2025 INSC 709

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2025
(Arising out of SLP(C)No.24419 of 2024)

EBY CHERIAN ...APPELLANT(S)

VERSUS

JEREMA JOHN ...RESPONDENT(S)

J U D G M E N T

VIKRAM NATH, J.

1. Leave granted.
2. The present appeal assails the judgment dated 23 August 2024 of the High Court of Kerala at Ernakulam in O.P. (FC) No. 364 of 2024. By the impugned order the High Court declined to set aside an interim-custody arrangement made by the Family Court, Ernakulam on 21 September 2023 in O.P. No. 1085 of 2023, and directed the appellant–father to continue moving a fresh application each time he visited India for overnight access to his minor daughter.

3. The essential background may be stated briefly. The parties were married on 10 January 2016. The appellant is a graduate engineer who has spent most of his career on rotational overseas assignments, initially in Angola and, since 27 August 2024, in the United Arab Emirates, returning to India during scheduled breaks. The respondent-mother, a homemaker, resides with the child at Ernakulam.

4. Their daughter, Manna Ann Eby, was born on 17 October 2017. Following marital discord, the respondent left the matrimonial home with the child on 4 March 2023, and since then the child has remained exclusively in her care at Ernakulam. On 29 April 2023 the appellant instituted O.P. No. 1085 of 2023 before the Family Court, Ernakulam, seeking permanent custody of the child. Pending that petition he filed applications for interim visitation.

5. The Family Court, by a common order dated 21 September 2023 on I.A. Nos. 2 & 4 of 2023, recorded that the child was comfortable in the company of the appellant, permitted daily video interaction from 8 p.m. to 8.30 p.m., granted one

weekend of overnight custody, and observed that "as and when the petitioner is available here, he may move necessary application for getting overnight custody."

6. Thereafter the appellant, who is employed overseas on a rotation basis, was required to file a separate interlocutory application (hereinafter IA) on every visit to India. Between September 2023 and May 2024, he filed numerous interim applications before the Family Court and four original petitions before the High Court, cumulatively obtaining only 37 days of physical access during one academic year.

7. Contending that the "apply-each-time" arrangement of the Family Court caused uncertainty, financial strain, and loss of leave, the appellant approached the High Court under Article 227 of the Constitution by O.P. (FC) No. 364 of 2024, praying for a single, definitive interim schedule not exceeding fifty per cent of the child's vacations and all weekends when he is in India, together with continued daily video calls.

8. The respondent opposed the petition, submitting that any standing arrangement should await the trial in O.P. No. 1085 of 2023. She maintained that the Family Court had already afforded liberty to seek access as and when required.

9. The High Court dismissed the petition but, by way of ad hoc relief, directed interim custody from 10 a.m. on 24 August 2024 to 5 p.m. on 26 August 2024 and again from 10 a.m. on 14 September 2024 to 5 p.m. on 17 September 2024, with exchange at the respondent's residence and freedom for the mother to interact telephonically during the child's stay with the father.

10. Aggrieved by the order of the High Court, the appellant filed the present appeal before us praying for a definitive interim arrangement for his visitation schedule with the child.

11. During the pendency of these proceedings, this Court referred the matter to the Supreme Court Mediation Centre to explore a mutually acceptable interim arrangement. However, despite multiple comprehensive sessions, no

settlement could be reached and the mediation was closed without agreement.

12. In this backdrop, the limited grievance before us is whether, pending adjudication of O.P. No. 1085 of 2023, the High Court and the Family Court were justified in compelling the appellant to seek overnight custody through successive IAs on every visit to India, instead of framing a structured interim-access schedule that duly balances the welfare of the minor child with the rights and obligations of both parents.

13. Learned Senior Counsel for the appellant, Ms. Shashi Kiran, has advanced the following contentions:

    (i) It is submitted that the requirement to file a fresh IA on every visit is impracticable, as custody suits in Kerala often last three to four years; the arrangement breeds uncertainty for the child and imposes recurring expense on the appellant.

    (ii) The appellant contends that he resigned his Angola assignment on 24 April 2024 and, having accepted employment in the United Arab Emirates on 6 August 2024, now

requires a settled interim timetable to plan leave and international travel.

(iii) It is submitted that between September 2023 and May 2024, the appellant filed twenty IAs before the Family Court and four original petitions before the High Court, yet secured only thirty-seven days of physical access, each application being hotly contested and exhausting his limited leave.

(iv) The appellant relies on the Family-Court counsellor's report and the interaction with judge of the Family Court, both noting that the child is comfortable with him, and therefore urges regular weekend contact and an equal share of school vacations as conducive to her emotional development.

(v) It is submitted that the appellant has remitted maintenance of ₹20,000 per month since September 2023 yet receives no information about the child's schooling or health, impairing meaningful parental involvement.

(vi) Finally, the appellant contends that the respondent's recurrent seizures and certain

health concerns observed in the child while solely in her care reinforce the necessity of predictable periods of custody with him pending final adjudication.

14. The Counsel for the respondent has rendered the following submissions:

(i) It is asserted that from the very outset the marital relationship was strained and that the respondent was subjected to mental and physical harassment by the appellant and his family, which ultimately compelled her to leave the matrimonial home with the child on 4 March 2023. Since that date she has been the sole caregiver, meeting all physical, emotional, educational and medical needs of the daughter, and maintains that the child's stable routine should not be disrupted by extended or frequent transfers of custody.

(ii) The respondent emphasises that the appellant works abroad for prolonged periods and, notwithstanding his recent change of employment, remains unable to provide day-to-day care and she contends that the child's welfare is therefore best

served by continuing in her exclusive custody.

(iii) The respondent argues that the custody petition, O.P. No. 1085 of 2023, is pending trial, and argues that any fixed long-term arrangement should emerge only after evidence is recorded and the matter finally decided.

15. Having heard the counsels for both the parties and on perusing the record, we are persuaded that the arrangement devised by the Family Court, requiring the appellant to file a fresh IA on every visit to India, places an undue procedural burden on both the father and, by necessary implication, the minor child. Custody litigation at Family Court generally proceeds at a measured pace and compelling repetitive applications for what is, in essence, the same relief reduces the child's time, exhausts the father's limited leave, and invites avoidable conflict at every turn.

16. The Family-Court counsellor and the Judge's own interaction recorded that the child is at ease with the appellant. No circumstance subsequent

to that finding has been shown to diminish the benefit the child derives from the father's company. Meaningful contact with both parents is an integral component for the child's welfare. We believe that where a non-custodial parent demonstrates consistency to be with the child, pays maintenance, and arranges his professional life around the child's calendar, as the appellant has done in the present case, procedure ought not to stand in the way of a predictable schedule.

17. The High Court's reluctance arises mainly from the expectation that O.P. No. 1085 of 2023 would go to trial on 18 September 2024. However, the matter is still pending as on the date of this judgement. In the interregnum, the child cannot be left to the vagaries of piecemeal orders. A structured timetable, sensitive to her routine and the appellant's overseas posting, is thus imperative.

18. While the respondent's apprehensions are noted, they may be met through reasonable logistical safeguards. We therefore consider it just and equitable to replace the Family Court's arrangement with a standing interim

arrangement that balances stability with the appellant's right to regular contact. We have taken into account, the child's tender age, her schooling in Ernakulam, the appellant's rotational employment abroad, and the need to minimise travel and hand-overs.

19. For the foregoing reasons, the appeal is allowed in part.

20. The impugned order dated 23 August 2024 is set aside to the extent indicated below, and in substitution thereof the following directions shall govern interim access until final disposal of O.P. No. 1085 of 2023 or until further orders of the Family Court:

    (i) Whenever the appellant is in India for at least 7 consecutive days, he shall be entitled to custody of the child from 10 a.m. on the first Saturday of that stay until 5 p.m. on the following Sunday, and, if his stay exceeds a further week, for the alternate weekend on the same timings. Exchange shall take place at a neutral public spot in Ernakulam to be agreed between the parties or, failing

agreement, at the main gate of the Family Court.

(ii) Summer vacations shall be divided into two contiguous segments of equal days each: the first with the respondent; the second with the appellant, provided he is present in India. If the appellant is abroad during the second segment, those days shall lapse without carry-over.

(iii) Each festival vacation shall be divided into two contiguous blocks of equal days for the custody. Before 30 days of the holiday dates, the parties shall consult, by e-mail or messaging, and endeavour to agree which parent will take the first block and which will take the second block, keeping the child's comfort and the appellant's travel plans in view. If they reach agreement, that arrangement shall prevail and if they do not agree within seven days of initiating consultation, either party may, by a short application, seek the Family Court's determination of the sequence.

(iv) The parent with whom the child is spending a vacation block shall not take her outside Kerala without the written consent of the other parent, communicated by e-mail together with the proposed itinerary at least forty-eight hours in advance.

(v) While the appellant is abroad, the parties shall facilitate video calls on at least 3 weekdays from 8 p.m. to 8.30 p.m. IST, and an additional virtual session on Saturdays from 11 a.m. to 12 noon IST for collaborative activities.

(vi) No fresh IAs before the Family Court shall be required for the subsequent visitation periods for the appellant.

(vii) The appellant shall e-mail the Family-Court registry and the respondent at least four weeks before his intended arrival in India, specifying the weekends and, if applicable, the vacation block for which he seeks custody. Absence of objection within seven days shall be deemed consent. Any scheduling dispute shall be listed before the

Family Court for summary resolution within ten days, confined strictly to logistics.

(viii) The Family Court may, upon application, vary the logistics (place and timing of exchange) but not the quantum of access, only if materially changed circumstances such as the child's schooling hours, significant travel distances, or the appellant's posting, so require.

21. The Family Court, Ernakulam is requested to adjudicate O.P. No. 1085 of 2023 as expeditiously as possible.

22. Pending applications, if any, stand disposed of in terms of the above directions.

.....J.
(VIKRAM NATH)

.....J.
(SANDEEP MEHTA)

NEW DELHI
MAY 15, 2025