

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 2736 of 2021
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2021
In
R/FIRST APPEAL NO. 2736 of 2021

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NIDHI ARUN CHATURVEDI
Versus
ARUN KAILASHNATH CHATURVEDI

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Appearance:

DEV D PATEL(8264) for the Appellant(s) No. 1
MR NEERAJ J VASU(3159) for the Appellant(s) No. 1
MS. KRUTI M SHAH(2428) for the Defendant(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE J.B.PARDIWALA
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 28/09/2021

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1. We have heard Mr. Shalin Mehta, the learned senior counsel assisted by Mr. Neeraj Vasu, the learned advocate appearing for the appellant (original respondent/mother) and Ms. Kruti M. Shah, the learned counsel appearing for the respondent (original applicant/father). The subject matter of challenge in the present appeal filed under Section 47 of the Guardians & Wards Act, 1890 (for short "the Act, 1890") is to the order passed by the Family Court at Ahmedabad dated 27th August, 2021 in the Civil Misc. Application No.138 of 2015 filed by the father under

Section 25 of the Act for the custody of the minor son “Arush”. By the impugned order, the Family Court allowed the application filed by the father and has directed the mother to handover the custody of minor child “Arush” to the father.

2. It appears from the materials on record that the parties in the present appeal got married sometime in the year 2006. Arush was born in the year 2009. It also appears that sometime from 2012 onward, matrimonial disputes arose between the parties, as a result, the appellant herein left her matrimonial home along with her son Arush in the year 2015. Since 2015, the minor son seems to be in the custody of his mother. We are informed that the mother is serving as a teacher at Gudgaon. The son is also studying in the very same school in which the mother is serving. At present, because of the Covid Pandemic situation, the appellant is at her parental home at Mathura, State of U.P.

3. We are also informed that during the interregnum period, i.e, between 2015 and 2021, the father has met Arush on regular basis.

4. Having regard to the peculiar facts and circumstances of the case, we would like to speak to Arush. We would also like to speak to the appellant as well

as the respondent.

5. Let notice be issued to the respondent, returnable on 30.09.2021. The respondent shall also personally remain present before this Court on the returnable date.

6. Ms. Shah, the learned counsel appearing for the respondent has expressed strong apprehension that the mother, i.e, the appellant may leave India any time with her son.

7. We inquired with the learned counsel appearing for the parties as regards the status of the passports of both, the appellant and minor Arush. We are informed that the passport of the appellant has already expired and the same is in the custody of the Navrangpura Police Station. If there is a passport in the name of minor Arush and the passport is operative as on date, then the same shall be deposited with the Registry of this Court by day after tomorrow. This Court shall make all possible endeavour to ensure only one thing, and that is the interest of the child. Whatever may be the individual rights of the parties under the Act, the Court should bear in mind the paramount consideration and that is the welfare of the child.

8. No notice now be issued by the Registry to the respondent as Ms. Shah, the learned counsel, has already

entered her appearance.

9. Post this matter on 30.09.2021 to be heard in the chamber at 5:15.

10. The impugned order passed by the Family Court shall remain stayed from its operation till further orders.

(J. B. PARDIWALA, J)

(VAIBHAVI D. NANAVATI, J)

Vahid