

(2009) 03 P&H CK 0309

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R No. 1383 of 2009

Sumedha Nagpal

APPELLANT

Vs

Gaurav Nagpal

RESPONDENT

Date of Decision: March 24, 2009

Citation: (2009) 2 HLR 352 : (2009) 2 Marr.LJ 72 : (2009) 3 RCR(Civil) 165

Hon'ble Judges: Ajay Tewari, J

Advocate: in person. in person., Advocates for appearing Parties

Judgement

Ajay Tewari, J.

The short question involved in this revision petition relates to the interpretation of the phrase "long holidays/vacations covering more than two weeks". The context in which this question has arisen is a dispute regarding visitation rights of a minor child between his mother and father. Vide judgment dated 19.11.2008, the Hon'ble Supreme Court has decided this issue in the following terms:

◆(1) During long holidays/vacations covering more than two weeks the child will be allowed to be in the company of the father for a period of seven days.

(2) The period shall be fixed by the father after due intimation to the mother who shall permit the child to go with the father for the aforesaid period.

(3) For twice every month preferably on Saturday or Sunday or a festival day, mother shall allow the child to visit the father from morning to evening. Father shall take the child and leave him back at the mother's place on such days.◆

2. The petitioner is aggrieved by the order of the trial Court wherein the trial Court disallowed the prayer of the respondent for visitation rights on 3rd of March and 11th of March (on the ground that the examinations of the minor were underway) but allowed him visitation from 22nd March to 28th of March on the premises that the exams of the child ended on 16.3.2009 and school had to reopen on 1.4.2009.

3. The petitioner has referred me to a circular of the school wherein it has been mentioned as follows:

◆ As notified vide Circular No.1510/2009, the Annual Examination will be conducted from 2nd March 2009, Monday to 16th March 2009, Monday.

Keeping in view the holistic development of the students and to enthuse them with fresh energy and vitality InterClass matches for Basket Ball & Football will be conducted for class V from

17th March 20th March : Timings :9.30 am 11.20am for practices

17th March 2009 Class VA, VB, 18th March 2009 Class VC, VD, 19th March 2009 All four sections VA, VB, VC, VD, Incharges : Mr. B.Sharma & Ms. Mukta Sharma.

Dance Practice 8.30 am 9.30 am for the selected students.

Incharges : Mrs. Shobha and Mrs. Lquana

Graduation Ceremony for the students of Class V will be held on 21st March 2009, Saturday. Students will to be in school uniform.

Incharges :Coordinator class V Ms. Renu Jhalani.

Activity I/CMs. Madhu Lakhanpal

Please note that attendance is mandatory in these programmes/activities.

Kindly arrange to pick your ward at 11.30 am from Gate no.2.

The students shall have a break from 23rd March 2009 (Monday) to 31st March 2009 (Tuesday).◆

4. The petitioner has asserted that a perusal of the circular quoted above would clearly show that the vacations are only from 23.3.2009 to 31.3.2009 and, therefore, the directions of the Hon"ble Supreme Court that the child shall be sent to the respondent for one week in a vacation lasting more than two weeks would not be applicable.

5. On the contrary, the respondent has asserted that the mere fact that between 17.3.2009 and 23.3.2009, the minor has to attend the school on three days (two days for basket ball practice from 9.30 to 11.20 AM and for Graduation ceremony on 21.3.2009) would not mean that there is not a break.

6. It is not disputed that an application for modification of the said order has been filed by the respondent before the Hon"ble Supreme Court. I tried to reason with both the parties that what is paramount in such cases is not the right of the respective parents but the welfare of the child and that in these circumstances, they should arrive at some agreed solution so that instead of fighting in the Court they should both spend some quality time with the child. To this, the petitioner

reluctantly offered that the respondent can take the child for 48 hours, while the respondent just as reluctantly offered that he would take the child for 5 days (instead of 7 days + 2 days which he was entitled to as per his version). Thus, the situation which has emerged is that both the parties are interested only in vindicating what they perceive to be their respective rights. Since, both parties have insisted that the case be decided on merits, I am constrained to do so even though I know full well that the consequences would be that one party or the other would immediately rush to the Hon"ble Supreme Court, keeping in view their adamant attitude and the short break of the child would be frittered away and none of the parties or the child would be able to enjoy the same.

7. Be that as it may, on merits I find that the order passed by the learned trial Court is unexceptionable. The spirit of the order of the Hon"ble Supreme Court was that the respondent would have custody of the child for one week during every such period when school may be off for two weeks or more. As the learned trial Court has rightly pointed out the fact that during this period the child would have to go to school on two occasions for extra curricular activities would not mitigate against the fact that in reality the children have a break from 16.3.2009 to 1.4.2009 between their final exams and the start of the new academic year.

Consequently, this revision petition is dismissed. However, it cannot be lost sight of that there are only seven clear days before the minor has to return to school and atleast one day prior to that would be required for making arrangements like purchase of books, uniform etc. In the circumstances, keeping in view the offer of the respondent that he would take the child for five days, I direct the petitioner to hand over the minor to the respondent on 25.3.2009 in the morning at 9 am and the respondent would return the child back to the custody of the petitioner on 29.3.2009 at 6 p.m.

Copy of this order be given dasti to the parties under the signatures of the Court Secretary.