

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Cr1.) No(s). 5229/2022

(Arising out of impugned final judgment and order dated 16-05-2022 in CRWP No. 1068/2022 passed by the High Court of Punjab & Haryana at Chandigarh)

ROSHAN LAL & ANR.

Petitioner(s)

VERSUS

GAUTAM KHANNA & ORS.

Respondent(s)

Date : 12-09-2023 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY S. OKA
HON'BLE MR. JUSTICE PANKAJ MITHAL

For Petitioner(s)

Ms. Pinky Anand, Sr. Adv.
Ms. Kirti Dua, Adv.
Ms. Saudamini Sharma, Adv.
Mr. Anshul Gupta, Adv.
Ms. Pratibha Hooda, Adv.
Ms. Shubhangi Tiwari, Adv.
Mr. Shantanu Raj, Adv.
Mr. Rajesh Kumar, Adv.
Mr. Gaurav Goel, AOR

For Respondent(s)

Mr. Keane Sardinha, Sr. Adv.
Mr. Vibhuti Sushant Gupta, Adv.
Ms. Aparna Gupta, Adv.
Ms. Priya Sirohi, Adv.
Mr. Narender Kumar Verma, AOR

Mr. Ardhendumauli Kumar Prasad, A.A.G.
Mr. Vishnu Shankar Jain, AOR

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

We have heard the learned senior counsel
representing the parties.

2. The petitioners are maternal grand parents of the two minor children. By the impugned order, the High Court in a *Habeas Corpus* Petition directed that the custody of the two minor children shall be handed over to the first respondent who is the father of the children. The mother of the children is no more. The impugned order is of 16th May, 2022. There is stay granted by this Court and therefore, the children continue to be in the custody of the petitioners.

3. It appears that on the basis of undertaking given by the first petitioner which is quoted in the impugned judgment that the custody of the children came to the petitioners in November, 2021. The respective ages of the children at present are 7 and 5 years. We are informed that a substantive Custody Petition filed by the petitioners is pending in the Family Court at Agra in which an interim application made by the petitioners for grant of interim custody of the children is pending. *Prima facie*, the petitioners may not have abided by the undertaking given by them which is quoted in the impugned judgment. However, the issue of custody of minor children cannot be decided on the basis of rights claimed by the rival parties and the only paramount consideration is the welfare of the children.

4. Looking to the tender age of the children and looking to the fact that at least from November, 2021, the children are with the petitioners, we are of the view that the issue of welfare of the children should be best left to be decided by the competent Family Court in the pending Custody Petition and it will not be proper at this stage to disturb the custody of the children.

5. Our attention is invited to the interim order passed by the Family Court at Agra on 18th July, 2023 by which access has been granted to the first respondent to meet the children on every first and third Saturday between 3.00 p.m. to 5.00 p.m. in the Mediation Centre attached to the District Legal Services Authority, Agra. Moreover, a permission has been granted to the first respondent-father to interact with the children on video call, as set out in the interim order dated 18th July, 2023.

6. We, therefore, propose to direct that the impugned order shall not be implemented till the final disposal of the application for interim custody made by the petitioners. The issue of custody will be governed by the interim order which may be passed by the Family Court.

7. In the meanwhile, the arrangement made under the interim order dated 18th July, 2023 of the Family Court will continue till interim order is passed in the Custody Petition with the following modifications:

(a) The first respondent and his parents shall be allowed to meet the children in terms of the said order on every first and third Saturday between 2.00 p.m. to 5.00 p.m; and

(b) If any other relative of the first respondent wishes to meet the minor children, the Secretary of the District Legal Services Authority will permit the said relative to meet the minor children during the aforesaid hours after verifying the relationship between the relative and the first respondent.

8. Whatever may be the outcome of the Custody Petition, it is necessary in the interests of the minor children that they get company of their father at least for a limited period as indicated above. Therefore, it is also for the petitioners to encourage the minor children to maintain very good relationship with their father.

9. With the above directions, we dispose of this Special Leave Petition by directing that the impugned order to the extent to which custody was ordered to be disturbed shall not be implemented till the final disposal of the interim application pending before the Family Court. The issue of custody shall be governed by the interim order which may be passed by the Family Court in the pending Custody Petition.

10. We, however, make it clear that the Family Court shall decide the interim application as well as the main Custody Petition on its own merits taking into consideration the cardinal principle that the welfare of the minor is the only paramount consideration.

11. The Family Court shall give necessary priority to the disposal of the pending interim application. We expect the Family Court to decide the same within a maximum period of two months from today.

12. In the event any modification is required in the interim arrangement which we have made above, the parties are free to approach the Family Court with the proper application in that behalf.

13. Pending application, if any, also stands disposed of.

(ANITA MALHOTRA)
AR-CUM-PS

(AVGV RAMU)
COURT MASTER