellant herein shall be referred as 'father' and the respondent as 'mother' of the minor ward, hereinafter.

4. G.W.O.P.No.03 of 2020 was filed by the father under Sections 7, 8, 9 and 10 of the Guardian and Wards Act 1890 to declare the petitioner as Guardian to the minor ward being natural guardian (father) and for other reliefs. After contest by the respondent (mother), the petition was dismissed by the Principal District Judge, Ananthapuram on 15.09.2023, recording that there were no sufficient and cogent reason to give the custody of the minor ward to the father.

5. Challenging the Order dated 15.09.2023, CMA No.453 of 2023 has been filed.

6. The petitioner has filed I.A.No.1 of 2023 for direction to grant visiting rights to the petitioner-father to see the minor ward Ayaan Latheef at the house

of the respondent or any other place mutually agreed or decided by the Court and grant interim custody of the child during school holidays for the full time, on such terms and conditions, as may be imposed by this Court.

7. The respondent has put in appearance through counsel and has filed counter affidavit to I.A.No.1 of 2023.

8. The petitioner was present. The maternal grandfather of the minor ward was also present. The respective counsels for the parties were present. The minor ward Ayaan Latheef was present with maternal grandfather, namely, M. M. Shakeel. The respondent (mother) was not present. It was informed by the learned counsel for the respondent that the mother was abroad in Saudi Arabia.

9. Learned counsel for the appellant/petitioner submitted that the custody petition was dismissed by the trial Court. The learned Principal District Judge, Ananthapuram must have considered the father-petitioner's right to visit the minor ward. But the visitation right aspect has not been considered. He further submitted that the mother remarried one Yakhoob Khan Lavani who is working in Gulf countries, leaving the minor child in India in the custody of her father (maternal grandfather of ward). He further submitted that in terms of "Declaration of Khulla by the respondent" Ex.A1, which was filed before the learned Principal District Judge, one of the declarations made by the respondent was that

".....the said child will be under her care and custody till she get remarried and subsequent to her second marriage, the child will be handed over

to Mr. Aslam Latheef (petitioner) for upbringing his education, his well being etc.,”

He further submitted that the declaration of 'Khulla' was accepted vide declaration of acceptance for Khulla by the petitioner, in which it was *inter alia* accepted that

“.....the said child will be under the care and custody of my wife Madanapalli Shafia Mariyam, D/o. M.M.Shakeel till her next marriage, and once when Madanapalli Shafia Mariyam was remarried, the custody of Ayaan Latheef, my son, shall be handed over to me for upbringing his education and future care”.

He further submitted that the petitioner-father is entitled for the custody and for the time being visitation rights.

10. Learned counsel for the respondent submitted that the petitioner had extra-marital affair with one lady and for that reason, the respondent left him. She further submitted that a criminal case was registered against the petitioner in Crime No.208 of 2018 on file of K.R.Puram Police Station, Bangalore for the offences under Sections 405, 504, 498A, 323, and 307 r/w. Section 34 IPC and Sections 3 and 4 of Dowry Prohibition Act. Since 2018, the petitioner and the respondent were living separately and the minor ward was with the mother and the appellant/petitioner never made any attempt to bring them back. She submitted that the custody has rightly been denied to petitioner and for that reason he is also not entitled for visiting rights.

11. We have considered the aforesaid submissions and perused the material on record.

12. We are of the view that the contentions as raised for custody, require consideration, on merits at the time of final hearing of Appeal i.e., finally, if the custody is to be given to the father or not, or is to be continued with the mother, pursuant to the order under challenge.

13. So far as, visitation rights of the father, at this stage, are concerned, the same require consideration.

14. The Order under challenge in appeal also does not consider the aspect of grant of visitation rights to the father.

15. In ***Yashita Sahu v. State of Rajasthan***¹ the Hon'ble Apex Court held that even if the custody is given to one parent, the other parent must have sufficient visitation rights to ensure that the child keeps in touch with the other parent and does not lose social, physical and psychological contact with any one of the two parents. It is only in extreme circumstances that one parent should be denied contact with the child. Reasons must be assigned if one parent is to be denied any visitation rights or contact with the child. Courts dealing with the custody matters must while deciding issues of custody clearly define the nature, manner and specifics of the visitation rights.

16. It was observed that the child is the victim in custody battles. In this fight of egos and increasing acrimonious battles and litigations between two spouses, the parents who otherwise love their child, present a picture as if the other spouse is a villain and he or she alone is entitled to the custody of the child. The Hon'ble Apex Court in ***Yashita Sahu*** (supra) emphasized that a

¹ (2020) 3 SCC 67

child, especially a child of tender years requires the love, affection, company, protection of both parents. This is not only the requirement of the child, but is his/her basic human right. Just because the parents are at war with each other, does not mean that the child should be denied the care, affection, love or protection of any one of the two parents. A child is not an inanimate object which can be tossed from one parent to the other. Every separation, every reunion may have a traumatic and psychosomatic impact on the child.

17. The Hon'ble Apex Court further observed that most Courts while granting custody to one spouse do not pass any orders granting visitation rights to the other spouse, and also that a child has a human right to have the love and affection of both the parents and courts must pass orders ensuring that the child is not totally deprived of the love, affection and company of one of her/his parents. The Hon'ble Apex Court further observed that in addition to the visitation rights, contact rights are also important for development of the child. The concept of contact rights in the modern age would be contact by telephone, e-mail or in fact, the best system of contact, if available between the parties should be video calling. It was emphasized that the courts dealing with the issue of custody of children must ensure that the parent who was denied custody of the child should be able to talk to her/his child as often as possible. Unless there are special circumstances to take a different view, the parent who was denied custody of the child should have the right to talk to his/her child for 5 to 10 minutes every day. This will help in maintaining and improving the bond between the child and the parent who was denied custody. If that bond is

maintained, the child will have no difficulty in moving from one home to another during vacations or holidays. The purpose of this is, if one cannot provide one happy home with two parents to the child then let the child have the benefit of two happy homes with one parent each.

18. Paras-20 to 24 of ***Yashita Sahu*** (supra) deserve reproduction as under:

“**20.** It is well settled law by a catena of judgments that while deciding matters of custody of a child, primary and paramount consideration is welfare of the child. If welfare of the child so demands then technical objections cannot come in the way. However, while deciding the welfare of the child, it is not the view of one spouse alone which has to be taken into consideration. The courts should decide the issue of custody only on the basis of what is in the best interest of the child.

21. The child is the victim in custody battles. In this fight of egos and increasing acrimonious battles and litigations between two spouses, our experience shows that more often than not, the parents who otherwise love their child, present a picture as if the other spouse is a villain and he or she alone is entitled to the custody of the child. The court must therefore be very wary of what is said by each of the spouses.

22. A child, especially a child of tender years requires the love, affection, company, protection of both parents. This is not only the requirement of the child but is his/her basic human right. Just because the parents are at war with each other, does not mean that the child should be denied the care, affection, love or protection of any one of the two parents. A child is not an inanimate object which can be tossed from one parent to the other. Every separation, every reunion may have a traumatic and psychosomatic impact on the child. Therefore, it is to be ensured that the court weighs each and every circumstance very carefully before deciding how and in what manner the custody of the child should be shared between both the parents. Even if the custody is given to one parent, the other parent must have sufficient visitation

rights to ensure that the child keeps in touch with the other parent and does not lose social, physical and psychological contact with any one of the two parents. It is only in extreme circumstances that one parent should be denied contact with the child. Reasons must be assigned if one parent is to be denied any visitation rights or contact with the child. Courts dealing with the custody matters must while deciding issues of custody clearly define the nature, manner and specifics of the visitation rights.

23. The concept of visitation rights is not fully developed in India. Most courts while granting custody to one spouse do not pass any orders granting visitation rights to the other spouse. As observed earlier, a child has a human right to have the love and affection of both the parents and courts must pass orders ensuring that the child is not totally deprived of the love, affection and company of one of her/his parents.

24. Normally, if the parents are living in the same town or area, the spouse who has not been granted custody is given visitation rights over weekends only. In case the spouses are living at a distance from each other, it may not be feasible or in the interest of the child to create impediments in the education of the child by frequent breaks and, in such cases the visitation rights must be given over long weekends, breaks and holidays. In cases like the present one, where the parents are in two different continents, effort should be made to give maximum visitation rights to the parent who is denied custody.”

19. We are of the view that the minor child needs the love, affection, company and protection of both parents, which is his basic human right. Parental conflicts should not deprive the child of care from either parent.

20. There is no controversy on the material factual aspects, i.e., the marriage between the parties, the petitioner being the father, the respondent having remarried and also presently at Saudi Arabia, the child in India with the maternal grandfather.

21. We do not find any extreme circumstances to deny the visitation and contact rights to the petitioner-father with his minor son.

22. So far as the submission of the learned counsel for the respondent with respect to the criminal case is concerned, the same was filed by the wife/respondent under the sections relating to the demand of dowry and cruelty and such other offences, but as is evident from the order of the learned Principal District Judge that the case was withdrawn by the wife. There is no other criminal case, pointed out of such nature so as to deprive the petitioner of at least visiting rights at this stage during pendency of the appeal.

23. We, therefore, provide visitation right and also the contact right to the petitioner-father to visit the minor child, namely, Ayaan Latheef, during pendency of the appeal, in the manner to be stated shortly.

24. We asked the learned counsels for the parties for convenient place, where the petitioner may meet the ward, in the light of the prayer made.

25. In the application, the petitioner has made request *inter alia* for the place where the ward is residing with maternal grandfather, learned counsel for the petitioner requested for such place, at least at this stage.

26. Learned counsel for the respondent, after consulting the maternal grandfather, stated that it can be in the house where the child is residing with the maternal grandfather at the address "M.M.Shakeel, D.No.10/614-1, Nagaraju Street, Kadiri town and Mandal, Nallapati Venkata Krishna, Ananthapuram", as given in the CMA of the respondent.

27. Accordingly, we provide and direct as under:

- i. The petitioner is permitted to visit the child, namely, Ayaan Latheef, once in a week, every week, on Sundays, for two hours during 2 pm to 6 pm.
- ii. That the petitioner shall visit the place of Sri M. M. Shakeel, the maternal grandfather of the minor ward where the child is residing;
- iii. Direct the respondent, as also the maternal grandfather of the child, and the other family members, that they shall not remove the child from that place and shall make available the child to meet the petitioner at that place and shall also not create any obstruction or cause inconvenience to the petitioner to meet the child and his being in the company of the ward;
- iv. During the aforesaid period for visitation, the petitioner would be given sufficient time to meet the child alone and the presence of any other member shall be avoided.
- v. The petitioner is expected to behave like a responsible father, not causing any embarrassment or hurting the feelings of the minor.
- vi. For the time being, the petitioner is not permitted to take the child outside of the place as aforesaid, for which liberty is granted to file fresh application, if so required;
- vii. We further grant permission to the father to make telephonic conversation with the child daily for 10 to 15 minutes at the convenient free time of the child without disturbing his studies;

viii. The petitioner shall not accompany any other person inside the place of visiting the child, except with the permission of the maternal grandfather;

ix. The ward shall not be removed from India or to any other place within India, except with the permission of the Court;

28. With the aforesaid observations and directions, the application stands disposed of. The other prayers in I.A.No.1 of 2023 which are not granted at this stage, that does not mean that the other prayers are rejected. It shall be open for the father to file fresh application for the other prayers as in I.A.No.1 of 2023, in due course of time, if he so desires.

29. Post the Appeal on 23.10.2024.

30. The appeal may itself be heard and decided finally.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

RAVI NATH TILHARI, J

NYAPATHY VIJAY, J

Date: 10.07.2024
Dsr