

Sh. Ravi Garg Vs. Smt. Bharti Garg

Sh. Ravi Garg Vs. Smt. Bharti Garg

SooperKanoon Citation : sooperkanoon.com/681003

Court : Delhi

Decided On : Jan-29-2003

Reported in : 2003IIAD(Delhi)281; 103(2003)DLT315; 2003(67)DRJ201

Judge : S. Mukerjee, J.

Acts : [Guardians and Wards Act, 1890](#) - Sections 12; Code of Civil Procedure (CPC) - Sections 151

Appeal No. : Civil Revision No. 790/2000

Appellant : Sh. Ravi Garg

Respondent : Smt. Bharti Garg

Advocate for Def. : Malini Sood, Adv.

Advocate for Pet/Ap. : S.K. Makkar, Adv

Judgement :

S. Mukerjee, J.

1. On 12.12.2002, I had occasion to spend more than half an hour with the children, during the course of which I found the children to be extremely mature and well aware of their own welfare, as also having a very balanced approach qua their relations with both parents.

2. This civil revision petition has been preferred by the father challenging the interim order dated 10.2.2000 of the Guardianship Judge incorporating the following interim arrangement :

'The Court is of the considered view, thus that in the instant case, it would not been appropriate to grant exclusive custody of the minors to the respondent-father, but it is considered appropriate for the welfare of the minors that the arrangement which has commenced during the pendency of the civil suit pending between the children and the father before the Hon'ble High Court of Delhi i.e. The suit having been failed by the children through their mother i.e. Suit No. 1787 of 99 continues and the petitioner is, thus, permitted to retain the custody of the minors during the pendency of this petition, but the respondent-father is allowed to take custody of the minors Rahul and Manuk Garg from the residence of the petitioner on alternate week ends i.e. On Friday evenings at 7.00 P.M. commencing w.e.f. 18.2.2000 and is permitted to retain the custody of the two minors till the Sunday following the Friday till 11 A.M. and is directed to hand over custody of the minors to the petitioner-mother on Sunday at 11 A.M. at the residence of the petitioner. The respondent is also permitted to take custody of the minors for the first half of the summer vacation and winter vacations of each year from the residence of the petitioner on the day that the vacation commences and is directed to hand over the custody of the minors at the residence of the petitioner by 5 P.M. on the day when half of the winter and summer vacation ends each year, till disposal of the petition. As regards the reliance placed on behalf of the respondent on the verdict of the Hon'ble Supreme Court in the case 1993 (1) HLR SC 114, it is essential to observe that it has been laid down therein that the alleged change in circumstances of the petition has to be linked with the consideration of welfare of the minor children and it is, thus, essential to observe that in the instant case, the Court is of the considered view that for the welfare of the children, the arrangement as directed herein-above as an interim measure during the pendency of the petition is for the welfare of the minors. Reliance placed on behalf of the respondent on the verdicts in the cases 1996 (1) HLR 703; 1998 (1) HLR 267; 1998 (2) HLR 522; AIR 1927 All 581, it is essential to observe that already observed herein-above that each case has to be decided on the basis of the facts and circumstances tilting in favor of the welfare of the minors. Thus, the

applications U/s 12 of the Guardians and Wards Act 1890 r/w Section 151 of the CPC dated 10.3.1999 filed by the petitioner; the application filed by the respondent on 31.5.99 u/s 12 of the Guardians and Wards Act 1890 whereby the respondent has sought that the Order dated 10.3.99 of the Court be set aside, recalled/suitably modified; and the application filed on 29.7.99 by the respondent u/S 12 of the Guardians and Wards Act 1890, all are disposed of accordingly and the parties are directed to be abide by the arrangement as directed herein-above.'

3. At the outset, I put it to the petitioner that since the Guardianship Judge was seized of the merits of the matter, the only scope for consideration by this Court could be at best limited to the aspect as to whether the interim arrangement should continue as it is, or should be modified along the lines prayed for by the petitioner.

4. Thereupon the petitioner submitted that both the children are at a very crucial stage of their formative years i.e. just about 12-13 years. He got hardly any time to spend with them during the last three years. He would like to have atleast a stretch of 4 to 6 months of regular interim custody of both the children of course, subject to the corresponding reversal of the situation as contained in the impugned order viz to the extent that the respondent (Mother), will then be entitled to have both sons with her on alternate weekends. The holidays according to petitioner, could be equally shared in terms of what has been already ordered by the Guardianship Judge in the impugned order.

5. Learned counsel for the petitioner has submitted that since both the children are sons, who are also far above the age of 5 years, and rather are in their teens, the father being of the same sex, would be the more appropriate guardian for regular custody, and he would be a role model as well. Accordingly to him there is no allegation in the existing petition directed against the petitioner as being a bad father, and in fact the only submission of the respondent is that the petitioner in his capacity of husband had certain failings. Accordingly to him except in the eventuality of the petitioner/father being held to be dis-entitled, the regular custody should remain with the father.

6. It is further submitted that the petitioner/father is a non-drinker, non-smoker, vegetarian and having outstanding academic career credentials. He has done his graduation from St. Stephen's College, and thereafter Masters degree in Business Management from IIM, Calcutta. He reportedly started business of manufacturing Floppy diskettes as far back in the year 1981, and is reportedly having a sizeable income with his own parental house.

7. It is contended that on the other hand, the respondent is a salaried employee who though having good income level, but is working from morning to evening, and reportedly has an over active social life with the result that according to petitioner, the respondent could not possibly have enough time to spend with the children.

8. Learned counsel for the petitioner submits that in all the proceedings till date, the children have always indicated that they have love and affection for their father as well, and are receiving all his love and affection. It is further contended that the petitioner would be in a position to spend quality time with both the children, as the nature of his work enables him to work from home and also contrary to respondent's attitude, he is prepared to put his business prospects and earnings on the 'back burner' for a period of one or two years just in order to make sure that the children achieve the best that they deserve and as per their potential.

9. On behalf of the respondent on the other hand, it has been submitted that both the sons have been constantly standing first in their respective classes including for the last two years when the regular custody has been with the mother. Reliance has been placed on the report of Local Commissioner Ms. Sadhna Ramchandran, Advocate, who had suggested that no change is advisable.

10. With reference to certain affidavits which have been filed suo moto by the respondent and on which no reply has been called for by the Court, as well as with reference to certain other pleadings, it is submitted that the petitioner/father who does not regularly go for work at a definite work place during the normal period of working hours, then he cannot be a good role model. Allegations of erratic and/or rude behavior have also been leveled against the petitioner. Reliance is also placed upon the interaction between the Guardianship Judge and the children and

the interaction of this court with the children held on the last date of hearing.

11. I do not propose to go into the allegations leveled by the parties against each other which can at best be the background of the facts to be kept in the mind while ordering the interim arrangement. Furthermore this petition is not at the instance of the mother (Respondent) seeking complete divesting of the father (Petitioner) of all visitation and other rights. Even as on date and during the course of arguments, it is not the case of the respondent that the father is dis-entitled on any account, or that the father would have a prejudicial influence on the children in case the children spend more time with the father. Rather the contention of the respondent through her counsel, is that the interim arrangement as contained in the impugned order, is working fine and that if at all only some minor changes be made by this Court, on the basis of the interaction with the children who had come to Court on the last date of hearing. But in any case the arrangement should not be drastically altered in the best interest of the children, as well as to avoid undue trauma to them.

12. At this juncture, it may be important to refer to some of the submissions of the petitioner/father during the course of hearing which was conducted in chamber. It was stated by the petitioner (Father) that he would like to shift the children to a top level educational institution, and also would like them to make to join certain extra-curricular activities for their proper physical and mental growth, apart from motivating them towards excellence on the basis of his own academic background, and his special knowledge about certain key fields in today's economic and commercial set up.

13. The petitioner suggested an interim arrangement whereby for the next two years which petitioner considers to be important formative years of the child, the boys should spend about eight months with the father and four months with the mother. The petitioner was prepared that Ms. Sadhna Ramchandran, Advocate who had been earlier appointed in the matter, to continue to perform the role of Local Commissioner in the case and she would be entitled to elicit the changing reactions and desirous of the children from time to time and could report to the Court in case the arrangement of children spending longer time with the father

seems to be operating to their prejudice or inconvenient in any manner whatsoever.

14. According to petitioner, if in these two years the children are not given an appropriate direction both as regards to their academic and professional growth, it would be immaterial as to whether to children are allowed to spend more time with him later when the continuous stage is over.

15. Objection was raised on behalf of respondent to the effect that the Father (Petitioner), who is claiming to be having so much interest in the future of his sons, has not been regularly in payment of even the meagre amount of Rs.5,000/- plus school fees which had been agreed by him. On my query, learned counsel for the petitioner submitted, on instructions of the petitioner, that any orders passed by this Court regarding the enhancement of maintenance amount for the children would be duly complied with.

16. On behalf of respondent it has been further objected that since the petitioner is more or less unemployed or is doing some very nominal work, he cannot be a role model as a parent, and that both the Guardianship Judge as well as Ms. Sadhna Ramchandran, Local Commissioner, who have talked with the children, have both opined that no change is advisable and that the presently continuing arrangement, is appropriate and in the best interest of the children.

17. It has been reiterated that these children continue to stand first in their respective classes even during the last two years. The respondents have also raised the aspect that the behavior of the petitioner is erratic and eccentric and he has been known to turn away the children from the house or make them stand outside the lock door and also indulge in various activities which construed great trauma to these children who are very young in age.

18. Learned counsel for the petitioner submits that without going into the correctness or gravity of the allegations about the erratic and eccentric behavior, in any case all these complaints were all about two years old and that the affidavits filed on this aspect were all filed by the respondent suo moto, and never taken note by the Hon'ble Judges who were dealing with the matter and the petitioner

was never called upon to file any response thereto.

19. It is further contended by learned counsel for the respondent that there was a restraint order granted against shifting the children outside of the present school, and not against the shifting the residence to Gurgaon. In any case it is submitted that in the present concept of NCR region, the outlining areas such as Gurgaon are more or less a part of Delhi. In any case, the respondent through her counsel, has submitted an undertaking that the children, as well as she herself, would always remain subject to the jurisdiction of Courts at Delhi and would take no stand in any proceedings to the effect that the Courts at Delhi do not have jurisdiction to deal with the subject matter of any pending proceeding between the parties, or any further proceeding arising there from or pursuant thereto.

20. After giving due and detailed thought to all aspects of the matter, including my interaction with the children, I consider it appropriate to dispose of the civil revision with the following directions :-

(i) starting from the month of February 2003, the children will start staying with the petitioner/ father for one month at a stretch after every three months. In other words, the petitioner/ father will have the custody of the sons for a total period of three months in the year. The month of January, 2003 being month spent with the mother/ respondent the children will be back with the father for a month in the beginning of May on 1st of May, 2003;

(ii) The children have expressed their desire to be not separated from each other and also I have gathered on the basis of my interaction with them, that as far as examinations or preparations therefore are concerned, they are equally comfortable with either parent;

(iii) During their stay with either parent, all alternate week ends will be spent with the other parent. The week-ends will start from Friday afternoon straight from school, and children will then attend school straight from the home of that parent, on Monday morning. This aspect is also suiting the convenience and desire of the children.

(iv) The children will be allowed to attend family functions on both sides irrespective of the parent with whom they may be staying at a particular point of time. It will be the duty of the parent with whom they are staying to make arrangements for enabling the children to attend the family function;

(v) Major functions such as Holi/Diwali will be celebrated with each parent, on alternate years instead of sharing part of the day with each one of them every year;

(vi) The period of long school holidays, will be shared half and half with both parents;

(vii) Considering that the petitioner/father has left it to the Court to suggest appropriate enhancement in the payment to be made by him, assuring that the same will be abided by, I direct that for the rest of the year 2003 i.e. Starting from February, 2003 the petitioner will pay Rs.7500/- plus school fees (instead of Rs.5,000/- per month plus school fees). This amount will be duly paid on or before the 10th of every month.

(viii) With effect from 1.1.2004, the monthly amount will be enhanced to Rs.8,500/- per month plus school fees.

21. On the request of this Court Mrs. Sadhna Ramchandaran has agreed to remain associated as a Court Commissioner and she will speak to the children and if necessary to the parents as well, from time to time as she deems appropriate, but preferably once in 15 days. She is requested to submit a report every three months. In case of any developments which in her opinion call for urgent consideration by this Court, then it is directed that on Registry receiving such a communication from Mrs. Ramchandaran, the matter will be listed in Court for hearing, latest within a period of two days of receipt of such intimation.

22. With these observations the Civil Revision is disposed of. It is made clear that any observation or direction made in this order, which is limited to the interim aspect, will not be deemed to preclude the consideration of the matter, in all its aspects on merits by the Guardian Judge. Upon the Guardian Judge passing final

orders in the main Guardianship petition No. 43/99, the present order shall cease to operate and the final orders passed by the Guardian Judge, shall be operative as regards the custody of the children.

23. C.R. 790/2000 is disposed but with no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com