

Deepak Chopra Vs. Meenu Chopra

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Court : Delhi

Decided On : Jan-29-2004

Reported in : 2004(73)DRJ91; (2004)137PLR26

Judge : Vikramajit Sen, J.

Acts : [Guardians and Wards Act, 1890](#) - Sections 25, 47; Code of Civil Procedure (CPC) - Order 9, Rule 13 - Order 43, Rule 1; Hindu Marriage Act - Sections 28

Appeal No. : CRP No. 1370/2002

Appellant : Deepak Chopra

Respondent : Meenu Chopra

Advocate for Def. : Vinay Kumar Garg, Adv.

Advocate for Pet/Ap. : Geeta Luthra, Adv

Disposition : Petition dismissed

Judgement :

Vikramajit Sen, J.

1. The facts of the case are that the Respondent wife had filed a Petition under Section 25 of the Guardians & Wards Act seeking the custody of the daughter, namely, Shivangi who was at that time in the custody of her father, who is the

Petitioner herein. It appears that non-bailable warrants had been issued against the Petitioner owing to his failure to produce the daughter in Court despite repeated Orders to this effect. While the above-mentioned proceedings were pending, the Habeas Corpus Petition came to be filed in this Court which was disposed of on 23.5.2001 in the following terms:

'23.05.2001

Present: Mr. Aman Lekhi with Mr. Pramod Jalan and Mr. Shyamal Kumar for the petitioner.

Petitioner in person.

Ms.Geeta Luthra with Mr. Deepak

Bharti for the respondent.

Respondent No. 3 in person.

Ms.Mukta Gupta for the State.

Crl.W.1192/2000 and Crl.M.No. 375/01

Rule D.B.

This case has a chequered history. Guardian Court, Delhi vide Order dated 10th August, 1998 granted interim custody of Baby Shivangi to the petitioner herein observing that the child Shivangi being a female child requires her mother's love, care and affection at such a tender age and even thereafter requires her mother's guidance being a female child. Further directions were given to respondent NO. 3 herein to produce the child. He was restrained from taking Baby Shivangi out of the jurisdiction of the Guardian Court without permission. Respondent failed to produce the child before the Guardian Court. thereforee the petitioner approached concerned Court and even invoked judicial proceedings by filing writ petition but Baby Shivangi was not produced on one pretext or the other. Ultimately present writ petition of Habeas Corpus was filed pursuant to which respondent No. 3 produced Baby Shivangi.

Efforts were made by this Court to bring about reconciliation and, therefore, allowed the petitioner and respondent No. 3 to take out baby Shivangi together. However, parties could not reconcile. On February 27, 2001 we talked to the parties as well as Baby Shivangi. It was agreed between the parties that let Baby Shivangi be given to the petitioner till such time respondent No. 3 comes back from Pune. Since then the interim custody is with the petitioner though off and on Baby Shivangi had been taken by respondent No. 3 and she stayed with him. To ensure that Baby Shivangi's education may not disrupt we directed that she be got admitted in a good school. Baby Shivangi is now admitted in Loreto Convent, Delhi.

It is in this background that the parties wanted that till such time the Guardian Court decides the case finally interim arrangement be made.

After hearing counsel for the parties and pursuing the record we Order that let Baby Shivangi be with her mother, the petitioner till such time the Guardian Court decide the custody case finally. During this period when Baby Shivangi is with the petitioner, respondent No. 3 being the natural father will have visiting rights. It has been agreed that respondent No. 3 can bring Baby Shivangi with him on Saturdays at about 11.00 A.M. and deliver her back at the residence of petitioner on the following Sundays at about 5.00 P.M. In case there happens to be a long week end then respondent No. 3 may be allowed to have Baby Shivangi even on Friday. During summer vacations as well as in winter vacations when the school is closed Baby Shivangi will spent half of her vacations with the petitioner and half of the vacations with respondent No. 3 i.e. first half with the mother and second half with the father. This arrangement will continue till final decision is given by the Guardian Court.

Parties were directed to file their respective affidavits giving undertaking that till such time final decision is given by the Guardian Court. Baby Shivangi will not be taken outside the jurisdiction of this Court. In case for any reason Baby Shivangi has to be taken out it should be with the permission of the concerned Court. The undertaking given by the parties i.e. petitioner and respondent No. 3 vide their respective affidavits are hereby accepted. They shall be bound by their

undertakings. It is made clear that any observations made by this Court during the pendency of this petition will have no bearing on the merits of the case pending before the Guardian Court nor these observations will be used by either party before the Guardian Court.

With these observations the petition stands disposed of.'

2. The proceedings before the Guardian Judge thereafter have been spelt out in detail in the impugned Order dated 2.8.2002 whereby the Petitioner husband application under Order 9 Rule 13 CPC was dismissed.

'.....

The record shows that the respondent was duly served in the petition and he had been appearing in the same through his Advocate. The Production Warrants were also being issue by the Guardian Court for seeking production of the child since 1998 till 2000 regularly, but the same were not executed. Deepak Chopra, the applicant himself appeared in the Court on 13.5.2000 and his statement was recorded by the Court as CW.1. The respondent/applicant despite being fully aware of the pendency of the present Guardianship Petition and also of the proceedings and also the Order granting interim custody of the child to the petitioner, preferred a petition before the Family Judge, Pune. The respondent thereafter, on 24.7.2000 appeared in this case through his Advocate Shri P.S. Bhaduri and failed to appear Along with the child despite the specific directions of the Court. Further directions were given for the appearance of the respondent and production of the child. Thereafter, again, in the subsequent proceedings, the respondent was duly represented by the Advocate. The Id. Counsel for respondent appeared on 8.11.2000, 14.11.2000, 18.11.2000 on which date, the matter was posted for Orders for 21.11.2000. The matter was, thereafter, adjourned for 29.11.2000 on which date it was noted that the respondent had failed to abide by the directions of the Court to appear in person on 18.11.2000 and Show Cause was directed to be issued against him to explain why contempt proceeding be not initiated against him. Thereafter, the respondent was again represented through Advocate on 7.12.2000. Thereafter, it was informed by the counsel for the petitioner on 1.2.2001 that the matter was being taken up by the Hon'ble High

Court and that short date may be given. The respondent had, thus, been appearing in this case till December 2000 through his Advocate. The respondent himself is a qualified Lawyer and had been practicing in the Supreme Court of India as a Junior with Mr. G.C. Sharma, Sr. Advocate. He has also been duly represented by Shri Baldev Malik, Advocate and thereafter, by Prof. Matadin, Advocate. There is no discharge taken by any of these Advocates. The respondent despite being aware of the pendency of present petition had still filed a petition before the Family Court, Pune without disclosing the fact of pendency of present petition. The respondent was all throughout aware of the pendency of the present petition and that Production Warrants were being issued to ensure the presence of the minors in the Court which Orders were being violated by the respondent with great impunity. It is also not in dispute the Criminal Writ No. 1182 of 2000 had been filed by the petitioner/non-applicant and that the respondent/applicant had appeared in the same through the Advocate. The said Writ petition was disposed of vide Order dated 23.5.2001 in the terms that interim custody of minor was granted to petitioner till disposal of the petition. The respondent had been appearing in the Main Petition till December 2000 through his Advocate and thereafter, none appeared on behalf of the respondent. No Explanation whatsoever has been given by the respondent as to what prevented him from appearing after December, 2000. It is mentioned in the application U/O 9 R.13 CPC that the respondent/applicant was under the impression that this Court would issue notice for reviving the matter for adjudication pursuant to the directions given by the Hon'ble High Court in terms of their Orders dated 23.5.2001. First and foremost, the Order dated 23.5.2001 was in a Criminal Writ Petition and was not in respect of any Order pertaining to the petition under consideration; secondly, there were no directions given to this Court for giving notice to the respondent before proceeding further in the present petition. Moreover, the present petition was subsisting before this Court and at no point of time had the proceedings been stayed or consigned sine die. Once the proceedings are alive and pending before this Court, there was no reason for this Court to have sent notice to the respondent/applicant. Moreover, when the file had not been consigned, where was the question of its revival. The respondent/applicant has interestingly not mentioned the date on which, according

to him, the proceedings in the present petition had been stayed or the file consigned sine die. It was argued on behalf of the applicant that the respondent was under the impression that the file has been consigned sine die, but there is no mention of any date of this alleged Order. The respondent is not a layman or a person without legal assistance and thus, these submissions made by the applicant/respondent are not tenable.'

3. Even though the husband had been proceeded ex parte, the Guardian Judge has reiterated visitation rights of the Petitioner in the Final Order. The effect of this is that every weekend is spent by Shivangi with her father which is likely to cause an imbalance. Since this arrangement has not been appealed against, I refrain from making any observations on its appropriateness as a permanent arrangement. Mindful of the fact that in custody matters the Court usually does not feel the constraints of procedural restraints, counsel for the Petitioner had been asked by the Court whether the entire custody question should be reviewed, in the exercise of *parens patriae* powers and duties. Counsel however declined this offer and asked for the case to be remanded. The Court cannot also ignore the fact that the Respondent/mother has not appealed against the Judgment of the Guardian Judge. Hence the Court should refrain from traversing the path of Review.

4. At the threshold counsel for the Respondent wife had taken an objection to the maintainability of this Revision Petition on the grounds that an Appeal ought to have been filed against it. This is evident from a conjoint reading of Order XLIII (d) and Section 47(c) of the Guardian and Wards Act, 1890, this Revision is, therefore, is not maintainable. The period for filing an Appeal expired in September, 2002 whereas this Revision has been filed on 17th December, 2002.

5. Even on merits, keeping in view the narration of the proceedings before the Guardian Judge, I find no error in the exercise of jurisdiction by the Guardian Judge. The Petitioner appears to have been watching the proceedings, with the intent of causing delay. No assistance can be taken from the decision of the Hon'ble Supreme Court in *Yallawwa (Smt.) v. Shantavva (Smt.)*, : AIR 1997 SC35, since the factual matrix in the cases are entirely disparate. The factum of service or knowledge was in doubt keeping the illiteracy of the wife in perspective, as well

as the death of the Petitioner husband. What is of significance is that the Apex Court had itself taken note of the fact that the ex-parte decree was appealable under Section 28 of the Hindu Marriage Act and Order 43 Rule 1(d) of CPC. The Petitioner before this Court is an Advocate, who had complete knowledge of the pendency of the proceedings.

6. The Revision Petition is dismissed with costs of Rs. 5,000/-. All interim Orders are recalled.

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