

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 958 OF 2023
(Arising out of SLP(C) No. 8746 of 2021)

ARUN SHARMA

Appellant(s)

VERSUS

ROXANN SHARMA

Respondent(s)

WITH

CIVIL APPEAL NO. 959 OF 2023
(Arising out of SLP(C) No. 8879 of 2021)

O R D E R

Leave granted.

Heard learned senior counsels for the appellant and the respondent.

The dispute in these matters relate to custody of an eleven-year-old male child. The appellant herein is his father, an Indian citizen having his permanent residence in India. The respondent-mother and the child are both citizens of the United States of America. We need not repeat here the particulars of the series of proceedings between the parties and the outcome thereof, which proceeding commenced in the year 2013 in the form of Matrimonial Custody Application No.59/2013/II. The said proceeding was instituted in the Court of Civil Judge, Senior Division at Margao. The first Court ordered permanent custody of the child to the respondent with a direction that the latter should reside within

the jurisdiction of that Court and not leave the State of Goa or the country without prior permission of the Court. The respondent was also directed to inform the petitioner if there was change of her residence. Appeal against that order, passed on 6th March 2018 was dismissed by the First Appellate Court and also by the High Court in Second Appeal. The respondent thereafter had filed a Miscellaneous Application (MCA No.195/2019) before the High Court in connection with the Second Appeal, primarily seeking permission to travel with her son to the United States of America. The order impugned in this appeal was passed in that application.

We are apprised by the learned senior counsel for the respondent-mother that she has been residing in India under orders of this Court.

The directives, against which the appellant has come up in appeal before this Court are contained in Paragraph '25' of the impugned judgment, which records:-

"As a result, I dispose of this Miscellaneous Application with these directions:

(A) The applicant may leave India for the USA along with Master Thalbir, the child, subject to these conditions:

(i) The applicant must allow the respondent to talk and interact with Master Thalbir twice every weekend: Saturday and Sunday. For that, she has to provide video-call access to the child at her end in the USA. The calls may be via skype, WhatsApp, or any other convenient electronic mode as the respondent chooses.

(ii) The applicant must visit India and stay here at least for two weeks. During that period, the applicant must hand over Master Thalbir to the father, who can have the child's exclusive custody. Of course, the applicant may speak to the child twice a week (audio or video calls).

(iii) If the respondent chooses to live in the USA, the same visitation rights as provided by the trial Court, and confirmed by the Apex Court, will continue to bind both the mother and the father.

(iv) Instead, if the respondent wants to visit the USA annually, the applicant must give the respondent two week's exclusive access to the child. It is subject to the respondent's providing all the details of his place of stay in the USA. This sole custody must be only during the child's vacation, lest it should disturb his education.

(v) In the alternative, if the respondent chooses to visit the USA more than once a year, he may have exclusive access to the child, in all, fifteen days, spread across his visits. Those days of sole custody must be either weekends or vacations.

(vi) If the applicant violates any of the above conditions, such violation shall be treated as an act of contempt. And if the respondent brings to the Court's notice any instance of violation, the Court may recall its judgment, dt. 18.09.2020, besides continuing the contempt proceedings against the applicant.

(vii) Once the applicant secures the travel documents for the child, she must file an undertaking before this Court that she would not abuse the arrangement now the Court has allowed and would always abide by them.

(B) On the Respondent's part:

(a) The respondent must provide all assistance to the applicant to secure an OCI card or any other travel documents to enable the applicant to take Master Thalbir to the USA.

(b) In four weeks from today, the respondent must hand over Master Thalbir's documents in his possession to the applicant to enable her to process the child's travel application.

With the above observations and directions, the Court disposes of this Miscellaneous Civil Application."

We do not think the said arrangement, as directed by the High

Court needs any interference, keeping the interest of the child in mind and considering the fact that he is being permitted to remain with his mother. It appears that the parties to this proceeding are still in the matrimonial relationship. We, however, stipulate a condition in addition to those contained in the arrangement specified by the High Court. That condition is that the respondent-mother shall pay the travel fare of the appellant-father once in a year for his journey to the location in the United States of America (to and fro) where the child would be residing as also for boarding and lodging of the appellant during his stay in the United States of America within the time-frame and frequency of visits as contained in the judgment under appeal.

The time during which the appellant-father shall travel to the United States of America at the cost of the respondent-mother would be intimated at least 12 weeks prior to his visit by the appellant-father.

The High Court shall release the passports of the respondent-mother and the child to enable them to travel to the United States of America, if they so desire.

The interim order dated 13.12.2022 passed in this matter shall stand dissolved, except the part of the order giving visitation rights of the appellant-father till the child remains in the State of Goa. Point was raised before us as regards maintainability of the petition in which the impugned order was passed. Argument of Mr. Das, learned Senior Counsel appearing for the appellant was that such a petition was not maintainable as no matter was pending before the Court at that point of time. In our opinion, however,

the jurisdiction to pass such order could be traced to Section 151 of the Code of Civil Procedure. Moreover, the initial order of the Trial Court had an element of transience, as it was stipulated that permission of the Court was necessary for leaving Goa or the country. In matters relating to custody of a child, the factors based on which an order is passed can undergo substantial changes over a period of time which may require revisiting the orders initially passed. The Court's jurisdiction to alter the order cannot permanently lapse even after a final order is passed in subsequent applications.

The appeals stand disposed of in the above terms.

Pending application(s), if any, shall stand disposed of.

..... J.
[ANIRUDDHA BOSE]

..... J.
[SUDHANSHU DHULIA]

NEW DELHI;
FEBRUARY 10, 2023.

ITEM NO.46

COURT NO.11

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No. 8746/2021

(Arising out of impugned final judgment and order dated 24-03-2021 in MCA No. 195/2019 passed by the High Court Of Judicature At Bombay At Goa)

ARUN SHARMA

Petitioner(s)

VERSUS

ROXANN SHARMA

Respondent(s)

(IA No. 133580/2021 - APPLICATION FOR PERMISSION
IA No. 163703/2021 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 73128/2022 - CLARIFICATION/DIRECTION
IA No. 136899/2021 - CONDONATION OF DELAY IN FILING
IA No. 133581/2021 - EXEMPTION FROM FILING AFFIDAVIT
IA No. 104918/2021 - EXEMPTION FROM FILING AFFIDAVIT
IA No. 163705/2021 - EXEMPTION FROM FILING AFFIDAVIT
IA No. 76581/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT)

WITH

SLP(C) No. 8879/2021 (IX)

(IA No. 136904/2021 - CONDONATION OF DELAY IN FILING
IA No. 104926/2021 - EXEMPTION FROM FILING AFFIDAVIT
IA No. 77374/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT)

Date : 10-02-2023 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ANIRUDDHA BOSE
HON'BLE MR. JUSTICE SUDHANSHU DHULIA

For Petitioner(s) Mr. Anupam Lal Das, Sr. Adv.
Mr. Bimlesh Kumar Singh, AOR
Mr. Vivek Phadke, Adv.
Mr. Rajeev Kumar Gupta, Adv.
Mr. Joginder Mann, Adv.
Mr. D. K. Thakur, Adv.

For Respondent(s) Mr. Colin Gonsalves, Sr. Adv.
Mr. Shiyas Kr., Adv.
Mr. Satya Mitra, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeals stand disposed of in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(SNEHA DAS)
SENIOR PERSONAL ASSISTANT

(Signed order is placed on the file)

(VIDYA NEGI)
ASSISTANT REGISTRAR