REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2025
(@ SPECIAL LEAVE PETITION (CIVIL) NO.7261 OF 2024)

KIRAN RAJU PENUMACHA …APPELLANT

VERSUS

TEJUSWINI CHOWDHURY …RESPONDENT

J U D G M E N T

AHSANUDDIN AMANULLAH, J.

Leave granted.

2. This appeal has been preferred by the Appellant against the Final Judgment and Order dated 13.03.2024 in Family Court Appeal No.19 of 2024 (hereinafter referred to as the 'Impugned Judgment') passed by a Division Bench of the High Court of Telangana at Hyderabad (hereinafter referred to as the 'High Court'), by which the appeal filed by the Respondent has been allowed setting aside the order dated 19.01.2024 of the Principal Family Court-*cum*-XIII Additional Metropolitan Sessions Judge, Hyderabad in Execution Petition (hereinafter referred to as 'E.P.')

No.7 of 2023 in O.P. No.421 of 2021 and remanding the matter to the learned Family Court with a direction to decide E.P. No.7 of 2023 afresh and I.A. No.865 of 2023 strictly in accordance with law.

THE FACTUAL BACKDROP:

3. The Appellant-father and the Respondent-mother were married as per Hindu rites and rituals on 15.04.2012 and a male child was born to the couple on 11.08.2014. Disputes arose between the parties that ultimately led to them living separately. During this time, the Respondent-mother had the physical custody of their minor son. On 23.02.2021, the parties filed O.P No.421 of 2021 under Sections 13-B[1] and 26[2] of the Hindu Marriage Act, 1955 before the Principal Judge, Family Court-*cum*-

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[1] '***13-B. Divorce by mutual consent***.—*(1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976, on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.*

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.'

[2] '***26. Custody of children***.—*In any proceeding under this Act, the court may, from time to time, pass such interim orders and, make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and may, alter the decree, upon application by petition for the purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending, and the court may, also from time to time revoke, suspend or vary any such orders and provisions previously made:*

Provided that the application with respect to the maintenance and education of the minor children, pending the proceeding for obtaining such decree shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent.'

Addl. Chief Judge, City Civil Court, at Hyderabad (hereinafter referred to as the ‘Family Court’) seeking divorce by mutual consent and custody for minor son. The Family Court allowed the divorce petition on 02.09.2021 and granted a decree of divorce by mutual consent and held that the Respondent-mother would have permanent custody of the minor son, and the Appellant-father would have interim custody during the weekends.

4. The Appellant alleges that, sometime in 2021, despite everything going extremely smoothly, the Respondent terminated all contacts between the son and the Appellant-father, despite several efforts on his part. Thus, on 06.02.2023, the Appellant was compelled to file E. P. No.7 of 2023 in O.P No.421 of 2021 before the Family Court seeking the appointment of an Advocate Commissioner to implement the Decree dated 02.09.2021. During the pendency of the E.P., the Family Court passed various orders, directing the Respondent to send the minor son to the Appellant for the weekends. The Family Court on 19.07.2023 passed an order directing the Respondent to permit video calls between the Appellant and the minor son every day for half an hour between 07.00 PM to 9.30 PM, but this was also, contended the Appellant, violated after a few days.

5. On 03.10.2023, Respondent filed an application *viz*. I.A. No.865 of 2023 in O.P No.421 of 2021 before the Family Court, seeking modification of the decree dated 02.09.2021 pertaining to interim custody of the minor son during weekends to the Appellant.

6. The Family Court passed an Order dated 19.01.2024, allowing E.P. No. 7 of 2023, and subsequently appointed an Advocate Commissioner to execute the Decree dated 02.09.2021 in O.P No.421 of 2021.

7. The order passed by Family Court dated 19.01.24 in E.P. No.7 of 2023 was challenged by the Respondent in Family Court Appeal No.19 of 2024 before the High Court. On 13.03.2024, the High Court, by way of the Impugned Judgment, allowed the appeal filed by the Respondent and remanded the matter back to the Family Court with a direction to decide E.P. No.7 of 2023 and I.A. No.863 of 2023 afresh strictly in accordance with law within a period of one month from the date of receipt of copy of the Impugned Judgment.

SUBMISSIONS BY THE APPELLANT:

8. The learned senior counsel for the Appellant submits that the High Court ought to have considered that a minor child requires the love and affection of both the parents, and the mere fact of divorce should not mean that the child is deprived of being taken care of by both parents. Learned counsel relied on ***Amyra Dwivedi (Minor) through her mother, Pooja Sharma Dwivedi v Abhinav Dwivedi*****, (2021) 4 SCC 698**. It was further submitted that the High Court ought to have considered the fact that the minor child used to enjoy his father's company and it is only due to the Respondent's tutoring that he later started showing animosity towards the Appellant. This was evident in the fact that the child became increasingly more agitated during Court visits. In sum, it was submitted that the High Court had erred in law and in fact, and interference by this Court was required.

SUBMISSIONS BY THE RESPONDENT:

9. The learned senior counsel for the Respondent submitted that the child was unhappy with the Appellant for not spending enough time with him during the visitations. The Appellant's lack of interest is also evident in the video calls with his minor son, in which he constantly blamed the child for the entire situation, leaving him traumatized. Even in the Interim Order dated 17.11.2023 of the Family Court, it was recorded that the

child was unhappy with the fact that his father and grandfather do not take care of him and that his father would be busy with his friends and that only his grandmother and one of the staff members of the Appellant take care of him.

10. Learned counsel further submitted that appellant cannot raise issues with regard to the custody of the child in an execution petition and the mechanism for custody-related rights is prescribed in The Guardians and Wards Act, 1890 and relied on the judgment of this court in ***Nil Ratan Kundu v Abhijit Kundu*, 2008 (9) SCC 413**. It was urged that no interference was called for with the Impugned Judgment.

ANALYSIS, REASONING AND CONCLUSION:

11. We may start of by noting that the entire/detailed submissions of the parties have not been recorded for the reason that they have delved into the main merits of the matter. However, the issue before us is in a very narrow compass i.e., whether the petition for modification of the decree regarding the custody of the child filed by the Respondent-mother and the execution petition filed by the Appellant-father should be heard

together or whether the execution petition should proceed irrespective of the pendency of the modification petition.

12. It is also relevant to point out that a huge bunch of additional material has been placed by both parties during the pendency of the matter in this Court. Such material includes, but is not limited to emails, WhatsApp messages, Psychiatrist/Counsellor reports and various orders of Family Court. The picture that emerges, were we to attempt to conjure one, taking a gist of the additional material in its entirety, is that the minor son of the parties during interactions, several times with the Courts, has stated that he was dis-inclined to even meet/visit the father and did not want to remain with him physically because of the Appellant-father not giving him sufficient time/attention.

13. The Appellant-father holds the Respondent-mother responsible for such stand taken by the minor son. While this may or may not be entirely true, the Respondent-mother has, at times, attempted to stall a fruitful visit/interaction of the minor son with the Appellant-father. Yet, the consistent stand of the minor son is that he is disturbed by the visits to his appellant-father and does not want to continue with the same.

14. If this matter had been one of a simple case for the execution of an ordinary decree in favour of a party, the obvious course for us to adopt would perhaps have been to direct to proceed for execution, without waiting for the other side's modification petition to be decided. But, in the present *lis*, the issue relates to the life of a minor child who has still not attained maturity himself and is not in a position to decide what is best for him. Thus, the responsibility for him is also on the Court which is seized of the matter. The Court has to be extremely careful in taking a considered view, such that the interests of the minor child are adequately safeguarded.

15. In ***Nil Ratan Kundu*** (*supra*), it was stated that '*… in deciding a difficult and complex question as to the custody of a minor, a court of law should keep in mind the relevant statutes and the rights flowing therefrom. But such cases cannot be decided solely by interpreting legal provisions. It is a human problem and is required to be solved with human touch. A court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and well-being of the child. In selecting a guardian, the court is exercising parens patriae jurisdiction and is expected, nay bound, to give due weight to a child's ordinary*

comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot be ignored. They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the court must consider such preference as well, though the final decision should rest with the court as to what is conducive to the welfare of the minor.' Albeit in a different factual backdrop, the '*best interest of the child*' principle has also been elucidated in ***Nithya Anand Raghavan v State (NCT of Delhi)*, (2017) 8 SCC 454**. In ***Yashita Sahu v State of Rajasthan*, (2020) 3 SCC 67**, this Court held that the welfare of the child is paramount in matters relating to custody. In this context, we may refer to Para 22 thereof, which reads as follows:

> '***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 matter 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.*'
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> (emphasis supplied)

16. There is a lot to be said about the conduct of the Respondent-mother who clearly attempts to prevent/obstruct/stop the visitation rights granted to the Appellant-father, that too pursuant to a consent decree between the parties. We were seriously contemplating to direct immediate compliance with the already existing decree before the Respondent's petition for modification of the original decree was heard and decided. However, being conscious of the fact that we are also in the *parens patriae* jurisdiction, and even interim arrangements could have a negative effect on the tender and fragile frame of the mind of the minor son, we ultimately find that the matter needs fresh consideration. The Impugned Judgment is thus, not interdicted. However, we hasten to add that during the interregnum period, the father cannot be totally deprived of the company of the minor son. Taking a cue from the various interim orders passed by the Family Court relating to the modalities of the custody of the minor son, we direct that till the time the Trial Court decides the modification petition and the execution petition filed by

Appellant, the father would have visitation rights from 04:00 PM to 06:00 PM on every Sunday. The son will go with his caretaker to the house of the Appellant-father, where the caretaker would remain present in the premises, but not in the immediate company of the Appellant-father or the family members of the Appellant or the minor son. The minor son would return to the Respondent-mother at 06:00 PM with the caretaker.

17. We direct that the Respondent-mother would send the child to the Appellant-father such that he reaches the house of the Appellant-father by 04:00 PM on every Sunday, along with the caretaker and pick him back after 06:00 PM. We further clarify that such visitation rights shall be at the place/city, where the minor son resides. If the father is not having permanent accommodation in that city, he shall intimate the mother of the hotel where he would be during such visitation. On receipt of the above intimation, the above arrangement will be scrupulously followed.

18. The matter is remanded back to the Family Court with a direction to conclude the matter expeditiously and latest within three months from the date of communication of the present judgment.

19. The parties are directed to cooperate. We may add that if the Respondent-mother were to obstruct the implementation of the

arrangement in any manner whatsoever, it will be open for the Appellant-father to apprise this Court of the same. In such eventuality, necessary consequences in law, including coercive measures, would follow. It is made clear that we have not expressed any opinion on the merits of the matter and even the interim arrangement *supra* is intended to operate till the Family Court takes a final call on the modification and execution petitions.

20. The appeal is disposed of accordingly.

21. Pending applications shall stand disposed of.

……..…..,J.
[SUDHANSHU DHULIA]

……..…..,J.
[AHSANUDDIN AMANULLAH]

NEW DELHI
MARCH 17, 2025