

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Civil Appeal No.1591 of 2019
(@ Special Leave Petition (C) No.20579 of 2018)

SUNILDAS **Petitioner(s)**

VERSUS

RAMYA SUNILDAS & ORS. **Respondent(s)**

Civil Appeal Nos.1592-1593 of 2019
(@ Special Leave Petition (C) Nos.21134-21135 of 2018)

O R D E R

1. Leave granted.
2. Heard learned counsel for parties.
3. In the proceedings before the High Court dealing with the issue of maintenance, it appears that the issue of the custody of the only child of the parties came to be examined. In terms of the agreed order dated 1.3.2018, the respondent-mother was given visiting rights while the custody remaining with the father.
4. Thereafter the conduct of the appellant-father, which left much to be desired, has resulted in orders including the impugned orders that now the custody is

with the respondent-mother with no direction having been passed about the visiting rights of the appellant-father.

5. The principal grievance raised before us by learned counsel for the appellant is that there was really no occasion for the custody issue to be examined by the High court as no proceedings had been filed before the family Court and the only issue to be examined was of the maintenance for which the appeal had been filed by both the parties.

6. On the conspectus of the matter we consider it appropriate to issue the following directions:

(i) The High Court will determine the appeals *qua* the issue of maintenance.

(ii) The appellant is free to initiate appropriate proceedings *qua* the custody of the child before the family court which will be determined on its own merits uninfluenced by any orders which may have been passed by the High Court.

(iii) In the interregnum period the custody of the child shall remain with the respondent-mother with visiting rights for the father on a *pari materia* basis

as per the agreed order dated 1.3.2018 now instead of the respondent-mother, the appellant-father would have the visiting rights on the same terms.

The appeals are disposed of accordingly.

....., J.
(SANJAY KISHAN KAUL)

....., J.
(INDIRA BANERJEE)

NEW DELHI
FEBRUARY 11, 2019

ITEM NO.51

COURT NO.13

SECTION XI-A

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 for Special Leave to Appeal (C) No.20579/2018

(Arising out of impugned final judgment and order dated 23-07-2018 in MAT Appeal No.739/2017 passed by the High Court of Kerala at Ernakulam)

SUNILDAS

Petitioner(s)

VERSUS

RAMYA SUNILDAS & ORS.

Respondent(s)

WITH

SLP(C) No. 21134-21135/2018 (XI-A)

IA NO.145026/2018-FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS

IA 145033/2018-APPLICATION SEEKING CUSTODY OF CHILD

FOR APPROPRIATE ORDERS/DIRECTIONS ON IA 12805/2019)

Date : 11-02-2019 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MS. JUSTICE INDIRA BANERJEE

For Petitioner(s) Mr. Sidhartha Dave, Adv.
Mr. Ranjith B. Marar, Adv.
Mr. A. Karthik, AOR
Ms. Smrithi S., Adv.
Ms. Kajal Bhatia, Adv.

For Respondent(s) Ms. Nidhi, AOR

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

Leave granted.

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

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

(POOJA ARORA)
COURT MASTER

(ANITA RANI AHUJA)
COURT MASTER

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(Signed order is placed on the file)