

ITEM NO.52

COURT NO.7

SECTION XV

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(s). 19072/2021

(Arising out of impugned final judgment and order dated 20-10-2021 in DBCMA No. 796/2021 passed by the High Court Of Judicature For Rajasthan At Jodhpur)

HIMANSHU CHORDIA

Petitioner(s)

VERSUS

ARUSHI JAIN

Respondent(s)

(MEDIATION REPORT RECEIVED)

IA No. 10716/2022 - APPLICATION FOR PERMISSION IA No. 149391/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT IA No.77197/2022 - EXEMPTION FROM FILING O.T. IA No. 11287/2022 - EXEMPTION FROM FILING O.T. IA No. 74089/2022 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 20-05-2022 These matters were called on for hearing today.

CORAM : HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE C.T. RAVIKUMAR

For Petitioner(s) Mr. Prabhjit Jauhar, Adv.
Ms. Aishwarya Makhija, Adv.
Mr. S. S. Jauhar, AOR

For Respondent(s) Mr. Yogesh Mahur, Adv.
Mr. Sumit Sharma, Adv.
Mr. Ronak Karanpuria, AOR
Mr. Jai Wadhwa, Adv.

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

The special leave petition is against an order dated 28.10.2021 passed by the Division Bench of the High Court of the Judicature for Rajasthan at Jodhpur dismissing the appeal filed by the petitioner against an order dated 20.07.2021 of the Family Court rejecting the application of the petitioner for interim custody of his minor son, Charvik. The application was declined

having regard to the Covid-19 Pandemic situation that was prevailing then. The order impugned cannot be faulted.

When this matter was called on for hearing on 16.12.2021. Learned counsel appearing on behalf of the petitioner submitted that the petitioner might be permitted to visit his minor son at Udaipur during the ensuing Christmas Holidays and particularly on 27.12.2021, which was the petitioner's birthday. The petitioner was agreeable to go to Udaipur, where the child was residing with his mother and stay in a hotel. This Court directed that the petitioner might pick up the the child and take him out within Udaipur. The petitioner was, however, not permitted to take the child out of Udaipur. The petitioner was permitted to visit the child on 26.12.2021 and again on his own birthday on 27.12.2022, after taking necessary tests to ascertain that he was not infected with COVID-19. The order was complied with.

By an order dated 04.03.2022, this court referred the parties to the Supreme Court Mediation Centre. This court also permitted the petitioner to go to Udaipur during the Holi holidays and stay in a hotel. On the day of Holi, he was pemitted to take the child out for a few hours in the afternoon, and then return the child to his mother, being the respondent, after dinner. This Court also directed that if the child was agreeable, the petitioner might spend the week end, i.e., 19th and 20th March, 2022 with the child, and return the child to the respondent-mother by the evening of 20.03.2022. The petitioner took the child out, and also spent two days with the child.

The petitioner has relied on some photographs to show that the child was happy in his company. Learned counsel for the respondent-mother submitted that similar photographs can also be produced by the respondent.

We have no doubt that the child needs both parents and the child would be equally happy, if not happier, in the company of the mother as well. The child would perhaps be happiest if he could have both his parents. Unfortunately, the parents are unable to resolve their differences and stay together. Be that as it may, the child has a right to access both parents, and get the love and affection of both parents. Whatever be the differences between the spouses, the child cannot be denied company of his father.

We are informed that the birthday of the child is tomorrow, i.e., 21.05.2022. The petitioner-father may go and visit the child on his birthday tomorrow and spend a little time with the child on his birthday.

We are also informed that the summer vacation has commenced. The petitioner may, during the summer vacation pick the child up from his mother's house at 5.00 p.m. in the evening and return him to his mother by 9-9.30 p.m. If the child is agreeable, the petitioner-father may spend one or two days with the child every week during the summer vacation. No pressure should be put on the child.

As the COVID-19 situation in the country has improved and life

has more or less normalised, the parties may in future approach the Family Court concerned for requisite directions with regard to custody of/access to the child.

The special leave petition is disposed of.

Pending applications, if any, stand disposed of.

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(MATHEW ABRAHAM)
COURT MASTER (NSH)