

Abhishekkumar Mishra S/o Ashok Kumar Mishra Versus Vs Ankita Ghanshyam Chauhan D/o Ghanshyam Kanhaiyalal Chauhan

Court: Gujarat High Court

Date of Decision: Jan. 21, 2025

Hon'ble Judges: Biren Vaishnav, J; Devan M. Desai, J

Bench: Division Bench

Advocate: Yashma R Mathur

Final Decision: Dismissed

Judgement

Biren Vaishnav, J

1 This appeal has been filed by the appellant-original applicant who filed Civil Miscellaneous Application No. 29 of 2021 before the Family Court. The

said application was filed by the appellant against the opponent under the Hindu Minority & Guardianship Act, 1956 r/w. Guardian & Wards Act,

1890, for custody of two daughters, namely, Shagun aged 12 years and Shubh aged 9 years from the respondent-mother.

1.1 The case of the applicant before the Family Court was that he and the opponent had entered into a wedlock on 24.01.2011. It was his case that

the daughters are in illegal detention of the opponent mother. In the application so filed in the Family Court, it was alleged by the applicant that the

respondent is not capable of upbringing the daughters as daughters would not get any moral or family values as the respondent is highly abusive. In the

application, the appellant had raised several issues with regard to the character of the family background of the respondent-mother. It was his case

that even the opponent's sister had a broken marriage. That the family had no sound background. The applicant had further pointed out in the

application that the respondent was serving at Dudhsagar Dairy and her engagement at the Dairy was as a result of her relationship with the Ex-

Home Minister of Gujarat and Ex-Chairman, Shri Vipul Chaudhary. That she had engaged in a Bonus Scheme inasmuch as, it indulged in a fake bonus

distribution scheme with employees of the Dudhsagar Dairy. That she had received kick back money from the bonus amount which was deposited in

various bank accounts. The applicant had produced details of such bank accounts. According to the applicant, even the sister-in-law of the respondent

had accused the family of asking for dowry when the wife's brother got married to her. That the daughters' education was suffering as the

respondent continued to move in and out of various cities such as Gurgaon and Mehsana.

1.2 It was the case of the applicant that he was a highly qualified professional, a Whistleblower, who commands huge respect nation wide for

righteous conduct. That the opponent was accused in multiple corruption cases. That she was severely addicted to drinking alcohol which would not

inculcate good moral values in the lives of the daughters.

1.3 The respondent had filed a response to the application and denied the allegations. It was her case that the application was frivolous and vexatious.

That the daughters being minor, deserved to be in the custody of their mother. That the applicant was not capable and in fact was unfit to be the

guardian of the girls due to his erratic violent behaviour and mood swings. She would in her response submit that the girls need proper care in their

formative years. The children were studying in a public school and they have resided together with the mother for the past five years. It was the case

of the respondent before the Family Court that the family of the applicant continued to harass her, and therefore, there were compelling circumstances

to leave the matrimonial home. The respondent would also in her response point out that she was being abused by the husband-appellant and in fact,

she was physically beaten at times when one of the daughters was due, and therefore, she had no other alternative but to grab an opportunity to look

for a suitable opening in consensus with her qualifications, and therefore, she took up a job at the Dudhsagar Dairy at Gurgaon from where she was

transferred to Mehsana. The allegations made by the appellant are frivolous and not worthy of consideration. In fact, the father was not competent to

get the custody of the daughters as he had also beaten her daughters and was not fit enough to get the custody of the daughters.

1.4 Based on the application, the response filed and the evidences led, the Family Court by its order dated 29.07.2021 dismissed the application.

1.5 Aggrieved by the aforesaid order, the appellant filed First Appeal No. 1775 of 2023 before this Court. By judgement and order dated 11.12.2023,

the Division Bench, after considering the submissions and after perusing the materials on record, remanded the matter to the Family Court for fresh

consideration.

1.6 The appellant challenged the order before the Hon'ble Supreme Court. The Supreme Court by its order dated 26.02.2024 refused to interfere

with the order and further directed that the Family Court, while deciding the application would also give an opportunity to the appellant to meet his

children on 02.03.2024 at 12:00 noon and also directed the respondent to co-operate.

1.7 The Trial Court proceeded to hear the matter in accordance with the directions issued by this Court, dismissed the application of the applicant by

the impugned judgement and order dated 09.04.2024, holding that though the appellant is the biological father as well as the natural guardian of both

the minor daughters, considering the paramount welfare of the daughters, it is not in the welfare of the children to consider the appellant as a fit person

to be appointed as a lawful guardian and he is also not entitled to get permanent custody of the children.

2. Mr.Abhishek Mishra, appeared as party-in-person. He made the following submissions:

2.1 That he is father of two daughters who has been obstructed by the opponent " mother from meeting his daughters for over four years. That as a

father, he being a natural guardian, is entitled to the custody of the children or at least visitation rights.

2.2 Mr.Mishra, made various submissions and allegations against the learned Judge of the Family Court, inasmuch as, it was his case that the original

case papers and original records were initially lost and that the Family Judge was unjustifiably biased against him.

2.3 Mr.Mishra, further submitted that despite a direction given by the Apex Court, the mother did not permit the appellant to meet the daughters and in

fact, she is a woman of low character, and therefore, unfit to be custodian of the daughters. Mr.Mishra, would further submit that because of her

proximity with one Vipul Chaudhary, she has been able to work at the Dudhsagar Dairy and indulge in corruption which indicates that the moral

character of the opponent is unbecoming of and undeserving to be a mother who deserves to have her daughters' custody.

2.4 Mr.Mishra, would take us through the photographs annexed with the appeal memo to impress upon us the connectivity that the daughters have

with the appellant, and therefore, according to him, it is but natural and this Court, therefore, should reverse the order of the Family Court and grant

him the custody of his daughters. Mr.Mishra, would submit that the Family Court has ignored the criminal antecedents of the respondent, like

corruption, prostitution and her involvement in corruption cases together with the Ex.Chairman. He would further submit that no lawyer in the lower

Court was willing to defend him as a result of the influence of Shri Vipul Chaudhary, who at one time was the Home Minister of the State.

2.5 In his submission, the applicant would submit that he is a well qualified professional and has exposed various scams of Multi National Companies

and he was, therefore, a crusader who was deserving the custody of his daughters. The family from which he came was a family of highly qualified

professionals, a well knit family. He would further submit that his brother and his siblings and the cousins of the daughters were extremely fond of his

daughters and rather than the custody be with the mother, the family would be better off to take care of these two daughters in their formative years.

2.6 On the question of Psychological Assessment Reports which the Family Court had relied on holding that the appellant was not fit to be handed

over the custody of the children, Mr.Mishra, would rely on a prescription of one Dr.Yatin K. Bhushan where the respondent was undergoing

treatment. He would submit that reading of this prescription which was a part of the evidence indicated that the respondent had suicidal tendencies.

The Assessment Report of the doctor who carried out the Psychological Assessment, therefore, was as a result flawed and the Family Court could

not have relied upon such a report for denying the appellant, the custody of his daughters.

3 Ms.Yashma Mathur, learned counsel appearing for the respondent, made the following submissions:

3.1 She would submit that except making extensive allegations against the character of her client, the applicant had not been able to show positively as

to how she was disqualified from having the custody of the daughters and that the appellant was better equipped keeping the paramount consideration

of welfare of the children in mind.

3.2 Ms.Mathur, learned counsel, would further submit that reliance on the prescription of the doctor is misconceived inasmuch as, the prescription was

of the year 2020. She was compelled to consult the doctor in the year 2020 as a result of harassment at the hands of the applicant and post that period,

four years had gone by and during the period, as is evident from the Psychological Assessment of the two daughters, the daughters found themselves

to be safe in the company of the mother.

3.3 Ms.Mathur, learned counsel, would further submit that the allegations made are misconceived and in fact, the learned Family Court has observed

that in compliance of the directions of the Hon'ble Supreme Court when visitation was tried to be arranged, it was found that the daughters had

strenuously resisted and insisted not to meet the appellant-father. The police party had recorded such statements and even on the intervention of the

child counsellor and with the communication of the children, it was found that the daughters were not willing to meet the appellant. In her submission,

therefore, it was a reason enough for the Family Court to refuse to grant custody of the daughters and no fault can be found with the judgement and

order of the Trial Court.

4 We have considered the submissions made by the Party-in-Person and the respondent's counsel.

5. At the outset, we may note that while considering the custody of children we cannot lose sight of the fact that the welfare of the children is of

paramount importance.

5.1 Mr.Abhishek Mishra, party-in-person, has in the memo of the appeal filed before us, set out a comparative chart as to how based on a welfare

assessment comparison he is better equipped and eligible to get custody of daughters than the respondent. What is tried to be conveyed by the party-

in-person based on this comparative chart on the yardstick of (i)cases against both the parties, (ii)public assessment, (iii)respect for ladies, (iv)sacrifice

for the country, (v)education, (vi)family stability, (vii)alcoholism, (viii)domestic violence, & (ix) societal reputation of the family etc., that considering

the paramount welfare of the children, it is the appellant who is more capable of the custody of the children.

5.2 We have examined the record and proceedings in four volumes that have been placed before us and also the citation and the synopsis and the law

on child custody and the paramount welfare consideration that the Courts should consider while granting the custody of children.

5.3 Here is one unfortunate case where two innocent daughters are undergoing the trauma of custody battle at the hands of the parents who are

equally well qualified and who, from the evidence produced on record, have indulged in nothing but mud slinging. The material placed before us

indicate the cross sections of allegations made between each other in context of their character, their financial stability, their educational background

etc. Witnesses have been examined and from the testimony of such witnesses, none of these witnesses would clearly depose for us to indicate each

others' preference. We note that the appellant has filed this application for custody in the year 2021. However, it is an admitted fact that both,

Shubh and Shagun, minor daughters are in the mother's care for over five years now. The custody litigation has gone back and forth inasmuch as,

the appellant has indulged in multiple litigations from the same application initially when the order was against him by approaching the Supreme Court.

When the Supreme Court affirmed the order of remand, pending the window of visitation for the appellant, we find from the judgement of the Family

Court, which is under challenge before us that in accordance with the directions of the Supreme Court when the police party and the Station House

Officer of the local police station in compliance of the order went for the visitation rights to be implemented in favour of the appellant, it was found

that the daughters had made a strenuous resistance and refused to meet the appellant. At the instance of the appellant, for intervention, one Child

Counsellor, namely, Ms.Mandaben Ashokbhai Savant was engaged and when her help was solicited with communication with the children, it was

found that the children did not desire to meet the applicant.

5.4 Case laws in abundance have been cited by the appellant together with the appeal memo to suggest that in cases of child custody, the Court should

certainly be not weighed by what the child wishes to and expresses before the Court. Mr.Mishra, has taken us through these materials to suggest that

we may not be influenced by the willingness of the children but take into consideration the fact that keeping in mind the psychological Assessment

Report which was seriously faulted inasmuch as, the mother had exhibited suicidal tendencies, the daughters should be handed over to the appellant.

5.5 We have perused the Psychological Assessment Reports which are on record. From the record and proceedings, we find that the two Assessment

Reports of the two daughters indicate that apart from the traits that the reports indicate vis-a-vis the two children, Shagun was found to be behaving in

a normal way and had no suggestive symptoms. The bottom line of the report was she felt threatened about father and though she wish support and

protection from the family, she would feel safe with the mother. Even the Assessment Report of daughter Shubh indicates that she is attached

towards the family but she finds the mother as the protecting figure and the father as an evil figure. Attempts though have been made by the learned

party-in-person to question these reports on the ground that the doctors who carried out this Assessment Report are under a scanner, inasmuch as,

they are facing hearings before the competent forum. Unfortunately for us, we cannot go behind these issues.

6. We also find that in one of the rounds of litigation before us i.e. the High Court, a Division Bench of this Court had assigned the task of

psychological assessment to the National Forensic Sciences University. Report is at Mark 216/2. Test findings in the report indicates that a session

was held by one Dr.Smita Pandya, Centre of Well Being & Happiness, School of Behavioural Sciences. Both the children were co-operative during

the assessment and comprehended the test items and instructions. The children were found to be of an intellectual level above average and their

behaviour on the Child Behaviour Check-List was normal. One of the observations of the Psychological Assessment Report of Shubh indicated that

she needed further counselling. As far as Shagun is concerned, what was found was that she had a good capacity to keep with the flawed

environment demands and possesses good daily living skills. She is the elder of the two siblings. The report indicates that she is able to interact in

social situations well and tends to take care of herself while in the social situation which may be uncertain in nature. On the child behaviour checklist,

she may have been found to be slightly aggressive but the bottom line that the report indicates is that she feels threatened about the father.

7. We are not an expert body in terms of such sensitive issues like child custody but with the facts of the case on hand, we note from the submissions

made by the party-in-person who was present before us and the counter made by the learned counsel appearing for the respondent that, except

allegations of character and documents to suggest such insinuations and photographs, the material that the Family Court, relied upon are the

Psychological Reports about two childrens. We are also conscious of the fact that the two minor daughters have been with the mother for over five

years now and at one stage when before this appeal was admitted by this Court, albeit by a different Bench, this Court on 05.07.2024, passed the

following order:

“1. Pursuant to the order dated 30.04.2024, the matter was placed for hearing before us.

2. On 13.06.2024, Ms.Yashma Mathur learned counsel for the respondent sought time.

3. The matter was hence listed on 01.07.2024. On that day, with a view to consider the issue of interim arrangement as to the visitation

rights of the appellant, we requested learned counsel Ms.Mathur for the respondent to keep the respondent and the two daughters Shubh

and Shagun present before us. Pursuant to the request so made, the respondent together with daughters Shubh and Shagun are present

before us today. We interacted with the two children Shubh and Shagun independently and thereafter in presence of the respondent herein.

We also interacted with the appellant in the chamber.

4. Having extensively heard them out, especially the children, what we decipher from their intentions is that they are for the time being not

willing to go to the appellant herein.

5. Having explored the possibility as to whether it was possible for us to see that the appellant can have access to the visitation rights for

two children Shubh and Shagun and having ascertained the wishes of the children, we find that they seem to be reluctant to meet the

appellant. The interim arrangement therefore as requested by the learned party-in-person Shri Mishra for visitation rights of his daughters,

after ascertaining the willingness of the children, is not accepted.

6. Considering the fact that the appeal pertains to the custody of two daughters, who are minor and are at present residing with her mother-

the respondent herein, we ADMIT the appeal and fix the same for final hearing on 17.09.2024.

7. Having heard party-in-person and Ms.Mathur learned counsel for the respondent, for the purposes of our order, we reproduce interim

prayers A, G, and H which read as under:

“A. Stay the impugned order at (Annexure:P/82) in CMA DC 29 of 2021 dated 09.04.2024 passed by 3rd Family Court at Vadodara ON

EX-PARTE BASIS, as the order came to be passed by same judge who was under Vigilance investigation on complaint of Applicant, since

prior to remand of the matter from Gujarat High Court, Amounting to violation of Principal of Natural Justice.

”

G. Direct registrar Vigilance to produce findings and other reports in relation to complaint filed by applicant in case file theft, wrong

issuance of warrant, Coincidences of Advocate H L Gupta and Ld Judge Ms. B H Somani as per Order XVI rule 15 of CPC.

H. Appoint Dr Rakesh Kapur " from Bamboo tree foundation, as Amicus curiae and subject matter expert on child psychology and

Parental Alienation to assist This Hon'ble court to reach fair and just conclusion.

8. In light of the fact that we have come to the prima-facie conclusion that visitation rights cannot be given to the appellant, we are not

inclined to grant Prayer-A. Prayers G and H are as of now not relevant for the purpose of deciding First Appeal at an interim stage and

therefore these prayers too are refused.

8. We, therefore, hold that the judgement and order dated 09.04.2024 passed by the Family Court in C.M.A No. 29 of 2021 cannot be faulted with and

deserves no interference. The appeal is accordingly dismissed.

In view of dismissal of the appeal, civil application will not survive and stands disposed of, accordingly.