

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Misc. Appeal No. 2516 / 2016

Saurabh Modi S/o Shri Satishnath Ji Modi, Aged About 31 Years,
R/o 101 Mangal Vihar, Gopalpura, Bypass, Jaipur (Raj.) R/o T-
10/1102, Vipul Greens, Sohna Road, Sector-48, Gurgaon-122 001
(Haryana)

----Appellant

Versus

Ms. Shweta D/o Shri (Dr.) Sushil Ji Lalwani, R/o A-5 Daspa House,
Nr. Railway Hospital, Jodhpur Presently R/o Plot No. 31 Sar
Padampat Singaniya University, Bhatever, Tehsil Vallabhnagar,
District- Udaipur (Raj.) 1.

----Respondent

Connected With

D.B. Civil Misc. Appeal No. 2619 / 2016

Saurabh Modi S/o Shri Satishnath Ji Modi, Aged About 31 Years,
R/o 101 Mangal Vihar, Gopalpura, Bypass, Jaipur (Raj.) R/o T-
10/1102, Vipul Greens, Sohna Road, Sector-48, Gurgaon- 122 001
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District-Udaipur(Raj.)1.

----Respondent

For Appellant(s) : Mr.Tribhuwan Gupta

Mr.Usman Ghani

For Respondent(s) : Mr.Rakesh Chotia

Mr.Rahul Rajpurohit for Dr.Sachin Acharya

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE VINIT KUMAR MATHUR

judgment

13/03/2018

1. Petitions filed by the mother:Ms.Shweta and the father:Saurabh for being appointed as Guardian as also for custody of their child named Saket have been disposed by a common order dated 3.8.2016 and thus the two appeals filed by the father. Three visitation rights in a year; a day prior to Saket's birthday, a day prior to the festival of Holi and a day prior to the festival of Diwali have been granted to the father. The time is between 10.00 AM to 5.00 PM.

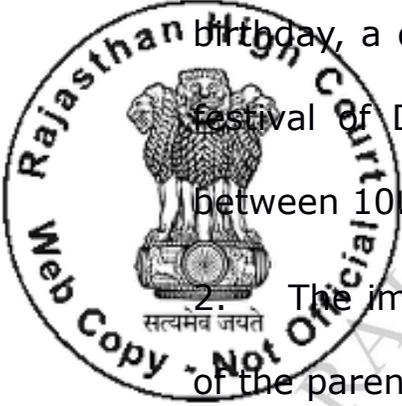
2. The impugned decision focuses more on the financial means of the parents.

3. The couple were married on 27.12.2003 and Saket was born on 12.11.2006. As of today Saket is 11 years and 4 months old.

4. Learned counsel for Saurabh does not dispute that the possibility of a psychological damage caused to the child who is removed from the familiar environment to an unfamiliar environment cannot be ruled out and the thumb rule to be applied is to try and retain the child in the environment in which the child has grown up. This casts the onus against the father.

5. Learned counsel for Saurabh also does not dispute that the bond between a mother and her child has always been held, especially in India, to be standing on a higher pedestal vis-a-vis the bond between a father and his child.

6. Learned counsel for the parties rightly concede that the issue of custody has to be viewed with reference to the best interest of the child.



7. Speaking about a child's interest we understand the same to be comprising two distinct parts: (i) maintaining family ties; and (ii) ensuring the child's development within a sound environment and not an environment which harms the development of the child.

8. The finances of the couple are sufficient for a proper upbringing of the child by each spouse and thus concededly Shweta can bring up Saket in an environment which needs finances.

9. Saket is residing with Shweta in Udaipur. Saurabh resides in Gurgaon and travels frequently to Jaipur for his work.

10. At this stage, learned counsel for Saurabh concedes that Saurabh would be satisfied if better visitation rights are granted to him for the reason meeting the child only three days in a year is insufficient for the bond to be created between the father and the son.

11. We agree.

12. It is in the interest of Saket that he bonds not only with his father but the extended parental family comprising his grandparents and cousins from the side of his father.

13. Thus we propose to dispose of the appeals retaining the impugned order in so far custody of Saket has been granted to Shweta but increasing the visitation rights as also granting interim custody rights to Saurabh.



14. Saurabh would be free to talk with Saket every Sunday at 10.00 AM and for which within a week from today Shweta would provide to Saurabh the telephone number on which Saurabh could ring and contact his son so that the direction could be complied with. Saurabh would be entitled to speak to Saket every Sunday at 10.00 AM through said telephone number.

15. A day prior to Saket's birthday, a day prior to the festival of Holi and a day prior to the festival Diwali, Saurabh would be entitled to meet Saket and the venue would not be the house where Shweta resides for the reason in the past there has been a lot of acrimony between the two and during the proceedings before the Family Court visitations by the father at the Mahila Thana resulted in complications. On these three occasions Shweta would hand over interim custody of Saket to Saurabh when Saurabh reaches her house where she resides, for which Saurabh would give prior intimation to Shweta of the time he would reach her residence. Saket's custody would be handed over at the gate of the house and after three hours Saurabh would return Saket to the custody of his mother.

16. On days mutually agreed between Saurabh and Shweta during the summer and the winter vacations of Saket, Shweta would hand over interim custody of Saket to Saurabh, who would keep Saket with him for 14 days during the summer vacations and 05 days during the winter vacations. During this period Saurabh would be entitled to take Saket with him anywhere in India for a holiday so that the bond between the father and the

son strengthens. At the end of the custody period of 14 days and 05 days respectively, Saurabh would hand over Saket's custody to Shweta at the gate of Shweta's house from where she would take Saket's custody.

17. Modifying the impugned decision as aforesaid the two appeals are disposed of.



Parmar

(VINIT KUMAR MATHUR)J.

(PRADEEP NANDRAJOG)CJ.



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