A SHEILA B. DAS

v.

P.R. SUGASREE

FEBRUARY 17, 2006

B [B.P. SINGH AND ALTAMAS KABIR, JJ.]

Guardians and Wards Act, 1890; Sections 7 and 25- Hindu Minority and Guardianship Act, 1956; Section 6—Claim of custody of child by father and mother after divorce—Child preferred to stay with her father—Family court holding in favour of father as per child's wishes—High Court dismissing the appeal of the mother—Correctness of—Held, on facts, after having custody of the child, the father looked after all her needs and the child appears to be happy with her father—Hence, the interest of the child will be best served if she remains with her father but with sufficient access to the mother to visit her child at frequent intervals as directed by the Court.

Appellant-doctor and respondent-lawyer got married under the provisions of the Special Marriage Act, 1954 and a girl child was born to them. The appellant left her matrimonial home alongwith the child without informing the respondent. The respondent filed a Writ of Habeas Corpus in High Court which was disposed of upon an undertaking given by the appellant to bring the child back to her matrimonial home. Thereafter, the respondent filed two applications before Family Court under sections 7 and 25 of the Guardians and words Act, 1890 and under sections 6 of the Hindu Minority and Guardianship Act, 1956. The respondent also filed an application before the Family Court for interim custody of the minor child. After interviewing the minor child to elucidate her views with regard to the respondent's prayer for interim custody, the Family Court allowed the two applications of the respondent by giving certain directions and directed the appellant to give the custody of the child to the respondent.

The appellant filed an appeal in High Court wherein the order of the Family Court was stayed. The respondent filed an application before the High Court for review of the order of stay. The High Court directed the Family Court to interview the minor child. The Family Court interviewed the minor child and gave a report the High Court stating that

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the minor child preferred to stay with the respondent. The High Court vacated the interim stay and granted custody of the minor child to the respondent till the disposal of the appeal. The respondent, thereafter, filed an application for divorce before the Family Court. The appellant filed a special leave petition before the Supreme Court against the order of the High Court granting custody of the minor child to the respondent, which was dismissed. The High Court thereafter dismissed the appeal of the appellant. Immediately thereafter, the Family Court granted divorce to the parties.

In appeal to the Court, the appellant-mother contended that the minor child was of tender age and would soon attain puberty when she would need the guidance and instructions of a woman to enable her to deal with both physical and emotional changes which take place during such period; that she, being a doctor, would be in a better position to take care of the needs of the minor child in comparison to the respondent who had little time to look after the needs of the minor child; that the minor child was extremely happy with her till the respondent-father began to claim custody of the child and soon after obtaining the custody, the respondent influenced his child to tell the Family Court that she preferred to stay with her father; that the child has been exposed by the respondent to "Parental Alienation Syndrome" and hence the minor child, inspite of her being with the appellant for 7 years, had expressed a preference to be with the respondent after she was placed in his custody; that section 6 of the Hindu Minority and Guardianship Act, 1956 recognised the mother also as the natural guardian of the minor; that she paid school admission and tuition fees for the child's schooling in a good school and for extracurricular activities; that she made various financial investments for the benefit of the minor child; that, although she was granted visitation rights by an interim order of this Court, she was unable to remain in contact with her because of distance and that the respondent never allowed her to meet the minor child and spend sufficient time with her.

The respondent-father, denying the various allegations of the appellant, contended that the minor child was suddenly and surreptitiously removed from his custody by the appellant who left her matrimonial home without informing the appellant; that the minor child made her preference to be with her father before the Family Court even though the appellant forcibly removed the minor child from the respondent; that he made arrangements with his elder sister to look after his minor child's needs

A which was duly considered by the Family Court and the High Court; and that he had sufficient finances to look after and provide for all the needs of the minor child. The respondent submitted that the appellant was welcome to visit the minor child either at the respondent's house or in some neutral place and to even keep the child with her on specified days if she was ready and willing to stay with the appellant.

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Disposing of the appeal with some modifications of the order of the Family Court, this Court

HELD: 1.1. The child, who is a little more than 12 years of age, is highly intelligent, having consistently done extremely well in her studies C in school, and this Court is convinced that despite the tussle between her parents, she would be in a position to make an intelligent choice with regard to her custody. She has no animosity as such towards her mother, she would prefer to be with the father with whom she felt more comfortable. The minor child also informed the Court that she had D established a very good relationship with her paternal aunt who was now staying in her father's house and she was able to relate to her aunt in matters which would concern a growing girl during her period of adolescence. [355-C-E]

1.2. There is no reason to consider the respondent ineligible to look E after the minor. In fact, after having obtained custody of the minor child, the respondent does not appear to have neglected the minor or to look after all her needs. The child appears to be happy in the respondent's company and has also been doing consistently well in school. The respondent appears to be financially stable and is not also disqualified in any way from being the guardian of the minor child. No allegation, other F than his purported apathy towards the minor, has been levelled against the respondent by the appellant. Such an allegation is not borne out from the materials and is not sufficient to make the respondent ineligible to act as the guardian of the minor. This Court, therefore, feels that the interest of the minor will be best served if she remains with the respondent but G with sufficient access to the appellant to visit the minor at frequent intervals but so as not to disturb and disrupt her normal studies and other activities.[355-F-G; 356-A-B]

Hoshie Shavaksha Dolikuka v. *Thirty Hoshie Dolikuka,* AIR (1984) SC 410; *Kumar* v. *Jahgirdar* v. *Chethana Ramatheertha,* [2004] 2 SCC 688 and H *Rosy Jacob* v. *Jacob A.Chakramakkal,* AIR (1973) SC 2090, referred to.

Kurian C. Jose **v.** *Meena Jose,* **(1992) 1 KLT 818 and** *Saraswatibai Shripad Ved* **v.** *Shripad Vasanji Ved,* **AIR (1941) Bombay 103, referred to.** A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6626 of 2004.

From the Judgment and Order dated 16.6.2003 of Kerala High Court in M.F.A. No. 365/2001 (D). B

Appellant-In-Person.

M.P. Vinod, Sajith and A. Raghunath for the Respondents.

The Judgment of the Court was delivered by C

ALTAMAS KABIR, J. The appellant, who is a paediatrician by profession, was married to the respondent, who is a lawyer by profession, on 29th March, 1989, at Thrissur in Kerala under the provisions of the Special Marriage Act. A girl child, Ritwika, was born of the said marriage on 20th June, 1993. D

As will appear from the materials on record, the appellant, for whatever reason, left her matrimonial home at Thrissur on 26th February, 2000, alongwith the child and went to Calicut without informing the respondent. Subsequently, on coming to learn that the appellant was staying at Calicut, the respondent moved an application in the High Court at Kerala for a writ E in the nature of Habeas Corpus, which appears to have been disposed of on 24th March, 2000 upon an undertaking given by the appellant to bring the child to Thrissur.

On 24th March, 2000, the respondent, alleging that the minor child had been wrongfully removed from his custody by the appellant, filed an F application before the Family Court at Thrissur under Sections 7 and 25 of the Guardians and Wards Act, 1890, and also Section 6 of the Hindu Minority and Guardianship Act, 1956, which came to be numbered as OP 193 of 2000 and OP 239 of 2000.

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Before taking up the said two applications for disposal, the learned Judge of the Family Court at Thrissur took up the respondent's application for interim custody of the minor child and on 27th April, 2000 interviewed the minor child in order to elucidate her views with regard to the respondent's prayer for interim custody. No order was made at that time on the respondent's application for interim custody. On 20th March, 2001, the learned Judge of H

A the Family Court at Thrissur took up the two applications filed by the respondent under Sections 7 and 25 of the Guardians and Wards Act and under Section 6 of the Hindu Minority and Guardianship Act for final disposal. While disposing of the matter the learned Judge had occasion to interview the minor child once again before delivering judgment and ultimately by his order of even date the learned Judge of the Family Court at Thrissur allowed
B the applicati16ons filed by the respondent by passing the following order:-

> "1. The respondent is directed to give custody of the child to the petitioner the father of the child, the natural guardian immediately after closing of the schools for summer vacation.
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> C 2. The father shall take steps to continue the study of the minor child in CSM Central School Edaserry and steps to restore all the facilities to the minor child to enjoy her extra curricular activities and studies also.
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> 3. The respondent mother is at liberty to visit the child either at the
> D home of the petitioner or at school at any time.
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> 4. If the mother respondent shifts her residence to a place within 10 kms. radius of the school where the child is studying the child can reside with the mother for not less than three days in a week. The petitioner father shall not, object to taking of the child by the mother
> E to her own house in such condition.
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> 5. The father the petitioner shall meet all the expenses for the education, food and cloths etc. of the minor child and the mother of her own accord contribute to the same anything for the child and the father should not prohibit the mother from giving the child anything
> F for her comfort and pleasant living.
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> 6. If the mother the respondent fails to stay within 10 kms. radius of the CSM central School, Edasserry however she is entitled to get custody of the child for 2 days in any of the weekend in a month and
> G 10 days during the Summer vacation and 2 days during the Onam hoilidays excluding the Thiruvonam day.
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> 7. This arrangement for custody is made on the basis of the prime consideration for the welfare of the minor child and in case there is any change in the situation or circumstance affecting the welfare of
> H the minor child, both of the parties are at liberty to approach this

court for fresh directions on the basis of the changed circumstance. A

OP 239/2000 is partly allowed prohibiting the respondent husband by a permanent injunction from removing or taking forcefully the "B" schedule articles mentioned in the plant. The parties in both these cases are to suffer their costs."

B

Being dissatisfied with the order of the Family Court, the appellant herein filed an appeal in the High Court of Kerala, being M.F.A.No.365/01, wherein by an order dated 21st May, 2001, the order of the Family Court was stayed. The respondent thereupon filed an application before the High Court for review of the said order and in the pending proceedings, a direction was given by the High Court to the Family Court at Calicut to interview the minor C child. The report of the Family Court was duly filed before the High Court on 5th July, 2001. From the said report, a copy of which has been included in the paperbook, it is evident that the minor child preferred to stay with her father and ultimately by its order dated 25th July, 2001 the High Court vacated the stay granted by it on 21st May, 2001.

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On the application of the appellant herein, one Dr. S.D. Singh, Psychiatrist, was also appointed by the High Court on 14th September, 2001, to interview the appellant and the respondent in order to make a psychological evaluation and to submit a report. On such report being filed, the High Court by its order dated 31st May, 2002, granted custody of the minor child to the E respondent till the disposal of the appeal.

Soon thereafter, in June 2002, the respondent filed an application for divorce before the Family Court at Thrissur. While the same was pending, the appellant filed a Special Leave Petition being S.L.P.(C) C.C.No.6954/ 2002 against the order of the High Court granting custody of the minor child F to the respondent till the disposal of the appeal. The said Special Leave Petition was dismissed on 9th September, 2002. The appeal filed by the appellant before the High Court against the order of the learned Judge of the Family Court allowing the respondent's application under Sections 7 and 25 of the Guardians and Wards Act, being M.F.A. No.365/01, was also dismissed G on 16th June, 2003. Immediately, thereafter, on 28th June, 2003, the Family Court granted divorce to the parties.

Being aggrieved by the dismissal of her appeal, being M.F.A.No.365/ 01, the appellant herein filed the instant Special Leave Petition, being SLP) No. 18961/2003, which after admission was renumbered as Civil Appeal H

A No.6626/2004. On 20th July, 2004, the appellant herein filed a petition in the pending Special Leave Petition for interim visitation rights in respect of her minor child for the months of August and September, 2004. After considering the submissions made by the appellant, who was appearing in person, and the learned counsel for the respondent, this Court passed the following order:-

B "This petition has been filed by the mother of minor girl-Ritwika, aged about 12 years, challenging the impugned order of the High Court dated 16th June, 2003. By the impugned order the High Court confirmed the order of the Family Court holding that it is in the best interest of the child that she be in the custody of the father. The High C Court, however, permitted the petitioner to visit the child at the house of the father once in a month, that is, first Sunday of every month and spend the whole day with the child there with a further stipulation that she will not be removed from the father's house. The petitioner and the respondent have not been living together since February, 2000. The divorce between them took place by order dated 26th June, D 2003.

On question of interim custody, in terms of the order dated 30th April, 2003, the Family Court Trichur, was directed to make an order regarding the visitation rights of the petitioner for the months of May, June and July, 2004 so that the petitioner may meet her daughter E at the place of some neutral person and, if necessary, in the presence of a family counsellor or such other person deemed just, fit and proper by the Family Court. The Family Court was directed to fix any two days, in months of May, June and July of 2004, considering the convenience of the parties, when the petitioner may be in a position F to spend entire day with her child.

Pursuant to the above said order the Family Court had fixed two days in the months of May, June and July, 2004 so that the petitioner could meet her daughter on those days. The Family Court directed that the said meeting shall take place in the room of family counsellor G in Court precincts. According to the petitioner the said arrangement was not satisfactory, so much so that ultimately she made a request to the Family Court that instead of meeting her daughter in the room of the family counsellor, the earlier arrangement of meeting her at father's house was may be restored. The Family Court, however, did not modify the order having regard to the orders passed by this Court H on 30th April, 2004. It is, however, not necessary at this stage to

delve any further on this aspect. A

Ritwika is studying in 7th class in a school in Trichur. Having heard petitioner-in-person and learned counsel for the respondent and on perusal of record, we are of the view that without prejudice to parties' rights and contentions in Special Leave Petition, some interim order for visitation rights of the petitioner for the months of August B and September, 2004 deserves to be passed. Accordingly, we direct as under:

(1) The petitioner can visit the house of the respondent at Trichur on every Sunday commencing from 1st August, 2004 and be with Ritwika from 10.00 a.m. to 5.00 p.m. During the stay of the C petitioner at the house of the respondent, only the widowed sister of the respondent can remain present. The respondent shall not remain present in the house during the said period. It would be open to the petitioner to take Ritwika for outing, subject to the condition that Ritwika readily agrees for it. We also hope that D when at the house of the respondent, the petitioner would be properly looked after, insofar as, normal facilities and courtesies are concerned;

(2) We are informed that the school in which Ritwika is studying shall be closed for 7 days in the month of August, 2004 during E Onam festival. It would be open to the petitioner to take the child for outing during those holidays for a period of three days. After the expiry of three days, it will be the responsibility of the petitioner to leave the child at the house of the respondent.

The arrangement about meeting on every Sunday would also continue in the month of September, 2004. F

List the matter on 5th October, 2004"

The question relating to the appellant's visitation rights pending decision of the Special Leave Petition came up for consideration before this Court again on 5th October, 2004, when on a reference to its earlier order dated G 20th July, 2004, this Court further directed that the appellant would be at liberty to move appropriate applications in M.F.A.No.365/01, which had been decided by the High Court on 16th June, 2003, and the High Court on hearing the parties or their counsel would pass such orders as it considered appropriate in respect of the interim custody of Ritwika during the Christmas H

A Holidays. It was also clarified that till the matter was finally decided by this Court, it would be open to the appellant to make similar applications before the High Court which would have to be considered on its own merits, since it was felt that the High Court would be in a better position to consider the local conditions and pass interim orders including conditions, if any, required to be placed on the parties.

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As mentioned hereinbefore, on leave being granted, the Special Leave Petition was renumbered as Civil Appeal No.6626/04, which has been taken up by us for final hearing and disposal.

C The appellant, who appeared in person, urged that both the Family Court and the High Court had erred in law in removing the minor child from the custody of the mother to the father's custody, having particular regard to the fact that the minor girl was still of tender age and had attained the age when a mother's care and counseling was paramount for the health and well-being of the minor girl child. The appellant submitted that the minor child D would soon attain puberty when she would need the guidance and instructions of a woman to enable her to deal with both physical and emotional changes which take place during such period. Apart from the above, the appellant, who, as stated hereinbefore, is a doctor by profession, claimed to be in a better position to take care of the needs of the minor in comparison to the respondent who, it was alleged, had little time at his disposal to look after the E needs of the minor child.

From the evidence adduced on behalf of the parties, the appellant tried to point out that from morning till late at night, the respondent was busy in court with his own work and activities which left the minor child completely F alone and uncared for. According to the appellant, the respondent who had a farm house some distance away from Thrissur, spent his week- ends and even a major part of the week days in the said farm house. The appellant urged, that as a mother, she knew what was best for the child and being a professional person herself she was in a position to provide the minor not only with all such comforts as were necessary for her proper and complete G upbringing, but also with a good education and to create in her an interest in extra-curricular activities such as music and dancing. The appellant strongly urged that the respondent had never had any concern for the minor child since her birth and till the time when the appellant left with her for Calicut. The appellant contended that for 7 years after the birth of the minor child, H the appellant had single-handedly brought up the minor since the respondent

was too pre-occupied with other activities to even notice her. According to the appellant, the minor child was extremely happy to be with her till the respondent began to claim custody of the minor and soon after obtaining such custody, he was able to influence the minor to such an extent that she even went to the extent of informing the learned Judge of the Family Court that she preferred to stay with her father.

On this aspect of the matter, the appellant urged that the minor had been exposed by the respondent to what she termed as "Parental Alienation Syndrome". She urged that such a phenomenon was noticeable in parents who had been separated and who are bent upon poisoning the mind of their minor children against the other party. According to the appellant, there could otherwise be no other explanation as to why even after being with the appellant for 7 years, the minor child had expressed a preference to be with her father after she was placed in his custody. The appellant laid stress on her submissions that not only till the age of 8 years, when custody of the minor child was given to him, but even thereafter the respondent had all along been an absentee father taking little or no interest in the affairs and upbringing of the minor child. According to the appellant, in view of the peculiar habits of the respondent, the minor child was left on her own much of the time, which was neither desirable nor healthy for a growing adolescent girl child.

Urging that she had the best interest of the minor child at heart, the appellant submitted that although under the provisions of Hindu Law by which the parties were governed, the father is accepted as the natural guardian of a minor, there were several instances where the courts had accepted the mother as the natural guardian of a minor in preference to the father even when he was available. Referring to Section 6 of the Hindu Minority and Guardianship Act, 1956, which provides that the natural guardian of a Hindu minor in the case of a boy or an unmarried girl is the father and after him the mother; provided that the custody of a minor who has not completed the age of 5 years shall ordinarily be with the mother, the appellant submitted that the aforesaid provision had recognized the mother also as the natural guardian of a minor. It was urged that in various cases the Courts had considered the said provision and had opined that there could be cases where in spite of the father being available, the mother should be treated to be the natural guardian of a minor having regard to the incapacity of the father to act as the natural guardian of such minor.

In support of her aforesaid submission, the appellant referred to and

A relied on the decision of this Court in *Hoshie Shavaksha Dolikuka* v. *Thirty Hoshie Dolikuka,* reported in AIR (1984) SC 410, wherein having found the father of the minor to be disinterested in the child's welfare this Court held that the father was not entitled to the custody of the child.

The appellant also referred to and relied on a Division Bench decision
B of the Kerala High Court in the case of *Kurian C. Jose* v. *Meena Jose,* reported in (1992) 1 KLT 818, wherein having regard to the fact that the father was living with a concubine who was none else than the youngest sister of the mother, it was held that the father was not entitled to act as the guardian of the minor. On a consideration of the provisions of Section 17 (3)
C of the Guardians and Wards Act, 1890, it was also held that a minor's preference need not necessarily be decisive but is only one of the factors to be taken into consideration by the court while considering the question of custody.

Reference was also made to another decision of this Court in the case
D of *Kumar V. Jahgirdar* v. *Chethana Ramatheertha,* [2004] 2 SCC 688, wherein in consideration of the interest of the minor child, the mother, who had re-married, was given custody of the female child who was on the advent of puberty, on the ground that at such an age a female child primarily requires a mother's care and attention. The Court was of the view that the absence of female company in the house of the father was a relevant factor in deciding
E the grant of custody of the minor female child.

The appellant urged that the courts in the aforesaid cases had considered the welfare of the minor to be of paramount importance in deciding the question of grant of custody. The appellant urged that notwithstanding the
F fact that the minor child had expressed before the learned Judge of the Family Court that she preferred to be with the father, keeping in mind the fact that the welfare of the minor was of paramount importance, the court should seriously consider whether the minor child should be deprived of her mother's company during her period of adolescence when she requires her mother's counselling and guidance. The appellant submitted that while the respondent
G had indulged Ritwika so as to win over her affection, the appellant had tried to instill in her mind a sense of discipline which had obviously caused a certain amount of resentment in Ritwika. The appellant submitted that the court should look behind the curtain to see what was best for the minor girl child at this very crucial period of her growing up

H In support of her aforesaid submission, the appellant referred to and

relied on a decision of the Bombay High Court in the case of *Saraswatibai Shripad Ved* v. *Shripad Vasanji Ved,* AIR (1941) Bombay 103, wherein in a similar application under the Guardians and Wards Act, it was held that since the minor's interest is the paramount consideration, the mother was preferable to the father as a guardian. The appellant emphasized the observation made in the judgment that if the mother is a suitable person to take charge of the child, it is quite impossible to find an adequate substitute for her for the custody of a child of tender years notwithstanding the fact that the father remains as the natural guardian of the minor.

A similar view was expressed by this Court in the case of *Rosy Jacob* v. *Jacob A. Chakramakkal,* AIR (1973) SC 2090, wherein in the facts and circumstance of the case, the custody of the daughter (even though she was more than 13 years of age) and that of the youngest minor son, was considered to be more beneficial with the wife rather than with the husband.

The appellant submitted that during the child's growing years, she had from out of her own professional income, provided her with amenities which a growing child needs, including admission and tuition fees for the child's schooling in a good school and for extra-curricular activities. The appellant submitted that she had made fixed deposits for the benefit of the minor and had even taken out life insurance policies where the minor child had been made the nominee. The appellant submitted that apart from the above, she had also made various financial investments for the benefit of the minor so that the minor child would not be wanting in anything if she was allowed to remain with the appellant.

The appellant submitted that although she had been granted visitation rights by the different interim orders, since she was residing in Calicut and the respondent was residing in Thrissur, she was unable to remain in contact with her minor daughter on account of the distance between Calicut and Thrissur. In fact, the appellant complained of the fact that on several occasions when she had gone to meet her minor child at the residence of the respondent, she had not been allowed to meet the child or to spend sufficient time with her. The appellant submitted that the interest of the minor child would be best served if her custody was given to the appellant.

The claim of custody of the minor child made by the appellant was very strongly resisted by the respondent who denied all the various allegations levelled against him regarding his alleged apathy towards the minor and her development. It was submitted on his behalf that till the age of 7 years, the

A child had been living with both the parents, and was well cared for and looked after during this period. The minor child was suddenly and surreptitiously removed from the respondent's custody by the appellant who left her matrimonial home on 26th February, 2000 without informing the appellant who had gone out of Thrissur on his professional work. It was submitted that only after coming to learn that the appellant had removed the B child to Calicut that the respondent was compelled to file a Habeas Corpus Petition in the Kerala High Court which ended upon an undertaking given by the appellant to bring the minor child to Thrissur. It was only thereafter that the respondent was compelled to file the application under Sections 7 and 25 of the Guardians and Wards Act and under Section 6 of the Hindu Minority C and Guardianship Act,1956.

According to the respondent, even though the appellant had forcibly removed the minor to Calicut, thereby depriving the respondent of the minor child's company, the said minor during her interview by the learned Judge of the Family Court at Thrissur made her preference to be with the father D known to the learned Judge.

On behalf of the respondent, it was also submitted that keeping in mind the fact that the girl child was attaining the age of puberty, the respondent had arranged with his elder sister, who was a retired headmistress of a school, to come and stay with him and to attend to the minor's needs during her E growing years when she required the guidance and counselling of a woman. It was submitted that the said aspect of the matter was duly considered by the Family Court as well as by the High Court on the basis of an affidavit filed by the respondent's sister expressing her willingness to stay with the respondent to look after the minor child.

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In addition to the above, it was submitted on behalf of the respondent that the Court had found on evidence that he had sufficient finances to look after and provide for all the needs of the minor child. In any event, what was of paramount importance was the welfare of the minor and the court had also taken into consideration the preference expressed by the minor in terms of G Section 17 (3) of the Guardians and Wards Act, 1890.

On behalf of the respondent it was submitted that the respondent was quite alive to the fact that the minor child should not be deprived of her mother's company and that for the said purpose, the appellant was welcome to visit the minor child either at the respondent's house or in some neutral H place and to even keep the child with her on specified days if she was ready

and willing to stay with the appellant. What was sought to be emphasized on behalf of the respondent was that in the interest of the child she should be allowed to remain with him since he was better equipped to look after the minor, besides being her natural guardian and also having regard to the wishes of the minor herself.

Having regard to the complexities of the situation in which we have been called upon to balance the emotional confrontation of the parents of the minor child and the welfare of the minor, we have given anxious thought to what would be in the best interest of the minor. We have ourselves spoken to the minor girl, without either of the parents being present, in order to ascertain her preference in the matter. The child who is a little more than 12 years of age is highly intelligent, having consistently done extremely well in her studies in school, and we were convinced that despite the tussle between her parents, she would be in a position to make an intelligent choice with regard to her custody. From our discussion with the minor, we have been able to gather that though she has no animosity as such towards her mother, she would prefer to be with the father with whom she felt more comfortable. The minor child also informed us that she had established a very good relationship with her paternal aunt who was now staying in her father's house and she was able to relate to her aunt in matters which would concern a growing girl during her period of adolescence.

We have also considered the various decisions cited by the appellant which were all rendered in the special facts of each case. In the said cases the father on account of specific considerations was not considered to be suitable to act as the guardian of the minor. The said decisions were rendered by the Courts keeping in view the fact that the paramount consideration in such cases was the interest and well-being of the minor. In this case, we see no reason to consider the respondent ineligible to look after the minor. In fact, after having obtained custody of the minor child, the respondent does not appear to have neglected the minor or to look after all her needs. The child appears to be happy in the respondent's company and has also been doing consistently well in school. The respondent appears to be financially stable and is not also disqualified in any way from being the guardian of the minor child. No allegation, other than his purported apathy towards the minor, has been levelled against the respondent by the appellant. Such an allegation is not borne out from the materials before us and is not sufficient to make the respondent ineligible to act as the guardian of the minor.

A We, therefore, feel that the interest of the minor will be best served if she remains with the respondent but with sufficient access to the appellant to visit the minor at frequent intervals but so as not to disturb and disrupt her normal studies and other activities. We, accordingly dispose of this appeal by retaining the order passed by the learned Judge of the Family Court at Thrissur on 20.3.2001 while disposing of O.P.No.193/2000 filed by the respondent B herein under Sections 7 and 25 of the Guardians and Wards Act, 1890 with the following modifications:-

1. The respondent shall make arrangements for Ritwika to continue her studies in her present school and to ensure that she is able to take part in extra-curricular activities as well. C

2. The respondent shall meet all the expenses of the minor towards her education, health, care, food and clothing and in the event the appellant also wishes to contribute towards the upbringing of the child, the respondent shall not create any obstruction to and/ or prevent the appellant from also making such contribution. D

3. The appellant will be at liberty to visit the minor child either in the respondent's house or in the premises of a mutual friend as may be agreed upon on every second Sunday of the month. To enable the appellant to meet the child, the respondent shall ensure the child's presence either in his house or in the house of the E mutual friend agreed upon at 10.00 A.M. The appellant will be entitled to take the child out with her for the day, and to bring her back to the respondent's house or the premises of the mutual friend within 7.00 P.M. in the evening.

4. In the event the appellant shifts her residence to the same city F where the minor child will be staying, the appellant will, in addition to the above, be entitled to meet the minor on every second Saturday of the month, and, if the child is willing, the appellant will also be entitled to keep the child with her overnight on such Saturday and return her to the respondent's custody by G the following Sunday evening at 7.00 P.M.

5. The appellant, upon prior intimation to the respondent, will also be entitled to meet the minor at her school once a week after school hours for about an hour.

6. The appellant will also be entitled to the custody of the minor for H 10 consecutive days during the summer vacation on dates to be

mutually settled between the parties. A

7. The aforesaid arrangement will continue for the present, but the parties will be at liberty to approach the Family Court at Thrissur for fresh directions should the same become necessary on account of changed circumstances.

B

The parties will each bear their own costs.

B.S. Appeal disposed of.