
Romani Singh Vs Lt. Col. Vivek Singh

FAO 39 of 2012 and Cont. Cas (C) 178 of 2012

Court: Delhi High Court

Date of Decision: April 2, 2013

Acts Referred:

Guardians and Wards Act, 1890 " Section 10, 11, 12, 14, 15#Hindu Minority and
Guardianship Act, 1956 " Section 13, 6

Citation: (2013) 7 AD 460 : (2013) 4 AD 311 : (2013) 201 DLT 742 : (2013) 136 DRJ 675 :
(2014) 1 RCR(Civil) 254

Hon'ble Judges: Veena Birbal, J; Pradeep Nandrajog, J

Bench: Division Bench

Advocate: Geeta Luthra, instructed by Ms. Ashly Cherian and Mr. Harish Malik, for the
Appellant; V. Shekhar instructed by Ms. Namita Roy, Piyush Jain, Ms. Shaveta Chaudhary,
Amit Chobey and Mr. Jatin Rajput, for the Respondent

Judgement

Veena Birbal, J.

This is an appeal u/s 47 of The Guardianship and Wards Act, 1890 (hereinafter referred to as "the Act") wherein

challenge has been made to the order dated December 7, 2011 passed by the learned Principal Judge, Family Courts, Dwarka,
New Delhi

whereby the petition of the appellant u/s 25 read with 10 and 12 of the aforesaid Act for the grant of custody of minor daughter,
namely, Saesha

Singh and for appointment of appellant as a guardian of the said child, has been dismissed. The marriage between the parties was
solemnised on

November 25, 2007 as per Hindu rites and ceremonies. A daughter Saesha Singh was born from their wedlock at Base Hospital,
Delhi on

October 29, 2008. When the petition seeking custody and appointment of guardianship of the minor Saesha Singh was filed, the
child was 18

months of age. Presently she is about 4 years and 5 months of age. Appellant is a teacher in Kendriya Vidyalaya-3, INA Colony,
New Delhi.

Respondent is an Army Officer. The appellant has alleged that respondent had harassed her from the beginning of marriage for not bringing

sufficient dowry, jewellery, etc. and due to inability to fulfil his demands he had been harassing and ill-treating her. She had stated that during the

posting of respondent outside Delhi, the appellant had been staying in a rented Government accommodation and had been maintaining herself and

the child. On September 08, 2009 the respondent was posted in Delhi and was allotted a Government accommodation at P-30, Pratap Chowk,

Delhi and the appellant also shifted in the said house.

2. The respondent due to his duties used to come from office late. After returning from office respondent invariably used to drink and thereafter

used to beat the appellant and was also using filthy language. She had alleged that on December 29, 2009 respondent gave her beating and had

thrown her out of the house. She had alleged that with the intervention of neighbour she was permitted to enter the house. Again on February 03,

2010 respondent had beaten her and had taken out an army dagger. The appellant saved herself and her child with great difficulty. In the scuffle

respondent injured his hand and was treated in military hospital. Again on August 04, 2010 respondent in a drunken state gave beatings to her and

threw her out of the house along with the child. The appellant had called police. The police personnel called the military police and a complaint was

lodged. Appellant had also called her parents who had come to her house from Noida. Her parents took hold of the child and the appellant and

when they were about to leave, the respondent pulled out the child from the hands of her mother and went inside the house and locked himself. He

was drunk at that time. The police suggested not to do anything otherwise respondent would harm the child. It was assured that the child would be

returned to her in the morning. Accordingly, the appellant and the respondent were instructed to come to the police along with the child in the

morning. The respondent did not bring the child and threatened that he would not give the child to her. Since then, she had been running from pillar

to post to get back the child but respondent had been refusing.

3. Appellant has alleged that she had been in continuous possession, care and protection of the child since her birth and respondent has no love

and affection for the child. In his absence, when he is away for duty his Orderly looks after the girl child. Respondent leaves for his office at 8.30

A.M. and returns back late in the evening and he is not in a position to look after the basic needs of the child. She had alleged that after school

hours she had been devoting all her time to the child and during her duties in the school the child is being looked after by her parents who have

been frequently visiting her house. It is in the mental well being of the child that the custody of the minor child Saesha Singh be given to her, being

her natural mother and she be also appointed as guardian of the person of the said child.

4. Respondent had filed written statement before the Family Court opposing the petition filed by her. The respondent has taken the stand that the

appellant is not in a position to look after the child as there is nobody to look after the child when she is away for work. Her parents are residing at

Noida and she is working and living in Delhi. He has denied having made demands of dowry or harassing appellant as is alleged. According to him,

their marriage was solemnized at Arya Samaj Mandir and there was no demand of dowry. He has alleged that appellant herself had given an

affidavit at the time of marriage that no kind of dowry was demanded from her.

5. The respondent has alleged that from the beginning of marriage he has provided all the comforts to the appellant and had taken her to various

places outside Delhi. The child was born at Base Hospital, Delhi Cantt. and he had taken leave at that time. He had been providing the necessary

expenses to her for maintaining her as well as the child as the respondent was having his salary account with her and she was having ATM card

and had been constantly withdrawing the money. He had provided her with various other facilities the details of which are given in the written

statement. He had alleged that the appellant invariably was getting drunk on their visits to Army Officer's Mess in the parties. The appellant used to

call him "Doom" meaning scheduled caste in Garhwali language and the appellant herself is a "Garhwali Rajput" and used to call herself Khandani.

6. The respondent has denied the allegations of beating as are alleged by her. As per him, on August 04, 2010 appellant and the respondent had

gone to Army Mess where she had two drinks and on returning home she asked for more drinks and on refusal by him she called her parents and

a colleague on telephone. They all came within one hour in two cars. Police was also called. The policemen called Military Police which also came

at the spot. Thereafter, the appellant and her parents had packed the belongings and had left the house along with the appellant and her mother had

thrown the minor child on the floor by saying ""Ye Doom ki aulad hai hum khandani log hain "" and appellant's mother told the respondent ""Hum

apni ladki ko le ja rahe ham tu apni ladki to apne aap pal le, is ladki ko iski dadi palegi woh apna farz nibhayegi.""(We are taking back our

daughter, you take care of your own daughter, now her grandmother will take care of her and will do her duty.)

7. The brother of the respondent who is also in Armed Forces and was staying at a distance of 4-5 kms. from his house had rushed to the

respondent. However, the appellant left the child and went with her parents. His brother had taken the photographs at that time and has alleged

that appellant has no love and affection for the child and she had abandoned the child and thereafter had not bothered for her well being. The child

is being looked after by the respondent and his parents and the child is getting love and affection and is very happy as such petition is liable to be

dismissed.

8. Appellant has filed the rejoinder denying all the allegations made therein and has reiterated the contents of her petition.

9. On the pleadings of the parties, the following issues were framed on January 13, 2011:-

1. Whether the petitioner is entitled to the custody of the child as prayed by him? (OPP)

2. Relief.

10. The parties led their respective evidences. The appellant had examined herself as PW1 and the respondent had examined himself as RW1.

11. After hearing the counsel for parties and perusing the record the learned Principal Judge, Family Courts has dismissed the petition.

12. Aggrieved with the same, the present appeal is filed.

13. Learned senior counsel for appellant has contended that the finding of the learned Principal Judge, Family Court that the appellant had

abandoned the child on August 04, 2010 is a perverse finding. It is contended that it is the respondent who had snatched the child from the hands

of her mother. It is submitted that it has come in the evidence that the appellant had also taken the child's clothes with her. It is submitted that the

same falsifies the stand of the respondent that she had abandoned the child. It is further submitted that the trial court has relied upon CD Ex. R-19

which was not proved in accordance with law. It is further contended that the same is a fabricated document as whatever was uttered by the

respondent to her mother has been deleted. It is further submitted that the child is below 6 years of age and is of tender age and is also a girl child.

The custody of girl child of tender age is ought to be given to the mother as she is the best person who can look after the comforts of the minor

child. It is submitted that the learned Family Court has not appreciated the evidence in a proper manner and has not considered the totality of facts

and circumstances. It is further submitted that during the pendency of present petition, respondent has also filed a divorce case against her. It is

submitted that in the facts and circumstances of the present case the impugned order is liable to be set aside.

14. On the other hand, learned senior counsel appearing for respondent has contended that the child is very comfortable with the respondent.

When the respondent attends his office, his parents take care of the child. It is submitted that child is getting all love and affection from them. It is

submitted that even when the parties were living together the respondent was taking care of the child and the child is very much attached to him. It

is further submitted that there is no perversity or illegality in the finding of the trial court. The learned trial court has rejected the petition after

appreciating the evidence on record. It is further submitted that it is the appellant who had abandoned the child on August 04, 2010 and the

petition has been filed to harass the respondent as such she is not entitled for any relief.

15. Section 7 of the Act deals with the power of the court to make order as to the guardianship. The same reads as under:-

7. Power of the Court to make order as to guardianship-

(1) Where the Court is satisfied that it is for the welfare of a minor that an order should be made-

(a) appointing a guardian of his person or property, or both, or

(b) declaring a person to be such a guardian, the Court may make an order accordingly.

(2) An order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument or appointed or

declared by the Court.

(3) Where a guardian has been appointed by will or other instrument or appointed or declared by the Court, an order under this section appointing

or declaring another person to be guardian instead shall not be made until the powers of the guardian appointed or declared as aforesaid have

ceased under the provisions of this Act.

16. Section 8 of the Act enumerates persons entitled to apply for an order as to guardianship. Section 9 empowers the Court having jurisdiction to

entertain an application for guardianship. Sections 10 to 16 deal with procedure and powers of Court. Section 17 is another material provision and

may be reproduced as under:-

17. Matters to be considered by the Court in appointing guardian-

(1) In appointing or declaring the guardian of a minor, the Court shall, subject to the provisions of this section, be guided by what, consistently with

the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.

(2) In considering what will be for the welfare of the minor, the Court shall have regard to the age, sex and religion of the minor, the character and

capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous

relations of the proposed guardian with the minor or his property.

(3) If the minor is old enough to form an intelligent preference, the Court may consider that preference.

17. While appointing guardian, the court should be guided by the sole consideration of the welfare of the minor.

18. Hindu Minority and Guardianship Act, 1956 (hereinafter referred to as ""1956 Act"") is another equally important statute relating to minority and

guardianship among Hindus. Section 4 defines ""minor"" as a person who has not completed the age of eighteen years.

""Guardian"" means a person

having the care of the person of a minor or of his property or of both his persons and property, and inter alia includes a natural guardian. Section 2

of the Act declares that the provisions of the Act shall be in addition to, and not in derogation of 1890 Act.

19. Section 6 of aforesaid Act enacts as to who can be said to be a natural guardian. It reads as under:-

6. Natural guardians of a Hindu Minor-The natural guardians of a Hindu Minor, in respect of the minor's person as well as in respect of the

minor's property (excluding his or her undivided interest in joint family property), are-

(a) in the case of a boy or an unmarried girl--the father, and after him, the mother; provided that the custody of a minor who has not completed the

age of five years shall ordinarily be with the mother;

(b) in the case of an illegitimate boy or an illegitimate unmarried girl--the mother, and after her, the father;

(c) in the case of a married girl--the husband;

Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section-

(a) if he has ceased to be a Hindu, or

(b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi).

Explanation.--In this section, the expressions ""father"" and ""mother"" do not include a step--father and a step--mother.

20. Section 8 enumerates powers of natural guardian. Section 13 is extremely important provision and deals with welfare of a minor. The same

may be quoted in extensor as under:--

13. Welfare of minor to be paramount consideration.

(1) In the appointment or declaration of any person as guardian of a Hindu minor by a court, the welfare of the minor shall be the paramount

consideration.

(2) No person shall be entitled to the guardianship by virtue of the provisions of this Act or of any law relating to guardianship in marriage among

Hindus, if the court is of opinion that his or her guardianship will not be for the welfare of the minor.

(emphasis added)

21. It is well settled position in law that in deciding the custody of the child it is not the welfare of the father, nor the welfare of the mother that is the

paramount consideration for the court. It is the welfare of the minor and the minor alone which is paramount consideration.

22. In Nil Ratan Kundu and Another Vs. Abhijit Kundu, while deciding the matter on the custody of the minor child, the Supreme Court has dealt

with various decisions on the subject by taking into account interest and well being of the minor as paramount consideration. Some of the important

cases discussed in the aforesaid judgment are as under:--

42. In Rosy Jacob Vs. Jacob A. Chakramakkal, this Court held that object and purpose of 1890 Act is not merely physical custody of the minor

but due protection of the rights of ward's health, maintenance and education. The power and duty of the Court under the Act is the welfare of

minor. In considering the question of welfare of minor, due regard has of course to be given to the right of the father as natural guardian but if the

custody of the father cannot promote the welfare of the children, he may be refused such guardianship.

43. The Court further observed that merely because there is no defect in his personal care and his attachment for his children----which every

normal parent has, he would not be granted custody. Simply because the father loves his children and is not shown to be otherwise undesirable

does not necessarily lead to the conclusion that the welfare of the children would be better promoted by granting their custody to him. The Court

also observed that children are not mere chattels nor are they toys for their parents. Absolute right of parents over the destinies and the lives of

their children has, in the modern changed social conditions must yield to the considerations of their welfare as human beings so that they may grow

up in a normal balanced manner to be useful members of the society and the guardian court in case of a dispute between the mother and the father,

is expected to strike a just and proper balance between the requirements of welfare of the minor children and the rights of their respective parents

over them.

44. Again, in Thrity Hoshie Dolikuka Vs. Hoshiam Shavaksha Dolikuka, this Court reiterated that only consideration of the Court in deciding the

question of custody of minor should be the welfare and interest of the minor. And it is the special duty and responsibility of the Court. Mature

thinking is indeed necessary in such situation to decide what will enure to the benefit and welfare of the child.

45. In Smt. Surinder Kaur Sandhu Vs. Harbax Singh Sandhu and Another, this Court held that Section 6 of the Hindu Minority and Guardianship

Act, 1956 constitutes father as a natural guardian of a minor son. But that provision cannot supersede the paramount consideration as to what is

conducive to the welfare of the minor. [See also Mrs. Elizabeth Dinshaw Vs. Arvand M. Dinshaw and Another, Chandrakala Menon (Mrs) and

Another Vs. Vipin Menon (Capt.) and Another,

46. Recently, in Mausami Moitra Ganguli Vs. Jayant Ganguli, , we have held that the first and the paramount consideration is the welfare of the

child and not the right of the parent.

47. We observed:

The principles of law in relation to the custody of a minor child are well settled. It is trite that while determining the question as to which parent the

care and control of a child should be committed, the first and the paramount consideration is the welfare and interest of the child and not the rights

of the parents under a statute. Indubitably the provisions of law pertaining to the custody of child contained in either the Guardians and Wards Act,

1890 (Section 17) or the Hindu Minority and Guardianship Act, 1956 (Section 13) also hold out the welfare of the child are predominant

consideration. In fact, no statute on the subject, can ignore, eschew or obliterate the vital factor of the welfare of the minor. The question of welfare

of the minor child has again to be considered in the background of the relevant facts and circumstances. Each case has to be decided on its own

facts and other decided cases can hardly serve as binding precedents insofar as the factual aspects of the case are concerned. It is, no doubt, true

that father is presumed by the statutes to be better suited to look after the welfare of the child, being normally the working member and head of the

family, yet in each case the Court has to see primarily to the welfare of the child in determining the question of his or her custody. Better financial

resources of either of the parents or their love for the child may be one of the relevant considerations but cannot be the sole determining factor for

the custody of the child. It is here that a heavy duty is cast on the Court to exercise its judicial discretion judiciously in the background of all the

relevant facts and circumstances, bearing in mind the welfare of the child as the paramount consideration.

23. In Gaurav Nagpal Vs. Sumedha Nagpal, the Supreme Court while deciding the issue of custody of minor held that prime consideration in

deciding such matter is the welfare of the child and not the right of parents under statute. The relevant para of the judgment is reproduced as

under:--

42. When the court is confronted with conflicting demands made by the parents, each time it has to justify the demands. The Court has not only to

look at the issue on legalistic basis, in such matters human angles are relevant for deciding those issues. The court then does not give emphasis on

what the parties say, it has to exercise a jurisdiction which is aimed at the welfare of the minor. As observed recently in Mousami Moitra Ganguli's

case (supra), the Court has to due weightage to the child's ordinary contentment, health, education, intellectual development and favourable

surroundings but over and above physical comforts, the moral and ethical values have also to be noted. They are equal if not more important than

the others.

24. For deciding the present petition the paramount consideration for the court is to see with whom the welfare of the child lies.

25. As noted above, the child is presently 4 years and 5 months old. It is admitted position that parties are living separately since August 04, 2010

and since that day the child is living with the respondent and her grandparents at Meerut. Presently respondent is also posted at Meerut. The

learned Principal Judge, Family Court during the pendency of petition, had given appellant/wife and her parents visitation right of the child on 1st,

3rd and 4th Saturday of every month between 2.30 P.M. to 5 P.M. in court. The aforesaid order was passed with the consent of parties. While

dismissing the petition only visitation rights for the aforesaid days and duration have been given to the appellant.

26. During the pendency of the present appeal, interim custody of the child has been given to appellant on every Friday at 3.30 PM and she has

been returning the child at 6.00 PM on every Sunday and the appellant has been keeping her daughter for about two days in a week with her.

27. It is also admitted position that the appellant is M.A. English (Hons.) and B.Ed. and is a TGT Teacher in Kendriya Vidyalaya, INA Colony,

New Delhi for the past 9 years. Respondent is an Army Officer. Presently, he is posted at Meerut. The Family Judge has mainly relied upon the

incident of August 4, 2010 to deny the custody of the child to her on the ground that she herself had abandoned the child on the said date. The

evidence in this regard is perused. Appellant has stated in her affidavit Ex. PW1/A that respondent after getting drunk at night used to beat her

without any reasons. She has given the dates in the affidavit when she was beaten. She has stated that on August 04, 2010 also he had become

very aggressive and had given beating to her. When she could not tolerate the beatings she called the police at about 11.30 P.M. and called her

parents to save herself. The police arrived which also called the military police. She gave written complaint to the police since she was asked to

give the same and while she was going out of the house with the daughter and was about to enter her parents car the respondent pulled the

daughter from the arms of the appellant and ran inside the house and locked himself and did not hand over the child to her. It was about 2 AM at

that time. On the other hand, the stand of the respondent in affidavit Ex. RW1/A is that on August 4, 2010 the appellant had taken two drinks with

him in the Officer's Mess and on reaching home she insisted for more alcohol and thereupon arguments started and she called her parents and

colleague on phone and they all came within one hour. He has denied the allegations of beating. The deposition of the respondent about the cause

of quarrel is not believable. It is not believable that on being refused for more alcohol, she would call her parents as is stated by respondent in his

cross--examination. He has also stated in cross--examination that the appellant had gone with her personal belongings and clothing of the child in

presence of police. The stand of the appellant is that the child was snatched by the respondent. If the child was abandoned by appellant as is

alleged by respondent, in that event she would not have taken the clothes of the child with her. The stand of respondent that child was abandoned

does not inspire confidence. Further, appellant has also given an explanation that the police had called them next day in the police station and it was

assured that respondent would bring the child whereas he did not bring the child. The Family Court ought to have seen the background in which

the appellant had to leave the house at midnight. It is also admitted position that on that day a quarrel had taken place between the parties. It is also

admitted position that her parents had come all the way from Noida in the house of the respondent at Pratap Chowk, Delhi Cantt. The appellant

has also stated her condition in which she was standing. According to respondent the mother of the appellant had left the child and uttered certain

words against the respondent. Assuming what respondent is saying is correct, if in the aforesaid circumstances the mother of the appellant had left

the child and uttered some words that does not mean that the appellant who is her mother be deprived of her custody forever. The learned Family

Judge has not appreciated the fact that from the birth of the child i.e. from October 29, 2008 till August 04, 2010 i.e. for 21 months the child had

throughout been with the appellant who has been attending her school as well as taking care of the child after school hours. There is nothing on

record to show that the appellant had neglected the child for a single day during that period. Neither the same is the stand of respondent.

28. The other reason given by the trial court in denying the custody of the child to her is that appellant has been posted at Balmer, Rajasthan since

June 28, 2011 for 3 years and is living there in a rented accommodation along with her father and in these circumstances it will not be appropriate

to give the child to her. However, during the pendency of the appeal it has been informed that the appellant has been transferred back to Kendriya

Vidyalaya, INA Colony, Delhi with effect from 11/13.10.2011 and is presently teaching in aforesaid school. In view of above change in

circumstances, the said fact cannot be taken against the appellant.

29. Further the learned Principal Judge has also taken into consideration CD(video recording) Ex. R--19 in coming to conclusion that child was left

by appellant of her own with respondent on 04.08.2010, as such the custody of the child cannot be given to her. The transcript of aforesaid CD is

on record. We have perused the same. It is stated by respondent that his brother had videographed from 12.30 AM to 2.30 AM on the midnight

of 04.08.2010 from his video camera. The Id. counsel for the appellant has contended that CD Ex. R-19 is a fabricated document. It is contended

that respondent and his brother were admittedly present at that time. It is not believable that they had not uttered a single word at that time. It is

contended that whatever they had uttered has been deleted in Ex. R--19. It is contended that CD Ex. R--19 being a fabricated document cannot

be taken into consideration. On the other hand stand of respondent is that same is genuine one. It is true that transcript of CD Ex. R--19 on record

does not show anything spoken by respondent or his brother at that time. It is not believable that in the moment of heated arguments they were

silent spectators. In these circumstances, CD Ex. R--19 cannot be free from suspicion. For the sake of arguments assuming CD Ex. R--19 is

genuine, even then nothing has been said therein by appellant. Even if out of anger something is said by her mother, the same should not deprive

appellant of the relief which she is otherwise entitled.

30. The role of the mother in the development of a child's personality can never be doubted. A child gets the best protection through the mother. It

is a most natural thing for any child to grow up in the company of one's mother. The company of the mother is the most natural thing for a child.

Neither the father nor any other person can give the same kind of love, affection, care and sympathies to a child as that of a mother. The company

of a mother is more valuable to a growing up female child unless there are compelling and justifiable reasons, a child should not be deprived of the

company of the mother. The company of the mother is always in the welfare of the minor child.

31. It may be noticed that the stand of the appellant is that since August 4, 2010 she had been pursuing for the custody of her child. She had also

visited the police station and approached the CAW Cell. It is also admitted position that within 22 days i.e. on August 26, 2010 the petition for the

grant of custody of child was filed by her. Had she abandoned the child of her own she would not have pursued continuously thereafter for getting

the custody of the child. Even she had requested the learned Principal Judge, Family Court for interim custody of the child which was given to her

in the form of visitation rights thrice in a month and she and her family had been meeting the child during that period. After filing the appeal, the

appellant has been taking the interim custody of the child as is stated above. In these circumstances, it cannot be said that the appellant has not

cared for the child. Further, respondent is an Army Officer. During the course of his service he will be also getting non-family stations and it will

be difficult for him to keep the child. Further, even though as per him his parents are looking after the child but when the natural mother is there and

has knocked the door of the court without any delay and has all love and affection for the child and is willing to do her duty with all love and

affection and since the birth of the child she has been keeping the child. In these circumstances, she should not be deprived of her right especially

considering the tender age and child being a girl child. The grandparents cannot be a substitute for natural mother. There is no substitute for

mother's love in this world. The grandparents are old. Old age has its own problems. Considering the totality of facts and circumstances, the

welfare of the child lies with the mother i.e. appellant who is educated, working and earning a good salary and after school hours has ample time to

spent with the child. In these circumstances, impugned order is set aside and the request of the appellant for the grant of custody of the said child to

her being natural mother is allowed and the appellant is also appointed as guardian of her child being a natural guardian/mother.

32. Since the child is a school going child and respondent is living at Meerut, in these circumstances, respondent will be at liberty to take the child

from the appellant on every 4th Friday of the month at 5.30 P.M. and the child shall spend two days with the respondent. The child shall remain

with the father on Friday followed by Saturday and Sunday. The child shall be returned safely to the mother on Sunday at 6.00 P.M.

33. Each year during Summer vacation custody of Baby Saesha Singh would be entrusted by the appellant to the respondent for a period of 15

days to be inter-se agreed upon between the parties and in case of any non-agreement, the dates to be decided by the learned Family Court.

34. Each year during Winter vacations Baby Saesha Singh would be entrusted by the appellant to the respondent for a period of 4 days to be

inter-se agreed upon between the parties and in case of any non-agreement, the dates to be decided by the learned Family Court.

35. On the birthday of child, custody of Baby Saesha Singh would be entrusted to the respondent for a period of 4 hours in the evening, the exact

hours to be mutually agreed upon by the parties.

36. The appeal stands disposed of accordingly.

37. No costs.

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38. This contempt petition is filed by the appellant/wife wherein it is alleged that respondent/husband has violated the order of this court dated 21st

February, 2012 passed in the aforesaid FAO whereby this court has given interim custody of the child to the appellant on every Friday from 2.30

pm upto Sunday 6 pm. It is alleged that as per the said order, respondent/husband was to hand over the child to the appellant/wife at her school

i.e., Kendriya Vidyalaya, INA Market at 2.30 p.m. on every Friday. It is alleged that in terms of the said order, respondent did not bring the child

on February 24, 2012, March 2, 2012 and March 9, 2012, as such, he has violated the court order and he be punished for wilful and deliberate

disobedience of the aforesaid order. The contempt petition is supported by her affidavit.

39. Respondent/husband has filed reply denying the allegations made in the said application. According to him, on February 24, 2012, the child

had developed rashes on her body and was sick. The doctor had advised the respondent to keep the child in confinement and not to send her to

school. Despite that, he along with the child had gone to the school of the appellant at about 3 p.m. and waited outside the school but applicant did

not come to take the child, as such, he was compelled to return back as the child was sick. Thereafter, on March 2, 2012, after returning from

office, he picked up the child and reached the school gate of the appellant at 2.15 pm. The school gate was closed. After great difficulty, he had

called the appellant and when she came out, he asked her as to what arrangement she had made to take the child to a far off place like Noida. On

hearing that, appellant misbehaved with him. As a result of which, he came back with the child. On March 9, 2012, he could not bring the child to

the school as due to Holi holidays there was lack of attendance, as such, on March 6, 2012, he had called appellant on her mobile phone but she

did not pick up the call of the respondent. Even the appellant is having his mobile phone but she did not call back. The reply is supported by the

affidavit of respondent. According to respondent/husband, there is no wilful disobedience by him. There is an affidavit against affidavit. Prima facie

appellant has not filed any proof in support of her allegations. The interim order of this court has continued till today. There is no violation alleged

by the appellant after March 6, 2012. The main matter has already been decided in favour of the appellant wherein the custody of the child has

been ordered to be handed over to her and she has been appointed as guardian of the minor child and respondent/husband has been given the

visitation/meeting rights as are detailed in the said order. In these circumstances we are of the view that no orders are required on this contempt

petition. The same stands disposed of accordingly.