

BVNJ & NSSGJ

Pronounced on 02.07.2020

**MFA.No.1536/2015 c/w. MFA.No.137/2015,
CCC.Nos.1236/2015, 656/2016 , 673/2016,
680/2016, 711/2016, 810/2016, 991/2016,
1144/2016, 1381/2016, 422/2017 &
MFA.No.4749/2019**

ORDER ON I.A.NO.I/2020

IN

M.F.A.No.1536/2015

An Application is filed in MFA.No.1536/2015 c/w other cases by the mother (wife) against the father (husband) of minor child, Aditya Rajiv Ratnam. The said appeal has been filed by her being aggrieved by Order dated 21/11/2014, passed in G & W.C.No.101/2012, by the III Addl. Prl. Judge, Family Court, Bangalore. The operative portion of the said order reads as under:-

"ORDER

The petitioner is appointed and declared as the guardian of the person of the minor child Master Aditya Rajiv Ratnam.

The minor child shall continued to be under the care and custody of the petitioner-mother.

The respondent is permitted to have the custody of the minor child Master Aditya Rajiv

Ratnam for first half of the Dasara, Christmas & Summer Holidays of the School.

The respondent is also permitted to have the custody of the minor child on 2nd & 4th Saturday & Sunday of every English calendar month between 10 a.m. on Saturday till 6 p.m. on Sunday.

The respondent is also permitted to have the custody of the minor child on the eve of his Birthday between 5 p.m. to 8 p.m.

With regard to Hindu Festivals viz., Ugadi, Ganesha-Chaturthi, Krishna Janmastami & Deepawali, the respondent is permitted to celebrate the festivals along with the child for alternative year commencing from 2015.

The respondent is also permitted to attend Parent-Teacher Meeting of the School in which the child is studying.

The petitioner shall inform the respondent in case she change the School of the child.

In case the petitioner wanted to go abroad to attend the law suits pending against her in US Court or on business tour, she shall

hand over the custody of the child to the respondent till she returns to India.

The petitioner & respondent shall equally bear the education expenses of the minor child Master Aditya Rajiv Ratnam.

The respondent is directed to pay sum of `10,000/- (Rupees Ten Thousand only) per month towards the maintenance of the child. The maintenance amount shall be enhanced to 10% for every two years. The maintenance amount shall be remitted to the account of the minor child to be opened by the petitioner. The respondent shall continue to pay the maintenance at the above said rate till the child completes his education.

The petitioner is directed to open Bank Account in the name of the minor child and furnish the Bank Account details to the respondent.

The petitioner & respondent are at liberty to take the child abroad and domestic tours for holidays during their tenure with prior intimation to other. If the respondent wanted to go abroad along with the child the petitioner shall hand over the passport and other

necessary documents of the child to the respondent.

The petitioner & respondent shall not spoil, poison or prejudice the mind of the child against each other.

The respondent shall pickup and drop the child in the petitioner's house.

Accordingly, the Petition & Counter-Claim are disposed of."

2. The said order was considered by the Hon'ble Supreme Court in Civil Appeal No.9340/2018 arising out of the interim order dated 08/09/2016 in CCC.No.1236/2015 passed by this Court. On 11/09/2018, the Hon'ble Supreme Court observed that during the pendency of CCC.No.1236/2015 before this Court, arrangement regarding custody, made by the Family Court Bengaluru, shall continue to operate subject to direction regarding exchange point being Tirumala Tirupati Devasthanam Temple, Malleshwaram, Bengaluru, on the designated dates.

3. In terms of the directions issued by the Family Court, the minor child was to be in the custody of the

father during the first half of the summer vacation. But, this year, on account of the outbreak of Covid-19 and the same being declared as a pandemic, summer vacation for schools was advanced and it commenced from 10/03/2020 abruptly ending the academic year 2019-20. Accordingly, respondent took custody of the minor child, Aditya Rajiv Ratnam from the designated point on 14/03/2020 and since then, the child has been with the father. In the circumstances, application has been filed by the appellant – mother, to handover the custody of the child Aditya Rajiv Ratnam, to her, having regard to the order passed by the Family Court.

4. We have heard learned counsel for appellant and learned counsel for respondent in the presence of the parties and minor child, Aditya Rajiv Ratnam, who appeared along with his father on video conference.

5. Appellant's counsel contended that since 14/03/2020, the child is with the respondent – father. That he had the right to custody of the child only during the first half of the summer holidays, thereafter, he had to send him to the appellant – mother, but the same has not

happened and hence, this application has been filed as the appellant has had no contact with the minor child since mid March 2020. Therefore, a direction may be issued to the respondent – father to handover custody of Master Aditya Rajiv Ratnam to the appellant herein.

6. There are no written objections filed to the said application.

7. However, learned counsel for respondent submitted that even prior to the filing of this application, the connected appeal was listed before this Court in February 2020. That this Court had interviewed the minor child as well as his parents, with regard to the issue of his custody and also on the aspect of the dissolution of marriage between the parties. This was to bring to an end all litigation between the parties. That the respondent is agreeable for divorce by mutual consent to be ordered in the connected case provided suitable orders are made regarding shared custody of the minor child in the event the parties do not arrive at any consensus on that aspect of the matter. He submitted that even now the respondent is agreeable to the same suggestion and this Court may

consider passing of decree of divorce by mutual consent between the parties, subject to shared parenting of the minor child and if possible, the parties would file a joint application in that regard. That the said order may be made in the connected matter so that all litigation between the parties would come to an end.

8. By way of reply, learned counsel for appellant submitted that the appellant is agreeable to the passing of decree for divorce by mutual consent by this Court but adequate and sufficient directions may have to be issued with regard to the custody of the minor child in the event there is no consensus between the parties on that aspect of the matter. But he emphasized that pending consideration of the aforesaid aspects of the case, the application filed by the appellant – mother may be considered and custody of the child Aditya Rajiv Ratnam may be handed over to the appellant since respondent has had the custody of the child for the last three months and there has been no contact between mother and the child as such.

9. Having heard learned counsel for respective parties, at the outset, it is necessary to observe that Novel Corona Virus 2019 has engulfed the globe as well as India and in order to contain the same, Union Government as well as the State Government declared a lockdown with effect from the midnight of 24/03/2020, which was initially till 14/04/2020 and subsequently, extended up to 03/05/2020 and thereafter, the State Government has extended it subject to certain relaxations. That even today, the State is gravely battling with Covid-19 pandemic and the cases are increasing day-by-day, especially the city of Bengaluru. It is also noted that on account of Covid-19, schools have shut and not re-opened, even after the summer vacation so as to enable the children to attend the schools physically. In the circumstances, classes are being conducted online or virtual classes are being held and a large number of children are attending classes through video conference. When we interviewed the minor child Aditya Rajiv Ratnam on video conference, he also stated that he is attending classes through video conference and that his father is assisting him in that regard.

10. Thus, on account of Covid-19 and consequent lockdown imposed by the Union Government as well as the State Government, there has been no handing over of custody of Aditya Rajiv Ratnam by the respondent to the appellant in terms of the directions issued by the Family Court. But presently the summer holidays are over and Aditya Rajiv Ratnam is attending to his classes online through video conference and is not attending school physically. He has stated that his classes are from 8.30 a.m. to 3.00 p.m.

11. Learned counsel for appellant has submitted that Aditya Rajiv Ratnam had to be returned to his mother by his father on 24/04/2020, the same has not happened and therefore, a direction may be issued in that regard. To counter the same, learned counsel for respondent stated that the appellant – mother has violated the conditions imposed by the Family Court in as much as she had taken him to Mysore and she had also gone abroad without informing the respondent herein. The contention of the respondent is also that, appellant's house is under repair and on account of dust, the minor child is likely to suffer from an allergy and therefore, at this stage, no

direction may be issued to handover custody of minor child to the appellant. But appellant's counsel submitted that appellant has moved to another house in the vicinity.

12. We have considered the aforesaid submissions in light of Covid-19 pandemic and also the directions issued by the Family Court. At the outset we observe that the said directions were issued much prior to the onslaught of Covid-19, which has been declared as a pandemic. When we interviewed the minor child on video conference, he stated that he was very comfortable and happy to be with his father and that he was attending online classes and that he would like to continue to do so. It is necessary to also note that the appellant's house is in Malleshwaram and closer to the school where Aditya Rajiv Ratnam is studying, which is at Rajajinagar/Basaveshwarnagar. On the other hand, respondent's house is in Banashankari Ist Stage, which is far off from the school. It is also necessary to note that respondent has not handed over custody of Aditya Rajiv Ratnam to the appellant after relaxation of the lockdown norms imposed by the State Government. Master Aditya Rajiv Ratnam mentioned to us through video conference that he has won first prize in whole of Asia in a

quiz competition. Master Aditya Rajiv Ratnam also mentioned that his mother was angry over his suggestion made to the Bench for shared parenting and she had also beaten him for the same. Be that as it may.

13. This application has been filed on 06/05/2020 seeking custody of the minor child in terms of the directions of the Family Court. At the outset it would be useful to refer to a decision of the Hon'ble Supreme Court in the case of ***Thrity Hoshie Dolikuka vs. Hoshiam Shavaksha Dolikuka*** reported in ***(1982) 2 SCC 544***, wherein it has been observed as under:

"17. The principles of law in relation to the custody of a minor appear to be well established. It is well settled that any matter concerning a minor, has to be considered and decided only from the point of view of the welfare and interest of the minor. In dealing with a matter concerning a minor, the court has a special responsibility and it is the duty of the court to consider the welfare of the minor and to protect the minor's interest. In considering the question of custody of a

minor, the court has to be guided by the only consideration of the welfare of the minor.”

14. We may also note that in MFA.No.4749/2019 on 10/02/2020, Aditya Rajiv Ratnam was interviewed exclusively in the chamber by a Co-ordinate Bench of this Court of which, one of us (Nagarathna J.), was a member. The order reads as under:-

“BVNJ & PGMPJ M.F.A.No.4749/2019
10.02.2020

ORDER

Pursuant to our order dated 04/02/2020, the case was ordered to be listed on 10/02/2020 at 4.30 p.m. and the child was to be present before this Court at the said time. The appellant has presented the minor child Aditya in Court.

The minor child Aditya, was spoken to and interacted with by us in our chamber. He is about eleven years old. Aditya is quite aware of the dispute between his parents and the fact that he is presently residing with his mother – appellant herein and the respondent has visitation rights.

We had a detailed interaction and discussion with Aditya. He has expressed that there could be an arrangement whereby, six months of the year he resides with one parent and with the other having visitation rights,

while in the next six months, there could be a converse arrangement. He has repeatedly told us that the arrangement must be kept a "secret" and the same should not be revealed.

On our assessment of Aditya, we find that he is at ease and comfortable with both parents and is concerned about his studies, hobbies, games and his well being, which is a positive sign. This implies that he has not been dragged into the dispute between his parents and has been able to pursue his studies as a normal child. He has also stated that he is second in class and his friend Rohan ranks first in the class. He also expressed that apart from his school activities, sports and games, he is learning how to play the violin from Karthik Sir and the violin classes are held very close to his mother's residence. He loves cricket more than football. He said that he is friendly with his cousins and also has a good relationship with his maternal and paternal grandparents. That his father stays at Banashankari and he takes him to meet his great grandmother at J.P.Nagar. That in school, he goes to picnics which are at village resorts. He categorically stated that he would like to concentrate on his studies and he likes Mathematics, English, History, Geography and all other subjects.

Having regard to the fact that Aditya expressed that any arrangement to be made regarding his custody and residence should be kept a "secret", we requested him to visit the High Court Library, so that in the meanwhile, the parents of Aditya could be spoken to.

Certain suggestions have been made, so as to bring an end to the dispute between the parties and to give a stable upbringing to Aditya. Thereafter, advocates for the appellant and the respondent have been appraised of our interaction with Aditya.

Learned counsel for appellant stated that he would discuss the matter with his party and respond. Respondent also stated that he would think over with the matter and respond to the suggestions made by us.

In the circumstances, list this matter on **17/02/2020** at 1.00 p.m."

(underlining by us)

The order sheets of the subsequent dates are extracted as under for immediate reference:-

BVNJ & NSSGJ:
26/02/2020

Appellant's counsel has submitted a proposal to learned counsel for the respondent for having amicable settlement in the matter.

Learned counsel for the respondent seeks two days time to go through the same.

List on 28/02/2020.

**BVNJ & NSSGJ: M.F.A.No.4749/2019
28/02/2020**

ORDER

Appellant's counsel submits that proposals have been submitted to learned counsel for the respondent.

There is no representation on behalf of the respondent.

We have considered the appeal for the purpose of arriving at a settlement. Hence, in order to ascertain as to whether a settlement is permissible in the matter, it is ordered to be posted for further hearing.

List on **13/03/2020**.

**BVNJ & NSSGJ:
13/03/2020**

We have heard the learned counsel for appellant and the learned counsel for respondent.

List this case on 16/03/2020 at 4.15 p.m.

**BVNJ & NSSGJ:
16/03/2020**

We have heard learned counsel for the respective parties on the modalities of settlement in the matter.

List on 18/03/2020 at 2.30 p.m.

BVNJ & NSSGJ:
18/03/2020

We have heard the learned counsel for respective parties.

List this case a/w M.F.A.Nos.137/15 & 1536/15 & connected cases.

Call on 23/03/2020 at 2.30 p.m.”

15. We note that appellant and respondent are agreeable for dissolution of their marriage by divorce by mutual consent as per Section 13B of the Hindu Marriage Act, 1955. However, the only contentious issue is with regard to custody of minor child Aditya Rajiv Ratnam. In principle, both the parties have no grievance with regard to shared parenting. However, conflict appears as to in what manner the same must be implemented in the instant case. While Master Aditya Rajiv Ratnam has expressed that he has no objection for shared parenting to an extent of six months each between his parents, with intermittent access to the other parent, the appellant

seems to have some reservations about the same. We find that respondent – father is also agreeable to the suggestion made by the child.

16. We also note that since mid March 2020, Aditya Rajiv Ratnam is in the custody of the respondent and he is attending to online classes from his father's house. Therefore, so long as the online classes are on, there is no difficulty about physical distance between the school and respondent's house. But once the physical attendance of the child in the school commences, then it would be in the interest of the child to go to Malleshwaram and reside with his mother (appellant herein), so as to attend to the school as her house is closer to the school.

17. In this regard, one of the submissions made by learned counsel for respondent was that the respondent is willing to shift his residence closer to the school and if necessary, to Malleshwaram, so that the difficulty of distance between the school and respondent's house is removed if directions with regard shared parenting are issued by this court in the event there is no consensus between the parties. Prima facie, shared parenting, in the instant case would mean that the child would be residing

with one of the parents for a period of six months and the other parent would have visitation rights and vice versa for next six months. That is a long term arrangement.

18. Master Aditya Rajiv Ratnam is presently aged about 12 years and studying in middle school. He is a very bright and mature child and has understood and is conscious about differences and conflicts between his parents and has suggested a via media about his custody, so as not to disappoint either of his parents and at the same time to bring to an end all litigation between them. He has hence agreed to live with either of his parents for atleast six months in a year while the other parent having access to him on certain days of the week and vice versa.

19. We are also conscious of the directions issued by the Family Court with regard to sharing the custody of minor child Aditya Rajiv Ratnam, which are assailed in this appeal as well as consideration of the same by the Hon'ble Supreme Court by its order dated 11/09/2018, but at the same time, we have to bear in mind the changed circumstances and developments that have occurred since mid March 2020 on account of COVID-19 pandemic and

the orders passed in these cases. Since mid March 2020, Aditya Rajiv Ratnam has been with his father and since June he is attending online classes, conducted by his school, therefore, the difficulty of distance between the school and his father's house pales into insignificance. It assumes significance once the physical attendance of Aditya Rajiv Ratnam in school is mandated. It is not known as to when that would happen. It may take another two months or so. But at the same time, we find that having regard to the wishes of Aditya Rajiv Ratnam to implement the concept of shared parenting (six months with each parent with visitation rights being given to the other parent on certain dates and vice versa), we find that his wishes would have to be given prime importance even while passing orders on this application in the instant case as we feel this is the most appropriate time to implement the same. In the circumstances, we find it just and proper to permit Aditya Rajiv Ratnam to remain in the custody of his father until his physical attendance in the school is mandated and the school is reopened in the usual way or till completion of period of six months i.e., till 14/09/2020, whichever is earlier. While saying so, we have borne in

mind the fact that Aditya Rajiv Ratnam is now used to online attendance of his classes with the help of his father, who has facilitated the same at his house and hence, we find that it is in the child's interest that the same must be continued. Once he is required to attend the school, then he would have to return to his mother's house, so that he can attend to school from Malleshwaram.

20. However, we are also mindful of the fact that appellant – mother has no contact with the son since mid March 2020. It is stated that they have not been in contact over telephone or on skype either. We do not know the reason as to why there has been no communication between mother and the son. Be that as it may. We think that the appellant must have visitation rights pending child's return to her as and when the school opens and it is necessary for Aditya Rajiv Ratnam to attend to school or on 14/09/2020 whichever is earlier as the case may be. In the circumstances, respondent is directed to facilitate appellant to have custody of the child on every Saturday and Sunday starting from 04/07/2020, between 11.00 a.m. on Saturday till 07.00 p.m. on Sunday, pending commencement of the school and

requirement of Aditya Rajiv Ratnam to attend the school. The above direction is subject to any orders of curfew to be issued by the State Government on account of the pandemic or otherwise. If the date for commencement of the school is notified by the school, then atleast two days prior thereto, the respondent shall handover custody of the child Aditya Rajiv Ratnam to the appellant, so that he could prepare to attend the school from appellant's residence at Malleshwaram. Till then, the child could remain with the respondent or till 14/09/2020, whichever is earlier. Respondent to take all steps for the attendance of Aditya Rajiv Ratnam through online classes and ensure appellant's access to him on the aforesaid days.

21. In the meanwhile, the parties and their respective counsel to negotiate with regard to shared parenting of Aditya Rajiv Ratnam and report about the same to this Court if any such settlement is arrived at between the parties.

22. In the result, the application is **disposed of** with the following directions:-

(1) Aditya Rajiv Ratnam shall remain in the custody of his father until his physical attendance in the school is

mandated or till completion of the period of six months i.e. till 14.09.2020 whichever is earlier.

(2) The respondent to handover custody of the minor child Aditya Rajiv Ratnam to the appellant two days before reopening of the school mandating physical attendance of the minor child in the school or on 14/09/2020, whichever is earlier. Till then, respondent is directed to facilitate the appellant to exercise visitation rights on every Saturday and Sunday starting from 04/07/2020 between 11.00 a.m. on Saturday, till 7.00 p.m. on Sunday. When there are curfew orders, the respondent shall hand over the child to the appellant on Friday evening by 7.00 p.m. and take back the child on Monday morning in time so that the child could attend to online classes. When the child is with one parent, the other parent shall be permitted to use telephone or video conferencing facility to connect with the child.

(3) In the event, physical attendance of the child in the school till 14/09/2020 is not mandated then, respondent to handover custody of the child to the appellant on the morning of 13/09/2020 which happens to

be a Sunday, by about 11.30 A.M. at the designated exchange point. The above direction is subject to orders of curfew to be issued by the State Government on account of the pandemic or otherwise.

It is further clarified that the aforesaid interim arrangement is made having regard to COVID-19 pandemic and the closure of the school of minor child herein and pending a final settlement in the matter.

By the next date of hearing, the parties may arrive at a consensus with regard to terms of settlement in the matter.

List these matters on **17/07/2020** for considering the proposals for settlement.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

**mvs*