



Reportable

IN THE SUPREME COURT OF INDIA
INHERENT JURISDICTION

R.P. (C) NOS. 2273-2274/2024
IN
CIVIL APPEAL NOS. 5395-5396 OF 2024

NEETHU B. @ NEETHU BABY
MATHEW **...PETITIONER(S)**

VERSUS

RAJESH KUMAR **...RESPONDENT(S)**

J U D G M E N T

VIKRAM NATH,J.

1. The instant review petitions have been preferred by the original appellant in Civil Appeal No(s). 5395-5396/2024, wherein the present petitioner's appeals assailing the common final judgment and order dated 17.10.2023 in MAT Appeal No. 815/2022 and MAT Appeal No. 252/2023 passed by the High Court of Kerala were dismissed by this Court, *vide* order dated 22.08.2024.

2. The brief factual background leading to the instant petitions is necessary before we delve into the reason for employing the review jurisdiction of this Court which is otherwise sparingly exercised.
3. The marriage was solemnised between the petitioner-wife and respondent-husband on 04.09.2011 in accordance with Hindu rites and rituals, and a boy was born out of the wedlock on 07.11.2012. However, differences arose between the parties soon after, they started living separately from 22.10.2013 onwards and eventually decided to dissolve the marriage by mutual consent. Accordingly, an agreement based on mutual understanding was executed by both the parties on 13.09.2014 regarding the terms of divorce as well as the custody of the minor child. As per the terms and conditions of the said agreement, custody of the minor child was agreed to remain with the petitioner-mother and the respondent-father was granted visitation rights on two Saturdays in a month. A joint divorce petition was filed by the parties which

was allowed by the Family Court, Attingal, Kerala on 26.06.2015 in terms of the mutual agreement.

4. Thereafter, the petitioner got remarried with one Handel Thomas on 18.08.2016. The said Handel Thomas had two children from his earlier marriage, and they have attained the age of majority as of date. Subsequently, one more child was born to the petitioner and Handel Thomas out of the wedlock. The petitioner was living with her husband and the minor children at Thiruvananthapuram at the relevant time.
5. It is the respondent's account of events that he remained unaware about the whereabouts of the petitioner and his minor son for the period between 2016-19 and could not find petitioner's residential address despite his best efforts. It is only in October 2019 when the petitioner contacted the respondent, in order to get his signatures on certain affidavits to obtain relevant documents for the minor son's international travel, that the respondent became aware about the factum of petitioner's remarriage and her intentions to relocate the minor son to Malaysia. The relocation of the minor child along with the

petitioner to Malaysia was intended on account of it being the place where the petitioner's second husband had secured a gainful employment opportunity in the capacity of a Senior Manager in a multinational company. As per the respondent, upon inquiry, he also subsequently became aware that the child's religion has been changed from Hindu to Christian by the petitioner without any consent or knowledge of the respondent.

6. Hence, in light of the above developments, the respondent filed OP(G&W) No. 2353/2020 before the Family Court, Thiruvananthapuram seeking permanent custody of the minor child. The said petition was subsequently transferred to Family Court, Ottapalam at the instance of the petitioner, who also preferred a counterclaim to seek permission to be able to take the minor child outside India in order to rejoin her husband.
7. The Trial Court, *vide* judgment dated 31.10.2022, rejected the respondent's prayer for the custody of the child, granted permanent custody and guardianship of the minor to the

petitioner and extended visitation rights to the respondent in following terms:

“In the result, original petition is allowed in part and counter claim is allowed and a decree is passed as follows:

- 1. The prayer of the petitioner for permanent custody of the minor child is disallowed.*
- 2. The petitioner is allowed to see and interact with the minor child on all 2nd and 4th Saturdays from 2 p.m. to 4 p.m. at the premises of the court.*
- 3. The respondent/mother is directed to produce the minor child before the Chief Ministerial Officer/in-charge of this court on all 2nd and 4th Saturdays at 2 p.m. and to hand over the custody to the petitioner/father for interaction upon 4 p.m.*
- 4. The petitioner shall pay an amount of Rs. 1,000/- (Thousand rupees only) to the respondent on all interaction days towards the travel and other expense of the child.*
- 5. Counter claim is allowed and the respondent is appointed as guardian of the minor child Ryan Handel (R.S. Sreejesh Nair) and*

permanent custody of the minor child is given to the respondent/mother.

6. The respondent is permitted to take the minor child with her to abroad during Onam and Christmas holidays and 30 days period summer vacation.

7. In case, the respondent takes the minor child with her to abroad during the above period, then before leaving, the respondent shall submit a statement before this court as to the details of country, place of residence with address, duration of stay, etc. and shall also file a statement after arrival before this court as to the date of arrival.

8. The parties shall bear their respective costs”

8. Both the parties filed their respective appeals against the order of the Family Court before the High Court. The High Court disposed of both the appeals, *vide* order dated 17.10.2023, and granted permanent custody of the child to the respondent while granting virtual visitation rights to the mother on every alternative day and physical visitation rights during one half of the

school holidays, depending on whenever the petitioner intends to visit India. This was done considering the fact that relocation of the child to Malaysia would not be in the best interest of the child since he has a stable and well-settled life over here.

9. Aggrieved by the change in permanent custody, the petitioner filed SLP (C) Nos. 25528-25529/2023 before this Court, wherein post issuance of notice on 24.11.2023, an interim order dated 29.01.2024 was passed directing the petitioner-mother to ensure that the child meets the respondent on every Saturday or Sunday between 2 p.m. and 4 p.m. in Ottapalam. The said interim arrangement was continued in the meanwhile by way of multiple subsequent orders. Leave was granted in the matter on 22.04.2024 which converted the special leave petitions to Civil Appeal No(s). 5395-5396 of 2024. However, the appeals were eventually dismissed by this Court on 22.08.2024, thereby effectively confirming the permanent custody of the child in favour of the respondent.

10. Consequently, the petitioner has preferred the instant review petitions against the dismissal of appeals primarily on the ground that the news of the imminent separation of the minor child (aged 11 years old at that time) from his mother, who has been his primary guardian since he was an infant, has caused an immense negative impact on the mental health of the child. The contention was supported by the Clinical Psychologist's Report dated 03.09.2024 which revealed the minor child to be indicating anxiety and fears, with a high risk for separation anxiety disorder. The detailed contents of the said report shall be discussed in the latter part of the judgment. It was also further contended in the said petitions seeking review that it was after the dismissal of appeals by this Court when the respondent had a conversation with the minor child, wherein the respondent allegedly administered certain threats regarding separation of the child from his mother. It was claimed that these alleged remarks and threats by the respondent have triggered a detrimental impact on the child's psychological health. Therefore, in view of the new factual developments, this Court's

interference was sought by way of these review petitions.

11. The normal principle is that a judgment pronounced by this Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.¹ This Court may also reopen its judgment if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice.² This Court has been conferred the power to review its judgments by Article 137 of the Constitution of India, which is subject to the provisions of any law made by the Parliament or the rules made under Article 145 of the Constitution of India. The scope of a review is usually considered very limited, and the grounds for maintainability of a review petition have been succinctly summarized by this Court in the case of **Kamlesh Verma v. Mayawati**³ as follows:-

“20.1. When the review will be maintainable:

¹ Sajjan Singh v State of Rajasthan, AIR 1965 SC 845

² O.N. Mohindroo v. Distt. Judge, Delhi (1971) 3 SCC 5

³ (2013) 8 SCC 320

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

20.2. When the review will not be maintainable:

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated.”

12. The principle has also been illuminated upon in the case of **State of West Bengal & Ors. v. Kamal Sengupta & Ors.**⁴, wherein it has been held that this Court, before entertaining review on the ground of discovery of new matter or evidence is required to record its satisfaction about three aspects, which can also be called as “triple test” i.e., (i) new matter/evidence discovered is of such nature which could change the judgment (ii) such new matter/evidence was

⁴ 2008 (8) SCC 612

not within the knowledge of the party seeking review (iii) same could not be produced before court even after due diligence. When any of the conditions of the test, as laid down above is not fulfilled, “discovery of new matter/evidence” *ipso facto* would not be sufficient ground for the Court to interfere with the finality of the judgment.

13. As such, it is established that the power of review jurisdiction is to be used in a restrained manner and only in circumstances as illustrated above. Hence, we are cognizant of the heavy burden that is to be fulfilled by this Court while entertaining a review petition.

14. Further, since the case at hand is a custody matter, it becomes imperative for us to lay down the universally accepted tenets that such matters are to be dealt sensitively with due consideration to the emotional, intellectual, physical, financial, social and cultural needs of a growing child. Therefore, custody orders are always considered interlocutory orders and by the nature of such proceedings, custody orders cannot be made

rigid and final.⁵ Rather, the Courts are entitled to alter and mould the custody orders in view of the best interest of the minor.⁶

15. The core and inalienable standard is the paramount consideration of the child's welfare, which is affected by an array of factors, is ever evolving and cannot be confined in a straitjacket. Therefore, each case has to be dealt with on the basis of its unique facts and take into account any change in circumstances which have an impact on the quality of a child's upbringing.

16. In light of the aforesaid legal principles surrounding review jurisdiction of this Court and the role of Courts in custody matters, it is a natural corollary that judicial discretion has to be properly balanced between the statutory provisions that advocate for limited exercise of review powers and the peculiar care that needs to be extended by the Courts in matters of child custody. We sincerely believe that undertaking a far too hyper technical approach in such cases shall indeed amount to abandoning the doctrine

⁵ Vikram Vir Vohra v. Shalini Bhalla, 2010 (4) SCC 409

⁶ Rosy Jacob v. Jacob A Chakramakkal, (1973) 1 SCC 840

of *parens patriae* and will cause travesty of justice.

17. Ms. Liz Mathew, learned senior counsel appearing for the review petitioner, has contended that the instant petitions have been filed solely in the paramount interest of the child as the judicial verdict in favour of change of custody has caused a drastic impact on the mental health of the child which may seriously affect him during his formative years and can potentially be irreversible if due regard is not exhibited in time. The said impact is argued to be manifestly evident in the psychology expert reports prepared by the Psychiatry Department of Christian Medical College, Vellore⁷ after psychologically evaluating the child.

18. The initial report of the psychologist dated 03.09.2024, which has been produced as Annexure P/1 before us, reflected the minor child to be undergoing anxiety and fears with a high risk for separation anxiety disorder. In the said report, for the sake of mental and emotional well-

⁷ CMC, Vellore

being of the child, it was further recommended by the clinical psychologist to avoid separating the minor from his current family and to conduct regular sessions to evaluate his mental status and provide psychotherapy.

19. It was this calamitous effect of the judicial order on the child's health that had evoked this Court to list the instant review petitions for an open court hearing and further consider if the circumstances merited this Court's interference. We have heard the review petitions as well as the civil appeals on merits.

20. During the course of arguments, the learned senior counsel for the petitioner submitted that in the present case, the child has been in the exclusive care of the petitioner-mother ever since the couple separated in October 2013, i.e. when the child was barely eleven months old. Since then, the child has only met with the respondent a handful of times and has never spent even one night apart from his mother, alone with the respondent. In such circumstances, taking the drastic step of changing custody would amount to upsetting his familiar environment and taking

a huge leap over the usually accepted norm of gradual modification in cases of custody. It is contended that this is especially so in light of the fact that, since the respondent did not avail visitation rights since 2014, the child has not had the opportunity to form a bond with his biological father.

21. The child's psychological assessment at CMC, Vellore continued during the pendency of the review petitions and four medical reports dated 03.09.2024, 19.10.2024, 07.01.2025, and 29.03.2025 have been produced before us. All the four reports have indicated the child to be undergoing significant anxiety, difficulty in coping with the emotions and separation anxiety due to the looming threat of custody change in the child's head. It has been advised throughout these reports by experienced psychologists and psychiatrists at CMC, Vellore, to provide the child with a stable and emotionally supportive environment during this time of distress. Further, it has been strongly cautioned that any disruption in the existing support systems can

further deteriorate the emotional well-being of the child.

22. On the other hand, Ms. Kiran Suri, learned Senior Counsel for the respondent has contended that the present case does not fall within the parameters for exercise of review jurisdiction. It has been submitted that the clinical psychologist report cannot be relied upon to decide the mental well-being of the child as the basis of such report is the history, symptoms and information provided by the mother and the stepfather to the concerned doctor. Further, it has been argued that the petitioner had intentionally withheld the child's whereabouts from the respondent for the period August 2016 to October 2019. It is for this reason that the respondent could not make frequent visits to the minor child and the petitioner should not be permitted to take advantage of her own wrong. Lastly, it was submitted that the respondent is a government servant, has not remarried and is, therefore, fully capable of providing a stable and financially secure environment for the child with undivided focus on his upbringing.

23. We have considered the rival contentions and perused the material on record in great depth.

24. Firstly, it becomes apparent that the child's deteriorating mental health as a consequence of judicial order changing custody is a new development and a direct consequence of dismissal of appeals by this Court. Therefore, the change in the child's emotional, mental and overall health, and the psychological assessment reports on the record certainly constitute new evidence which was not within the knowledge of the review petitioner at the time of hearing appeals, and could not have been produced before this Court at that time even after due diligence, on account of it being a post-decision development. Further, there is no room for doubt that in matters of custody, the best interest of the child remains at the heart of judicial adjudication and a factor adversely impacting the child's welfare undeniably becomes a matter of such nature that has a direct bearing on the decision with the possibility to change it. Therefore, in the wake of new facts as detailed above, the review petitions at hand are deemed worth entertaining

under Article 137 of the Constitution of India and require indulgence of this Court.

25. The minor child in question is presently twelve years old and at the cusp of adolescence. The factors defining the best interests of a child are multiple and range from quality education, a nurturing family environment, healthy worldly experiences, provision of basic amenities of life, meeting of financial requirements, access to a friendly social system to imparting of spiritual and cultural learnings. The list is naturally not an exhaustive one. However, the essential feature is that a secure, supportive and loving family forms the bedrock of a healthy childhood experience and helps one grow into a balanced, positive and confident adult.

26. In the present case, it remains undisputed that the child has remained in the exclusive care of the petitioner since the age of eleven months old. He understands and accepts her to be his primary caregiver and support system. In fact, a perusal of the psychological assessment reports brings forth that in moments of distress and heightened emotions, the child seeks refuge in

his mother's arms and finds her presence to be calming. Therefore, there is no denial of the fact that the petitioner-mother remains a great source of comfort and safety to the minor child.

27. Additionally, the petitioner got remarried when the child was not even four years old. The fortunate repercussion has been that the child, ever since his preschool days, recognizes his stepfather to be a part of the family and considers him to be an essential paternal figure in his life. It has come on record that the stepfather has also openly extended a shield of affection and care towards the minor and has undertaken before various Courts a commitment to provide an educationally sound upbringing to the child to the best of his financial capabilities. The petitioner and her husband also appear to be people of means, thereby securing the financial aspect of upbringing.

28. Further, the second child born to the petitioner out of her current wedlock is also perceived by the minor son in question as his sibling and he shows a great amount of fondness for his younger brother. Therefore, it becomes quite

evident that the minor child recognizes his mother, half-brother and stepfather to be his immediate family and feels utterly secure in that setting. There is nothing on record to reflect that the petitioner's subsequent marriage or the birth of the second child has, in any manner, altered her level of motherly devotion to the minor in question. The child is also shown to reflect excellent academic performance at his school and there is nothing worrisome about his educational needs as well.

29. Therefore, in our considered opinion, there is nothing on record to draw an adverse inference against the current family setup of the child, merely on account of it being a modern rendition of familial concept. Rather, it can be seen that the child's best interests are being taken care of well in the current setting.

30. At the same time, the desire of the biological father of the minor, i.e. the respondent, to become an active part of the child's life cannot be discounted. It is right of both the parents to contribute to their child's robust upbringing and share a bond of care and affection with their

offspring. It is also in the best interest of the child to have the presence of both his parents in his life, which ensures a more holistic development and formation of sound emotional connections.

31. Even though the petitioner contends that the respondent has made no serious efforts to be involved in the child's life ever since their separation and has visited the child hardly twelve times in the last eleven years, the respondent's contention remains that such an absence was caused due to the petitioner pro-actively keeping the child away from the biological father. We find it futile to submerge ourselves in the midst of these contentions as the fact remains that the child has not had a real chance to form an emotional bond with his biological father.

32. The High Court's order of granting permanent custody of the minor to the father was based on the belief that the mother's relocation of the minor to Malaysia would practically amount to uprooting his life in Kerala and may cause a severely negative impact on the child in his growing years. The same consideration had

weighed heavily with this Court while dismissing the appeals.

33. However, the psychological reports on record make it absolutely clear that the minor's normative universe comprises his current family setting, primarily and especially involving his mother who has been the child's sole caregiver for the past eleven years. In such circumstances, the change in permanent custody shall also essentially amount to upending the very core of the stable and familiar environment in which the child currently lives and prospers. This enormous transition cannot be said to be conducive to the best interest of the child, as it is reflective from his current mental status. It has rather been quite damaging to his welfare.

34. The stability and security of the child is an essential ingredient for the full development of the child's talent and personality.⁸ Even most of the well grown adults do not perceive sudden and huge changes in their lives very comfortably and often exhibit symptoms of distress when

⁸ Athar Hussain v. Siraj Ahmed, (2010) 2 SCC 654

confronted with such an imminent change to their regular life. It would be extremely harsh and insensitive for the courts of law to expect the child to accept and flourish in an alien household where his own biological father is akin to a stranger to him. We cannot turn a blind eye to the trauma that is being inflicted on the child in consequences of the orders of the courts of law handing custody to the father, who is alleged to exhibit apathy towards the tender emotional state of the minor.

35. Therefore, in light of the facts and circumstances of the case, we firmly believe that permanent custody of the minor child should remain with the petitioner-mother. However, the respondent-father's intention and efforts to become actively involved in his child's life cannot be ignored and he needs to be given a material opportunity to develop a connection with his minor son. It shall be done in the form of granting him visitation rights, and such visitation rights will provide the child with a space to start being at ease in his father's presence at a comfortable pace, as opposed to an immediate transition in custody.

This approach is intended to ensure the welfare of the child and assist him in forming a child-parent bond with both his parents.

36. Accordingly, we issue the following directions governing the custody and visitation rights of both the parties with regard to the minor child:

- a) The minor child is to remain in permanent custody of the petitioner-mother.
- b) The respondent-father is allowed to see and interact with the child virtually twice a week for thirty minutes each. The exact time of such virtual interactions is to be worked out between the parties after giving due consideration to the child's educational schedule and otherwise. During such virtual sessions, the petitioner is directed to provide an interference-free environment to the child and respondent, and ensure that she does not meddle in such conversations.
- c) The respondent is also permitted to visit the child in-person for one day every weekend. The respondent shall be allowed to spend time with the child between 10 a.m. to 5 p.m.

- every Saturday or Sunday, as may be convenient to both the parents and the child.
- d) For the purpose of physical visitation, the petitioner is directed to produce the minor child before the Chief Ministerial Officer/in-charge of the Family Court, Ottapalam on every Saturday at 10 a.m., who is to hand over the custody to the respondent for seven hours, as mentioned above.
- e) The petitioner is strictly restrained from changing the current place of residence of the minor to outside India. She shall be allowed to take the child with her to abroad only during Onam, Christmas and for 50% of the period of the total days of the child's summer vacations.
- f) In case, the petitioner takes the minor child with her to outside India during the above period, then at least two weeks prior to the date of leaving, she is directed to submit a statement before the Family Court, Ottapalam as to the details of the country, place of residence with address, duration of stay etc., and shall also file a statement after

arrival before the Family Court, Ottapalam as to the date of arrival.

- g) On occasions of foreign travel, the petitioner is also directed to share the above-mentioned details with the respondent via e-mail, at least ten days prior to the date of said travel.
- h) Considering the current vulnerable emotional health of the minor child, the petitioner is directed to continue to keep the child under the care and observation of the psychologists with routine sessions as it is an evolving situation. Since the respondent intends to become an active participant in the child's life, he is also directed to partake in the counselling sessions and apprise himself of the emotional and mental well-being of the child.
- i) The parties are mandatorily directed to seek a re-assessment of the child's health at CMC, Vellore, within three months from this order, i.e. before 31st October 2025.
- j) The respondent is not being granted any over-night stay permission or longer visitation rights to the child at this point in time. However, this is subject to change,

provided there are positive developments in interaction between the respondent and the minor-son. The said positive changes should be reflected by the child's behaviour and comfort level as well as the psychological examination reports. If such favourable changes are reported, the respondent shall be at liberty to prefer an application before this Court seeking modification of the present order and more flexible visitation rights.

37. Before parting with the judgment, we find it relevant to remind both the parents of their primary responsibility towards child's nurturing, which can be achieved by effective communication and smooth execution of the above arrangement, while exhibiting mutual respect. The parties are advised not to let their bitter past experience impede the child's well-being, especially given the sensitive emotional state of the tender child. The petitioner is advised to encourage the child to accept and welcome both the parents in his life for a well-rounded development.

38. The petitioner has also contended that the respondent has allegedly administered threats upon the minor child regarding taking him away permanently from his mother and that, such threats have triggered the deteriorating mental health of the child. While we refrain ourselves from commenting on the alleged threats because their factum has been strongly opposed by the respondent and it remains to be a matter of evidence, we strongly advise and caution the respondent-father against making any kind of insensitive or crude remarks to the child. Further, the respondent cannot immediately expect the child to develop a parental bond with him abruptly after such a long absence. A father-son relation can only be fostered patiently over the course of years, marked by his continued presence and responsibility-bearing attitude, and nurtured with boundless love, care and empathy.

39. Lastly, I.A. No. 54350 of 2025 was filed by the petitioner seeking directions to the Family Court to avoid calling the minor child to Court premises in the execution of custody proceedings pending

before the Family Court. Even though the said execution proceedings shall be rendered infructuous in light of the instant judgment, if there arises any subsequent proceeding before the Family Court, we recommend the Court to afford due care while ordering the physical presence of the child in Court premises. This is considering the fact that the child has already faced colossal emotional impact in the courts of law and might not respond well in such circumstances. Therefore, the physical presence of the child is advised to be avoided unless absolutely necessary.

40. Accordingly, the instant review petitions are allowed and this Court's order dated 22.08.2024 in Civil Appeal Nos. 5395-5396 of 2024 is recalled and the civil appeals are restored to their original numbers. Further, the civil appeals are allowed. Subsequently, the High Court's order dated 17.10.2023 stands set aside, whereas the conditions imposed by the Trial Court, *vide* order dated 31.10.2022, are re-affirmed apart from the visitation arrangement which stand modified as per the instant judgment. It is directed that the

custody of the child shall remain with the petitioner while the respondent shall have visitation rights in terms of the above stipulations.

41. Interlocutory application(s), if any, shall stand disposed of.

.....J.
[VIKRAM NATH]

.....J.
[PRASANNA B. VARALE]

NEW DELHI
JULY 15, 2025.