

ITEM NO.15

COURT NO.14

SECTION XVI-A

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

Transfer Petition(s)(Civil) No. 83/2019

DIVYA NAIR

Petitioner(s)

VERSUS

ARJUN SASIKUMAR

Respondent(s)

(IA No. 49352/2019 - APPROPRIATE ORDERS/DIRECTIONS
 IA No. 1561/2021 - APPROPRIATE ORDERS/DIRECTIONS
 IA No. 49423/2020 - CLARIFICATION/DIRECTION
 IA No. 6308/2019 - EX-PARTE STAY
 IA No. 105680/2020 - EXEMPTION FROM FILING O.T.
 IA No. 49424/2020 - EXEMPTION FROM FILING O.T.
 IA No. 145353/2021 - PASSING APPROPRIATE ORDER OR DECREE UNDER
 ARTICLE 142 OF THE CONSTITUTION
 IA No. 19918/2019 - PERMISSION TO FILE ADDITIONAL
 DOCUMENTS/FACTS/ANNEXURES
 IA No. 30684/2019 - VACATING STAY)

WITH

T.P.(C) No. 463/2019 (XVI-A)

(FOR STAY APPLICATION ON IA 37085/2019)

CONMT.PET.(C) No. 30/2021 in T.P.(C) No. 83/2019 (XVI-A)
 (FOR ADMISSION.)

Date : 27-04-2022 These matters were called on for hearing today.
 CORAM :

HON'BLE MR. JUSTICE DINESH MAHESHWARI
 HON'BLE MR. JUSTICE ANIRUDDHA BOSE

For Parties

Mr. Pallav Shishodia, Sr. Adv.
 Mr. Ranjith K. C., AOR
 Mr. Abhishek Singh, Adv.
 Mr. Bijo Mathew Joy, Adv.
 Ms. Shreya Singh, Adv.
 Ms. Neha Tripathi, Adv.

Mr. Kush Chaturvedi, AOR
 Ms. Priyashree Sharma PH, Adv.
 Mr. Syed Faraz Khan, Adv.

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

In these cross transfer petitions, filed respectively by the
 wife [Transfer Petition (C) No. 83 of 2019] and by the husband

[Transfer Petition (C) No. 463 of 2019] of an estranged marriage, after rounds of preposition for settlement, ultimately the parties arrived at a settlement on 16.11.2019, that was duly taken note of by the Hon'ble Single Judge of this Court in the order dated 04.12.2020 and thereby, several cases between the parties, including the child custody petitions filed by them were also disposed of.

While concluding the said order dated 04.12.2020, the Court found two aspects of the matter remaining to be taken care of, one being of dissolution of marriage with decree of divorce by mutual consent; and second, about the interim custody of the child to the mother. The Court, therefore, kept these petitions pending and provided for the arrangements looking to the impending Christmas vacations in the following words: -

"There are two more things remaining to be done. The first is to file a joint application seeking dissolution of marriage by a decree of divorce by consent and the second thing that remains to be done is to provide interim custody of the child to the wife during Christmas vacation.

In order to encourage the parties to honour their commitment under the agreement and not to create any further problems between them, I keep both these transfer petitions pending. The husband shall hand over the custody of the child to the wife on 19.12.2020 and the wife shall return the custody of the child to the husband on 01.01.2021. During this period, the child shall be with the mother.

These transfer petitions may be called immediately after the Court re-opens after Christmas vacation. On the next date of hearing, both parties may file a joint application for divorce by mutual consent. The parties shall bear in mind that unless this arrangement is worked out by both of them smoothly, their application for dissolution of divorce will be in jeopardy and it may not be viewed in the light of the settlement agreement."

It has been pointed out during the course of submissions today that the arrangement as expected by the said order dated 04.12.2020 did not work out, for which, each of the parties to the litigation has its own submission to make but, at this stage, we need not enter into any of those aspects and would prefer leaving the same for the present, in view of the order proposed to be passed today.

Two applications are placed before us in these matters; one being the joint application by the parties seeking dissolution of marriage with decree of divorce by mutual consent [I.A. No. 61749 of 2022]; and another being an application by the wife seeking interim custody of the minor child [I.A. No. 55629 of 2022].

Though, on 25.04.2022, learned counsel for the parties made submissions for passing appropriate orders on the joint application seeking dissolution of marriage with decree of divorce by mutual consent and thereafter to consider the prayer in the other application for interim custody but, looking to the background aspects as available on record, we have considered it appropriate to examine the prayer in relation to the interim custody of the minor child at the first and before passing orders on the said joint application for dissolution of marriage.

After having heard learned counsel for the parties on the said application seeking interim custody (I.A. No. 55629 of 2022) and having taken note of the terms of settlement which both the parties have arrived at including the provision for visitation rights as also interim custody, as mentioned in clause 'D' of the settlement agreement in its paragraphs (i) to (x), more particularly that mentioned in paragraph (vi) thereof as also taking note of the

admitted position that the child is at present having summer vacations, which commenced from the 1st week of April, 2022, we deem it appropriate to provide for interim custody to his mother for a reasonable period during the summer vacations. It has been informed that the summer vacations for the child shall be upto 05.06.2022 and the child will be required to attend the school again on 06.06.2022. It has also been informed that the wife is residing at Nagpur (Maharashtra) at present whereas the husband and the child are residing at Ernakulum (Kerala) at present.

In the totality of facts and circumstances of the case, we consider it just and proper to provide for interim custody of the child with his mother from 04.05.2022 to 30.05.2022.

In order to facilitate the processes of handing over-taking over and for appropriate supervision, we also deem it appropriate to provide that the same be carried out before the respective Family Courts, where the parties had earlier filed their respective custody petitions.

Accordingly, it is ordered and provided that:

(1) The husband Mr. Arjun Sasikumar (father of the child) shall hand over the custody of the child Advaith Nair to the wife Ms. Divya Nair (mother of the child) before the Principal Judge, Family Court, Nagpur (Maharashtra) on 04.05.2022, latest by 04:00 p.m.

We would request the said Principal Judge, Family Court, Nagpur to draw a memo of such proceedings, of handing over the custody of the child with reference to the Custody Petition No. D3 of 2019, which otherwise

stands disposed of in terms of the order of this Court dated 04.12.2020.

A copy of the memo may be forwarded to the Registry of this Court.

(2) The wife Ms. Divya Nair (mother of the child) shall hand over the custody of the child Advaith Nair back to the husband, Mr. Arjun Sasikumar before the Principal Judge, Family Court, Ernakulum (Kerala) on 30.05.2022, latest by 04:00 p.m.

We would similarly request the said Principal Judge, Family Court, Ernakulum to draw a memo of the handing over of the custody back to the father of the child, with reference to O.P.(G & W) No. 1358 of 2017 in that Court, that had also been disposed of in terms of the order of this Court dated 04.12.2020.

A copy of this memo may also be forwarded to the Registry of this Court.

Having regard to the circumstances of the case, we deem it appropriate to take up these matters for necessary directions before the summer vacations of this Court.

Therefore, list these matters on 13.05.2022.

(SHRADDHA MISHRA)
SENIOR PERSONAL ASSISTANT

(DIPTI KHURANA)
COURT MASTER (NSH)