



AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 165 of 2019****(Judgment/order Reserved on 02.02.2022)****(Delivered on 09.03.2022)**

Irfan Ur Rahim Khan S/o Anwar Ur Rahim Aged About 61 Years R/o E-1, Nutan Colony Sarkanda Bilaspur, Tahsil and District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh --- **Appellant**

Versus

Smt. Farha Khan D/o Late Anis Hasan Khan Aged About 42 Years R/o Jatiya Talab, Om Nagar Jarhabhatha, Bilaspur, At Present Flat No. 203, Second Floor, C.K. Highets Chadda Badi Nehru Nagar, Bilaspur, Tahsil And District Bilaspur Chhattisgarh. --- **Respondent**

For the Appellant : Mr. A.A. Ansari, Sr. Advocate with Mr. Aman Ansari and Mrs. Meera Ansari, Advocates.

For the Respondent : Mrs. Indira Tripathi, Advocate

DB : Hon'ble Shri Justice Goutam Bhaduri, Judge &
Hon'ble Mrs. Justice Rajani Dubey, Judge

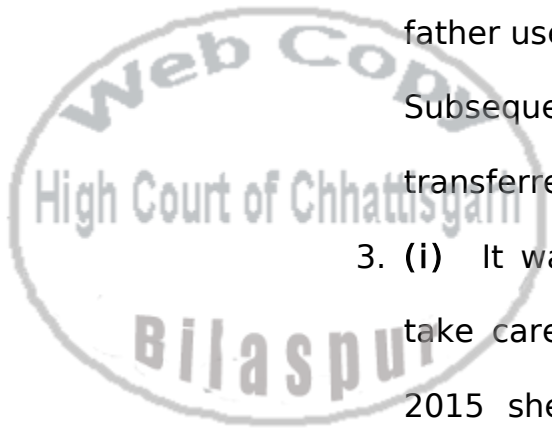
C.A.V. JUDGMENT/ORDER**Per Goutam Bhaduri, J**

1. The challenge in this appeal is to the order dated 16.04.2019 passed by the Family Court Bilaspur whereby the custody of the child is ordered to be kept with the mother, the respondent-wife herein.
2. The appeal is by the husband who filed a custody application before the learned Family Court. The admitted facts of the case are that the appellant Irfan-Ur-Rahim Khan and non-applicant Smt. Farha Khan married to each other. Out of the



wedlock, twin children (daughter and son) were born on 22.11.2008 and they were named as Arhan Khan (son) and Fiyona Khan (daughter). Arhan Khan was suffering from Nephritic syndrome. Appellant Irfan ur Rahim Khan was serving in police department and subsequently a divorce was effected between the appellant and respondent. As per the averments of appeal, the father and mother along-with children were residing together till July 2014, but subsequently their relations became estranged. As a result, non-applicant mother Farha Khan after intimating the Durg Mahila Police Station, came to Bilaspur along-with children and started living separately in a rented house. The husband father used to meet the children during their stay at Bilaspur. Subsequently he being in the police department, was transferred to Sukma and was unable to meet the children.

3. (i) It was pleaded by husband that the mother could not take care of the children, therefore, in the month of April 2015 she gave the custody of both the children to the husband and the husband was residing along with the children at Sukma. Subsequently, certain cases were filed by the wife. It is further pleaded by the husband that initially an application was filed by him at Dantewada under the Guardian and Wards Act, 1890 for custody of children which was subsequently transferred to Bilaspur Court. In such a case, on 04.10.2016 a settlement deed was executed whereby the custody of children was given to the father for their proper education and thereafter a civil suit bearing No.552-A/2015 was filed which was disposed on 04.10.2016 without any finding on merit. It was further pleaded that on





05.10.2016, the wife got divorce from him and received an amount of Rs.10 lakhs towards final settlement and thereafter on one day she came to the Government quarter of the appellant and after raising a dispute took the children with her.

3(ii). Subsequently in year January 2017, minor son Arhan Khan was left in the custody of the father whereas the custody of daughter Fiyona was kept by her. It was pleaded that the wife has extended threat that she will commit suicide and will implicate the husband in a false case, for which, a report was made at police station. The husband alleged in the application for custody that the wife did not follow the Islamic rituals and she was a Tarot Card reader which is not recognized in Islam faith and she never participated in any religious activity, she did not have any house of her own and resides at a rented house and nobody is there to take care of the children. The husband further contended that the wife does not have any source of income whereas the appellant being placed in a high cadre of Police Department can very well maintain the children in a better way and he being father is a natural guardian.

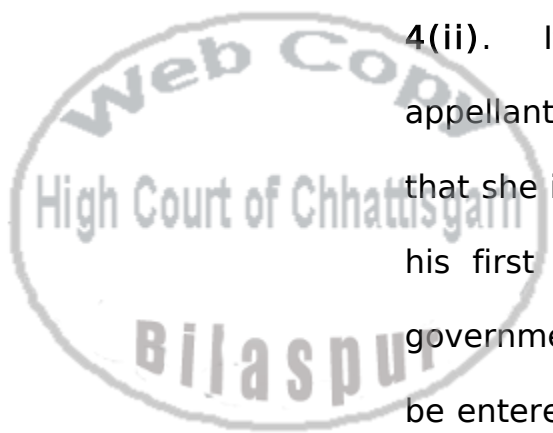
(i) The non-applicant denied all the allegations and in reply, it was stated that because of harassment and cruelty meted to her, she along with her children started residing at Bilaspur since 2012. Thereafter on a false pretext, the wife was taken to Bhilai but there also because of cruelty and assault committed by husband, she came back to Bilaspur for the safe interest of the children and both the children are living with the mother since their birth and she loves them





more than her life. She further stated that in the month of April, 2015 the appellant came to her and by extending threat wanted to take away the children and she became scared therefore, for safety reasons before the Additional Superintendent of Police, Bilaspur, under the pressure of appellant-husband both the children were given for a week to the custody of the father and the father agreed to return the children after a week but since the children were not returned different steps were taken by resorting to various courts and eventually the custody of children was taken by filing habeas corpus petition wherein the orders were passed to hand over the custody to her.

4(ii). It was further contended in the reply that the appellant has taken a pretext and narrated to the respondent that she is the second wife and no divorce was effected with his first wife who was nominee in his service book and government records, therefore, the names of minors are to be entered in the service book, so that the retiral and other service benefits may pass on to them, but since the non-applicant is second wife, it would not be possible, hence the steps to dissolve the marriage is to be taken according to the Muslim law. Thereafter on such pretext the documents were prepared on the premise of one time settlement of her maintenance and further it was also impressed that documents are also required for custody of the children. The wife contended that in such belief she being the mother has signed certain settlement-deed, which is null and void. It is contended that despite execution of the settlement deed, the children were staying with the mother and they were not





under the custody of the father.

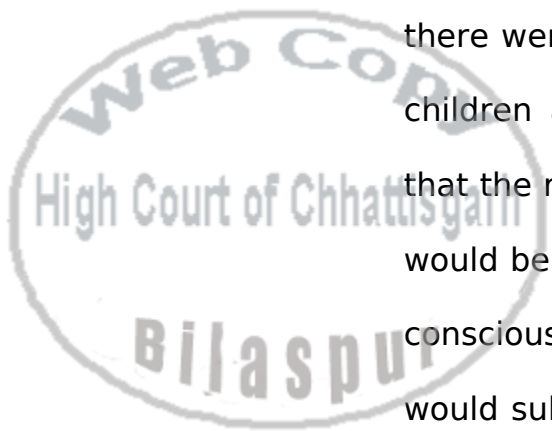
4(iii). The respondent mother further contended that the father was granted visitation rights and he used to meet the children and the first wife also does not reside with the husband and he has to move from place to place in discharge of official job, as such, nobody would be there to take care of his children in his absence. The wife further contended that she is a well educated lady as she belongs to an educated family and is a famous Tarot card reader and she had a shop at Bilaspur and also holds the agency of newspaper whereby considerable income is generated. Therefore, she was able to take care of children. She has further stated that the children were taken to Delhi for admission into St. Maria School but since the cases were going on, they could not often travel between Delhi and Bilaspur, as such, the children were brought back to Bilaspur. She further stated that by order of the Court, visiting rights were given to the father to meet the children and she overall stated that the the welfare of the children in her custody would be much better than the appellant therefore, the custody of children sought by the appellant may be dismissed.

4. The learned trial Court predominantly framed two issues. The first issue is whether the “supreme welfare” of the children Fiyona and Arhan Khan lies with custody of applicant Father ? The Court answered it in negative. The second issue is whether the “supreme welfare” of Arhan Irfan Khan lies with custody of non-applicant mother. The court answered it in positive. Thereby the application for custody of the children



by father was dismissed.

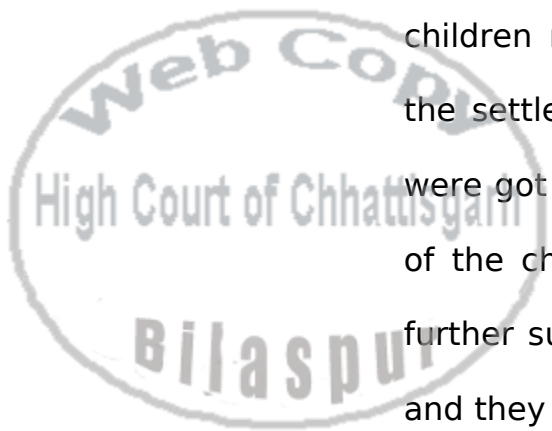
5. Mr. K. A. Ansari, learned Senior Advocate assisted by Mr. Ansari, counsel for the appellant would submit that the learned trial Court failed to consider the fact that a settlement was executed between father and mother whereby the father was given the custody of the children. He would submit that the settlement deed which was placed before the Court below (Ex.P-3) would show that the mother knowing fully well has given the custody of the children to the father, therefore, the evidence whatsoever has been adduced by the parties i.e., the mother and father in this court would be immaterial. He would further submit that there were two settlements – one was for the custody of the children and other one was for divorce. He would submit that the respondent wife had realized the fact that the father would be a better person to take care of the children as such consciously she signed the document of settlement. He would submit that the learned Court below has ignored such deed of settlement and rejected his claim. He would further submit that the appellant is working as an Additional Superintendent of Police in Police Department and he has no other issues except these two children. therefore, he would be more suitable and sound enough to support his children in providing education. It is further contended that though the minors were examined in this case, but their evidence would be immaterial. He relied on *AIR 1989 Bombay 357 (Para 4)* and would submit that though the minor children have stated to stay with someone or expressed their wish that could not be considered looking to their age and future





progress. He also placed reliance on decisions rendered in *Mrs. Elizabeth Dinshaw Versus Arvand M. Dinshaw* AIR 1987 SC Pg.3; (1993) 2 SCC Pg.6; *Mausami Moitra Ganguli Versus Jayant Ganguli* (2008) 7 SCC 673 – *Sumedha Nagpal Versus state of Delhi and others* (2000) 9 SCC 745); *Mausami Moitra Ganguli V. Jayanti Ganguli* AIR 2008 SC 2262; *Gayitri Bajaj Vs. Jiten Bhalla*) 2012 (1) CGLJ 416.

6. Per contra, Mrs. Indira Tripathi, learned counsel for the respondent wife would submit that the husband petitioner played a fraud to get the settlement executed and though it was written that the custody is given to the father but the children remained with the mother. She would submit that the settlement was an outcome of fraud as the documents were got signed with an allurements to secure the prospects of the children by offering the retiral benefits. She would further submit that the children were examined in this case and they expressed their desire to stay with the mother. She further submitted that the welfare of the children would be paramount consideration, consequently the evaluation of evidence by the court below that the welfare of the minor children would be much better with the mother, is correct. She placed reliance in *Tejaswini Gaud and others Vs. Shekhar Jagdish Prasad Tewari and others* (2019) 7 SCC 42 Paras 26 & 27 and *Sheoli Hati V. Somnath Das* (2019) 7 SCC 490 and would submit that the supreme welfare of the minor children better lies in the custody of mother and the appeal therefore deserves to be dismissed.
7. We have heard learned counsel for the parties at length and

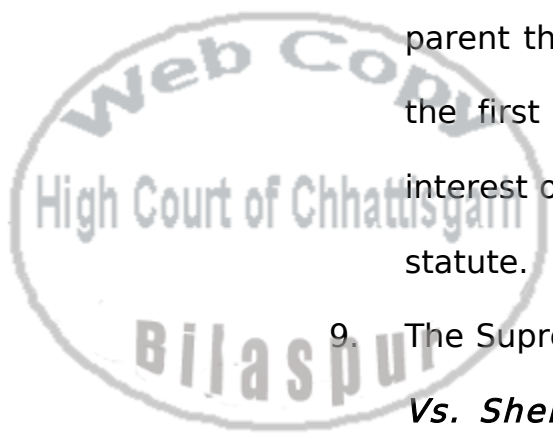




perused the entire evidence placed on record. It is trite law that the statute namely the Guardians and wards Act, 1890 and also Mohmmadan Law make it clear that the welfare of the children is a predominant consideration. In a matter of this nature, particularly, when father and mother fighting their case and both of them extending promise of the welfare to minor children, a heavy duty is cast upon the court to exercise its discretion judiciously bearing in mind the welfare of the child as paramount consideration.

8. The Supreme Court in ***Mousami Moitra Ganguli v. Jayanti Ganguli*** AIR 2008 7 SCC 673 at para 14 expressed the view that while deciding the issue as to which parent the care and control of a child should be committed, the first and paramount consideration is the welfare and interest of the child and not the rights of the parents under a statute.

9. The Supreme Court further in ***Tejaswini Gaud and others Vs. Shekhar Jagdish Prasad Tewari*** (2019) 7 SCC 42 held that the Court while deciding the custody cases of the child, it is not bound by the mere legal right of the parents or guardians. It held that though the provisions of the special statutes govern the rights of the parents or guardians, but the welfare of the minor is the supreme Consideration in cases concerning the custody of minor child. Therefore, the paramount consideration should be the interest and welfare of the child. The Supreme Court in the aforesaid judgment reiterated the view taken in ***Nil Ratan Kundu Vs. Abhijit Kundu*** reported in (2008) 9 SCC 413 and emphasized that paramount consideration should be the welfare of the





child and due weight should be given to the child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings.

10. With respect to the oral and documentary evidence so created by the parties in custody matters, the Supreme Court in *M.K. Hari Govindan Vs. A.R. Rajaram* reported in 36 2003 OnLine Mad 48: AIR 2003 Mad 315 held that the custody cases of child cannot be decided on documents, oral evidence or precedents without reference to "human touch". It held that human touch is the primary one for the welfare of the minor since the other materials may be created either by the parties themselves or on the advice of counsel to suit their convenience.

11. Further in *Gaurav Nagpal Vs. Sumedha Nagpal (2009)* 1 SCC 42 at paras 30, 32, 37, 50 & 51 the Supreme Court while dealing with custody of children held as under:-

"30. Sometimes, a writ of habeas corpus is sought for custody of a minor child. In such cases also, the paramount consideration which is required to be kept in view by a writ-Court is 'welfare of the child'.

32. In *Mc Grath, Re*, (1893) 1 Ch 143 : 62 LJ Ch 208, Lindley, L.J. observed;

The dominant matter for the consideration of the Court is the welfare of the child. But the welfare of the child is not to be measured by money only nor merely physical comfort. The word 'welfare' must be taken in its widest sense. The moral or religious welfare of the child must be considered as well as its physical well-being. Nor can the tie of affection be disregarded.

36. The Guardians Act, consolidates and amends the law relating to guardians and wards. Section 4 of the said Act defines "minor" as a person who has not attained the age of majority. "Guardian" means a person having the care of the





person of a minor or of his property, or of both his person and property. "Ward" is defined as a minor for whose person or property or both, there is a guardian. Chapter II (Sections 5 to 19 of Guardians Act) relates to appointment and declaration of guardians. Section 7 thereof deals with 'power of the Court to make order as to guardianship' and reads as under:

"7. Power of the Court to make order as to guardianship. - (1) Where the Court is satisfied that it is for the welfare of a minor that an order should be made--

(a) appointing a guardian of his person or property, or both, or

(b) declaring a person to be such a guardian,

the Court may make an order accordingly.

(2) An order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument or appointed or declared by the Court.

(3) Where a guardian has been appointed by will or other instrument or appointed or declared by the Court, an order under this section appointing or declaring another person to be guardian in his stead shall not be made until the powers of the guardian appointed or declared as aforesaid have ceased under the provisions of this Act.

50. When the court is confronted with conflicting demands made by the parents, each time it has to justify the demands. The Court has not only to look at the issue on legalistic basis, in such matters human angles are relevant for deciding those issues. The court then does not give emphasis on what the parties say, it has to exercise a jurisdiction which is aimed at the welfare of the minor. As observed recently in Mousami Moitra Ganguli's case (supra), the Court has to give due weightage to the child's ordinary contentment, health, education, intellectual development and favourable surroundings but over and above physical comforts, the moral and ethical values have also to be



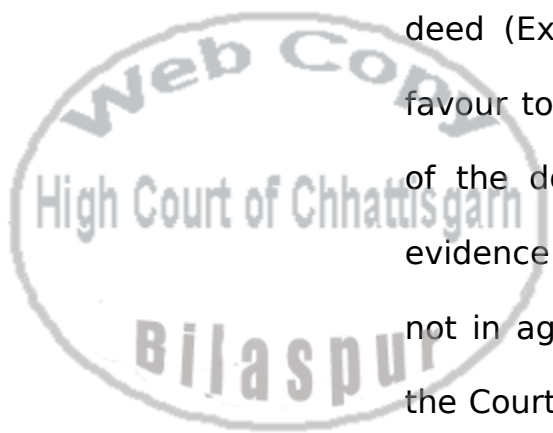


noted. They are equal if not more important than the others.

51. The word 'welfare' used in Section 13 of the Act has to be construed literally and must be taken in its widest sense. The moral and ethical welfare of the child must also weigh with the Court as well as its physical well being. Though the provisions of the special statutes which govern the rights of the parents or guardians may be taken into consideration, there is nothing which can stand in the way of the Court exercising its parens patriae jurisdiction arising in such cases. "

Therefore it is only the paramount consideration of the child that would be the deciding factor.

12. In this case the appellant heavily relied upon the settlement deed (Ex.P-3) claiming that right has been accrued in his favour to retain the custody of minor children. On the basis of the document, the submission is made that the other evidence is immaterial especially in view of Ex.P-3. We are not in agreement with the submission of the appellant that the Court has to shut its eyes in view of the settlement deed Ex.P-3 which gives the custody of the child to the father. Ex.P-3 would show that it only gives visitation rights to the mother. Can we ignore the welfare of the minor children by accepting the submission of the appellant that oral evidence would be excluded ? Certainly the answer would be in negative. The children cannot be treated as a commodity in a battle between the father and mother. It is not a case where the provisions of sections 91 & 92 of the Indian Evidence Act can be pressed into motion to hold that there is a contract between the father and mother for the custody of the child, therefore, all other oral evidence is excluded.





Further more, the mother in her deposition at para 4 has questioned the authenticity of such settlement deed (Ex.P-3) and it is supported by the admission made by father at para 16 that after 04.10.2016, the mother had taken away the children and thereafter, he had not resorted to any proceeding. Thereby it would show that the settlement deed Ex.P-3 which was executed by the parties was not actually acted upon. The settlement further cannot be given any weight or conclusive finding of fact and effective review and reconsideration would be required to give a precedent to settlement of deed. The court cannot mimic ostrich act to shelve the emotional concept in a custody battle of children.

13. The Supreme Court in *Mousami Moitra Ganguli v. Jayanti Ganguli AIR 2008 7 SCC 673* at Para 19 expressed similar view that while determining the question as to which parent the care and control of a child should be committed, the first and paramount consideration is the welfare and interest of the child and not the rights of the parents under a statute. Further it referred to Halsbury's Law of England at Para 16 which reads as under:

16. In Halsbury's Law of England (Fourth Edition. Vol. 13), the law pertaining to the custody and maintenance of children has been succinctly stated in the following terms :

"809. Principles as to custody and upbringing of minors. Where in any proceedings before any Court, the custody or upbringing of minor is in question, the Court, in deciding that question, must regard the welfare of the minor as the first and paramount consideration, and must not take into consideration whether from any other point of view the claim of the father in respect of such



custody or upbringing is superior to that of the mother, or the claim of the mother is superior to that of the mother, or the claim of the mother is superior to that of the father. In relation to the custody of upbringing of a minor, a mother has the same right and authority as the law allows to a father, and the rights and authority of mother and father are equal and are exercisable by either without the other.”

14. Reverting to facts of the present case, evidence on record and the observations made by the Court below, it would show that the wife and husband both have made wild allegations on each other and claimed the custody of children. The husband contended that in the month of July 2014, after raising a dispute, the wife took away both the children from Durg after giving an information at Police Station and came back to Bilaspur where the children were admitted in a school. It is further stated that they were admitted in a good school of DPS at Bhilai. Whereas the wife has stated that during certain proceedings of custody pending before the court below, the daughter Fiyona herself came back to mother and she did not want to live with the father and because of cruelty and torture meted out to the wife, she came to Bilaspur along-with children and started living there right from 2012 but later she joined the company of husband for some time and returned to Bilaspur along with children. The wife contended that she was residing in Bilaspur since 2012 along-with her children for the reason that she was subjected to cruelty by the husband. She further submitted that in the month of April 2015, the appellant/father came to Bilaspur, exerted pressure as such





before the Addl. Superintendent of Police, under pressure both the children were taken away by the father with an assurance that within one week, the children would be returned. Thereafter, when the father did not return the children, she filed habeas corpus petition wherein the order was passed to give back the custody and on the basis of the said order the custody was given back to the mother. The wife further contended that she is living in a joint family along-with her brother and other relatives who give much attention to the care and control of the children and as such the growth of children in such joint culture would be better and the children would not be left alone in the hands of servants of the appellant as he goes out for the duty. This also appears to be logical for the reason that the first wife of the appellant does not reside with him and the appellant lives alone, therefore, naturally if he goes out for the official duty, then the children would be left alone in the hands of servants. The admission of father shows that he being in police department, has no time to spend and he has to go out in time, therefore, naturally if the father goes out and if there is no female member in the house then in such a case, the question looms large as to who will look after. The further submission of the wife that with growing age, the minor girl Fiyona would need certain company of the mother or any lady and certainly she can share the company of mother, also appears to be logical.

15. Non-applicant D.W.3 Amaan Khan has stated that her sister was subjected to cruelty, therefore, she was forced to live separately from the appellant since 2012. She also confirms



the fact that her sister lives in joint family wherein other family members including the ladies reside, therefore, if the children are left in such joint family, they would have better mental/physical development. He also made allegation that by using police influence and with the help of Education Officer, the children were forced to leave school for which a separate petition was also filed before the High Court. The document Ex.D-17 copy of the writ petition has been filed wherein the allegations have been made that at the behest of the father, the children were removed from the school. In such writ petition, the copy of order sheet dated 28.11.2018 is on record which indisputably goes to show the fact that the children were not allowed to study in the Winners Valley school and thereafter, they were continued by the order of the High Court, which was at the behest of mother.

16. D.W.2 Gulam Asharaff has deposed that he used to impart Islamic rituals to the children and he was engaged as tutor by the non-applicant to impart the languages of Urdu and Arabic languages to minors Arhan and Fiyona for which the non applicant used to pay Rs.2000/- per month. Along-with the fact, the mother, wife has contended and filed the documents to show that she is a Tarot Card Reader and is running a shop in a Complex whereby she used to earn Rs.50,000/-. The income tax return (Ex.D-19) of the assessment year 2018-19 is also placed on record to prove the fact that her gross annual income was Rs.5,00,888/-. Therefore the documents would show that the mother has also reasonable income.

17. Now the most important fact to be noted in this case is that



both the children i.e., Baby Feona and Arhan Khan were examined as D.W.4 and DW.5 in this Case. Reading of their statements would show that both have expressed that they love mother and wanted to stay with her. Baby Fiyona stated that she loves her brother and mother and she goes her father's house on Saturdays and Sundays. She admitted the fact that all the amenities are available in the house of the father. However, she stated that the mother provides all the favorite food and takes them on tour to favourite places of their interest. She also stated that whatever things she needs that are purchased and given by the mother. She stated that her mother supports her in doing the home work after schooling hours. She further stated that they are nicely maintained by the mother, therefore, they want to live with her. In cross examination, she admitted the fact that they had visited Kashmir along with the father and though her mother had not taken to Kashmir and other places, but she wanted to stay with the mother.

18. Likewise D.W.5 the son Arhan stated that he wants to stay with mother and does not want to stay with father. He further stated that the father used to abuse the mother but mother never used to abuse the father, therefore, he wants to stay with mother. He also stated that on Saturdays and Sundays they used to go to father's house and the mother also provide them all amenities and comforts. Both the children have stated that the father had detached them from school and on a suggestion given to them that they were not detached from school by the father, it was denied. In the further examination of Arhan, when the child was suggested

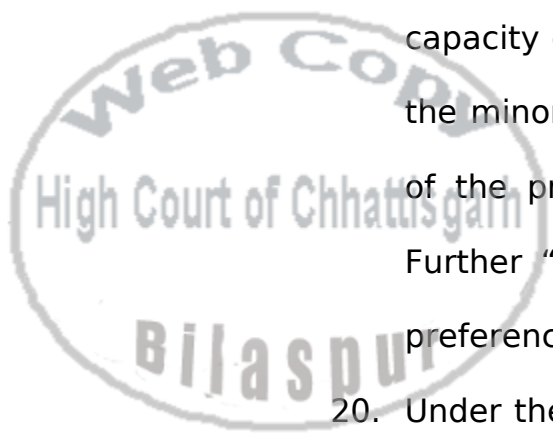


the fact that he was tutored by the mother to say that the father has abused, he denied the same. He also denied the fact that he has made statement at the instance of the mother.

19. Under the *Principles of Mohmmadan Law, 9th Edition, by M. Hidayatullah & Arshad Hidayatullah*

Section/Rule 351 governs the guardianship of persons and property and its appointment. It purports appointing or declaring the guardian of a minor, the Court shall, subject to the provisions of this section, be guided by what would be best for the welfare of the minor, the court shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes and any existing or previous relations of the proposed guardian with the minor or his property. Further "if the minor is old enough to form an intelligent preference, the Court may consider that preference".

20. Under the principles of Muslim law, the mother is entitled to the custody of her male child until he has completed the age of seven years and of her female child until she has attained the age of puberty i.e., 14 years. However, the principle of law which is well established is that in a proceeding for appointment of guardian, it is not the guardianship of minor which is of importance, but the welfare of the minor has to be taken into consideration. If there is a conflict between the personal law to which the minor is subject and the consideration of the minors' welfare, the latter must prevail. Likewise where the provisions of law are in conflict with the provisions of Guardians and Wards Act, the latter will prevail





over the former.

21. In the instant case, both the minors, who were aged about 10 years at the time of recording statements, were put to cross examination and various suggestions were given. The answers which were given by them are logical and appears to be correct. Meaning thereby it would show that they are old enough to form an intelligent preference to be in the custody of the mother which they have chosen. The nature of cross examination and the answers which were given by twin children would show that there was consistency in their statements wherein they have categorically expressed their view and chose to stay with the mother. When the witnesses are intelligent enough to have their preference, evaluating their evidence, this court will not sit over their opinion and preference. The custody battle of children requires a human touch apart from the statutory obligation, therefore, we are of the view that the children's *wish and will* would prevail over. All other material is subjected to conflicting evidence of mother and father which cannot hold sway in its entirety.
22. Having thus given our thoughtful consideration to the facts and material evidence of the present case, we are of the opinion that proper and paramount welfare of children lies with the custody of the respondent-mother and therefore, the finding recorded by the learned court below to keep the custody of the minor children with the mother does not warrant any interference.
23. Now coming to the visitation rights of the father in respect of the children who are in custody of mother, reading of the impugned judgment would show that no specific direction

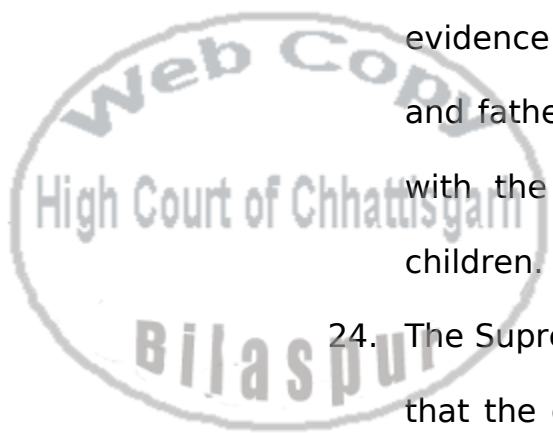




with particular rights and guidelines regulating the visiting arrangements was given by the learned Court below. The Apex Court in *Yashita Sahu Vs. State of Rajasthan (2020) 3 SCC 67* held that even after the custody was given to one parent, the other parent must have sufficient visitation rights to ensure that the child keeps in touch with the other parent and does not lose social, physical and psychological contact with any one of the two parents. It is only in extreme circumstances that one parent should be denied contact with the child. The evidence in this case does not show any extreme circumstances whereby one parent for all practical purposes can be denied to meet the child. The evidence has come on record that even though the mother and father are living separately and the children are staying with the mother, yet the father often uses to meet the children.

24. The Supreme Court in *Yashita Sahu (Supra)* further observed that the concept of “visitation rights” is not fully developed in India. Most courts while granting custody to one spouse do not pass any orders granting visitation rights to the other spouse. It held that the child has a human right to have the love and affection of both the parents and Courts must pass orders ensuring that the children are not totally deprived of the love, affection and company of one of their parents.

25. In addition to “visitation rights” the court observed that the “contract rights” is also important for the development of the child specially in cases where both the parents live in different places the concept of contact rights in the modern age would be contact by telephone, e-mail or in fact we feel the best





system of contact, if available, between the parties should be video calling. It observed that with the increasing availability of internet, and the Courts dealing with the issue of custody of child must ensure the parent who is denied the custody of the children should be able to talk to his/her child as often as possible. It held that the communication will help in maintaining and improving the bond between the children and the parent who is denied the custody. If that bond is maintained, the children will have no difficulty in moving from one home to another during vacation or holidays. The purpose was held that the court cannot provide one happy home with two parents to the child then let the child have the benefit of two happy homes with one parent each.

26. In a recent decision rendered in *Ritika Sharan Vs. Sujoy Ghosh*, 2020 SCC OnLine SC 878 the Supreme Court held that a balance has to be drawn so as to ensure that in a situation where the parents are in a conflict, the child has a sense of security. The interests of the child are best served by ensuring that both the parents have a presence in his/her upbringing. Therefore, following the principles laid down in *Yashita Sahu Vs. State of Rajasthan (supra)* and *Ritika Sharan Vs. Sujoy Ghosh (supra)*, we hereby order to facilitate the grant of visitation and contact rights to the father. The following arrangements shall be made by both the appellant and respondent as father and mother :

(i) The appellant/father would be able to engage with the children on a suitable video conferencing platform for one hour every Saturday and Sunday and 5 – 10 minutes on other days.

(ii) Both the appellant/father and the respondent mother in order to facilitate the video conferencing



between them shall procure smart phones which would facilitate the inter-se video calling.

(iii) During long holidays/vacation covering more than 2 weeks the children will be allowed to be in the company of the father for a period of 7 days and the mother, if so desires, can also accompany them. The period shall be fixed by the father after due intimation to the mother and she will permit the children to go with the father for the aforesaid period and the mother, if so desires, may also accompany them.

(iv) Every month preferably on Saturday or Sunday the mother shall allow the children to visit his father or father may take the children in his company and leave them back in the evening of such day.

(v) During festivals like Idd, Ramjan etc., the father may join the company of the children at the place of the mother and spend the festival days with the children along with the mother.

27. With the aforesaid observations/direction, the appeal is disposed of.

Sd/-
GOUTAM BHADURI
JUDGE

Sd/-
RAJANI DUBEY
JUDGE



HEAD-NOTES

In respect of custody of children claimed by mother and father who are living separately, if there is a conflict between the personal law to which the minor is subject and the consideration of the minor's welfare, the latter must prevail.

ऐसे माता-पिता जो अलग-अलग निवास कर रहे हैं के द्वारा बच्चों की अभिरक्षा का दावा किये जाने पर, यदि स्वीय विधि जिससे अवयस्क शासित होते हैं और बच्चों के कल्याण को लेकर कोई विवाद उत्पन्न होता है, तो बच्चों का कल्याण सर्वोपरि होगा।

