



IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

&

HON'BLE SHRI JUSTICE AVANINDRA KUMAR SINGH

ON THE 20th OF AUGUST, 2026

FIRST APPEAL No. 552 of 2020

ABHISHEK SINGH

Versus

SMT. ANNANYA @ PRIYA AND OTHERS

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Appearance:

Shri Manoj Sharma, Senior Advocate assisted by Ms.Aqsa Mokarram,
Advocate for the appellant.

Shri Akhil Singh, Advocate for the respondent.
.....

ORDER

Per. Justice Vivek Agarwal

With consent of learned counsel for the parties, this appeal is finally heard.

This appeal is filed by the appellant/father Abhishek Singh under Section 47 of the Guardian and Wards Act, 1890 read with Section 19 of the Family Courts Act, 1984 being aggrieved of judgment dated 20.7.2020 passed by learned Principal Judge, Family, Court, Shahdol in M.J.C/GW/4/2018 rejecting the application filed by the appellant/father Abhishek Singh for transferring the custody of the ward from the respondent/mother Smt.Ananya @ Priya Singh to the appellant/father Abhishek Singh.



It is submitted by learned counsel for the appellant that the ward is now aged about twelve years and, therefore, is in a position to take a decision with regard to his well-being. The visitation rights are being violated repeatedly inasmuch as the ward has been removed from the jurisdictional area of the Court at Shahdol to Ghaziabad, and, therefore, the visitation rights cannot be enforced. There have been frequent violations of the visitation rights.

It is submitted by learned counsel for the respondent that, firstly, a twelve-year-old child is not competent to take decisions regarding what is good or bad for him; secondly, since the respondent/mother has moved to Ghaziabad, the ward has also moved alongwith his mother where he is studying; and thirdly, the appellant/father has also contracted a second marriage and has children from the said marriage. The appellant/father has never visited Ghaziabad in terms of the High Court's order dated 22.12.2021 and, therefore, his contention that he has not been allowed to meet his ward, is incorrect.

Learned counsel for the appellant disputes the submission made by learned counsel for the respondent that the appellant has children from his second marriage.

However, it is an admitted fact that there is no document on record to establish that the appellant/father ever visited Ghaziabad to meet his ward in terms of the High Court's order dated 22.12.2021.

Be that as it may, the fact of the matter is that, when the impugned order is tested on the touchstone of the welfare of the ward, we do not find



any error in the impugned order.

As far as the interim arrangement dated 22.12.2021 is concerned, the same is required to be honoured. The appellant/father, being the biological father of the ward, has a right to meet the ward. On the request of the parties, it was decided to permit the ward to meet the appellant/father at a neutral place. It was also directed by a Coordinate Bench of this Hon'ble High Court that the ward would meet his father, i.e. the appellant, in presence of his mother, i.e. the respondent, at the District Child Care Centre, Ghaziabad for a period of two hours once every Sunday during the pendency of this appeal.

We hereby make the aforesaid interim order absolute.

At this stage, it is submitted by Shri Manoj Sharma, Senior Advocate for the appellant/father that the respondent/mother usually stays at Shahdol.

In **Vivek Singh versus Romani Singh (2017) 3 SCC 231**, the father, who was an Army officer, kept his daughter with him from the age of 21 months to 8 years, despite Court orders and contempt proceedings. Because the child had lived with the father for a long time and had little opportunity to stay with her mother, she naturally preferred to remain with her father. However, the Apex Court held that when the girl had reached the age of 8 years, she was entering a stage where her thinking and personality were developing. At that stage, the love, care and company of the mother were considered important for her proper development. The Apex Court also considered that the mother, being a school teacher, was in a better position to look after the child's education and schooling.

In the present case, the ward is 12 years old and, therefore, the same



reasoning applies even more strongly. At the age of 12, the child is more mature and is going through an important stage of emotional, mental and physical development. His relationship with his mother, his education, emotional support and overall development are important considerations. Therefore, merely because the child has been living with the mother for a long time or prefers to stay with her, that preference should not by itself decide custody. The Court must consider what is in the best interest and welfare of the child, including the importance of the mother's care and guidance at this stage of the child's life.

I n **Ruchi Majoo versus Sanjeev Majoo (2011) 6 SCC 479** , the respondent/father had contracted a second marriage and did not appear to be genuinely interested in taking the actual custody and day-to-day responsibility of the minor. Considering the welfare and best interests of the child, the Apex Court held that the minor would be better off continuing in the custody of the mother, particularly when the father had contracted a second marriage.

The facts of the present case are similar to those in **Ruchi Majoo versus Sanjeev Majoo (supra)**, as the appellant/father in the present case has also contracted a second marriage. This is an important circumstance while considering the welfare of the minor, especially when the father is not showing a genuine willingness to take responsibility for the child. The settled principle is that, in matters of custody, the welfare of the minor is the foremost consideration. Therefore, following the principle laid down in **Ruchi Majoo versus Sanjeev Majoo (supra)**, the minor would be better



served by continuing in the custody of the mother, where the child can have greater stability, continuity of care and emotional support.

Keeping in view the principles laid down in **Vivek Singh versus Romani Singh (supra)** and **Ruchi Majoo versus Sanjeev Majoo (supra)**, it is directed that:-

1. The appellant/father shall be permitted to meet his ward every working Saturday, if the respondent/mother is at Shahdol, at the Creche attached to the District Court, Shahdol, or, in its absence, at the Office of the Secretary, District Legal Services Authority, Shahdol, Shahdol.
2. The respondent/mother shall permit video calling every Sunday from 8:00 PM to 8:30 PM, subject to the convenience of the ward and his educational schedule.
3. The respondent/mother shall share her mobile number upon an undertaking by Shri Manoj Sharma, Senior Advocate assisted by Ms.Aqsa Mokarram, Advocate that the appellant/father shall not abuse the ward, his mother, or their relatives, directly or indirectly.
4. In case of any abuse, the ward and his mother shall be entitled to discontinue the conversation.
5. Liberty is reserved to the parties to approach learned Trial Court afresh for visitation rights.

In above terms, this appeal is disposed of.

Record, if any, be sent back, forthwith.

(VIVEK AGARWAL)
JUDGE

(AVANINDRA KUMAR SINGH)
JUDGE