

Bombay High Court

Shweta Chandra vs Brahmanand Baldev Rai on 8 September, 2025

Author: Madhav J. Jamdar

Bench: Madhav J. Jamdar

2024.DOC IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13980 OF 2024 Shweta
Chandra ...Petitioner
Versus Brahmanand Baldev Rai
...Respondent Mr. Ashish Anand a/w. Ms. Gauri Dhale i/b. Ms. Asmeeta
Bhoir, for the Petitioner. Mr. Pawankumar Ramchander Prasad, for the
Respondent. CORAM: MADHAV J. JAMDAR,
J.

DATED : 8th SEPTEMBER 2025 PC:-

1. The impugned order is concerning access and over night access of a daughter aged 11 years. It is an admitted position that there is no contact of the daughter with the father for about last 4 years.

2. A learned Single Judge by order dated 16 th October 2024 has recorded certain interim arrangement of access. Thereafter, the matter was placed before this Court on 15 th January 2025 and in the said order dated 15th January 2025, this Court recorded the statement of the Respondent who was personally present in Court Page 1 Sonali 9-WP-13980-2024.DOC that the Respondent shall meet the daughter as directed by a learned Single Judge by order dated 16 th October 2024 on 18th January 2025 and 25th January 2025. However, the Respondent- Father thereafter had sent email on 18 th January 2025 stating that he would not be coming to meet the daughter as per the order dated 15th January 2025 and a request is made to decide the Writ Petition finally.

3. In view of the above, this Court in the order dated 5 th February 2025 has observed that the Respondent is not interested in having access of the daughter and the impugned order is already stayed by a learned Single Judge by the order dated 16 th October 2024. The said order dated 5th February 2025 passed by this Court has been challenged before the Supreme Court and the Supreme Court although dismissed the Petition(s) for Special Leave to Appeal (C) No(s). 9365 of 2025, granted liberty to the Respondent to move before the High Court for early disposal of the Petition.

4. As noted herein above, the impugned order is concerning the overnight access and visitation rights of a daughter aged 11 years and as the father and daughter have not met each other for about Page 2 Sonali 9-WP-13980-2024.DOC 4 years, it is necessary that the access be given of the daughter to the father initially for 2-3 hours and thereafter, the same can be increased gradually so that overnight access can be given.

5. The Supreme Court in the decision in *Yashita Sahu vs. State of Rajasthan*¹ has inter alia held that a child requires the love, affection, company, protection of both parents. This is not only the requirement of the child but is his/her basic human right. Just because the parents are at war with each other, does not mean that the child should be denied the care, affection, love or protection of any one of the two parents. A child is not an inanimate object which can be tossed from one parent to the other. Every separation, every reunion may have a traumatic and psychosomatic impact on the child. Therefore, it is to be ensured that the court weighs each and every circumstance very carefully before deciding how and in what manner the custody of the child should be shared between both the parents. Even if the custody is 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 1 (2020) 3 SCC 67 Page 3 Sonali 9-WP-13980-2024.DOC the two parents. It is only in extreme circumstances that one parent should be denied contact with the child. It is further held by the Supreme Court 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. As observed earlier, a child has a human right to have the love and affection of both the parents and courts must pass the orders ensuring that the child is not totally deprived of the love, affection and company of one of her/his parents. It is further held by the Supreme Court that in addition to "visitation rights", "contact rights" are also important for development of the child specially in cases where both parents live in different States or countries. The concept of contact rights in the modern age would be contact by telephone, e-mail or video calling. With the increasing availability of internet, video calling is now very common and courts dealing with the issue of custody of children must ensure that the parent who is denied custody of the child should be able to talk to her/his child as often as possible. Unless there are special circumstances to take a different view, the parent who is denied custody of the child should have the right to talk to his/her child for 5-10 minutes every day. This will help in Page 4 Sonali 9-WP-13980-2024.DOC maintaining and improving the bond between the child and the parent who is denied custody. If that bond is maintained, the child will have no difficulty in moving from one home to another during vacations or holidays. The purpose of this is, if in the facts and circumstances, 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.

6. It is necessary to observe that for a child to be developed as a good human being, the child should get love and support of both the parents and therefore, it is absolutely essential that father should meet the child frequently and thereafter, even overnight access can also be granted.

7. Both the Petitioner-Mother and the Respondent-Father are requested to contact each other and work out schedule of the visitation rights i.e. access for few hours, overnight access and phone access.

8. Accordingly, it is necessary that both the Petitioner-Mother and the Respondent-Father shall remain present before this Court Page 5 Sonali 9-WP-13980-2024.DOC personally or through Video Conferencing on 11th September 2025 at 03:00 p.m. for finalizing a programme of access, overnight access and phone access of the daughter with the father.

[MADHAV J. JAMDAR, J.] Digitally signed by SONALI SONALI MILIND MILIND PATIL PATIL
Date:

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