

INDIA / JUDGMENT

ARATHY RAMACHANDRAN versus BIJAY RAJ MENON

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[2025] 4 S.C.R. 2063 : 2025 INSC 587

Arathy Ramachandran v. Bijay Raj Menon

(Civil Appeal No. 5680 of 2025)

29 April 2025

[Vikram Nath, Sanjay Karol and Sandeep Mehta,* JJ.]

Issue for Consideration

Issue arose as regards sustainability of the order passed by the High Court granting 15 days interim custody of the minor children to the father.

Headnotes†

Guardians and Wards Act, 1890 – Custody of children – 15 days interim custody to the father – Grant of – Appellant- mother sought permanent custody of children, one son and one daughter – Family court restrained respondent-father from forcibly removing the minor children from the custody of the mother – Family court granted visitation rights to the father – On petition of the father, High Court granted interim custody of the children to the father for 15 days – SLP by mother raising concerns regarding environment being provided to the daughter during the interim custody period of 15 days granted to the father – During pendency, this Court stayed the operation of interim custody granted to father in respect of minor son, and the interim custody of the daughter continued – Sustainability:

Held: Order passed by the High Court not sustainable – In cases of child custody, the paramount consideration should be the welfare of the child – Utmost sincerity, love and affection showered by either of the parents, by itself, cannot be a ground to decide the custody of a child – On facts, interim arrangement charted out by High Court, neither feasible nor conducive to the well-being, mental and physical, of the children – Directing the interim custody of the tender aged boy of three years to be assigned to the father, grossly unjustified, may have serious adverse effects, and is totally uncalled for – As regards the daughter, the intervening circumstances and the information provided by the child during interaction fortifies the

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genuine concern of the mother that the environment being provided to the child by the father during the interim custody may not be conducive to her physical and emotional well-being – Child definitely requires nutritious home cooked food for overall well-being, growth and development and the father not in a position to provide such nutrition to the child – Also the child gets no company except that of the father during the interim custody period whereas the parents of the mother are staying with her – Emotional and moral support which the child gets at her mother's home is manifold than what is being provided by the father during custody period – Period of 15 days with the father would also lead to deprivation of her company to her sibling – High Court clearly erred in granting interim custody of the children to the father for a period of 15 days every month – Arrangement made by the High Court not arrived at by weighing the pros and cons of the situation – Periodic division of custody definitely adverse to the well-being; physical, mental and emotional, of the children – To provide the father fair and reasonable access to the children, the father entitled to interim custody of the daughter on alternate Saturdays and Sundays of every month, and on either of these two days, interim custody of the boy child for a period of four hours – Father to make sincere efforts to provide home cooked meals to the children during this period of interim custody – Impugned order set aside. [Paras 19-29, 32]

Guardians and Wards Act, 1890; Constitution of India.

List of Acts

List of Keywords

Child custody; Permanent custody; Interim custody of the minor children; Visitation rights; Welfare of child; Emotional and physical well-being of child; Adverse effects on emotional and physical well-being of child; Periodic division of custody; Forced separation from mother; Intervening circumstances; Nutritious home cooked food; Emotional and moral support; Health hazard; Mental trauma to children; Family bonding; Child counsellor; Utmost sincerity, love and affection showered by the parents; 15 days' interim custody.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5680 of 2025

From the Judgment and Order dated 11.12.2024 of the High Court of Kerala at Ernakulam in OPFC No. 682 of 2024

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Appearances for Parties

Advs. for the Appellant: Ms. Haripriya Padmanabhan, Sr. Adv., Santosh Krishnan, Ms. Sonam Anand, Vishal Sinha.

Advs. for the Respondents: Dr. Rajesh Pandey, Sr. Adv., Ms. Aswathi M.K.

Judgment / Order of the Supreme Court

Judgment

Mehta, J.

1. Heard.

2.

Leave granted.

3. The appellant¹ and the respondent² who are both highly qualified professionals, tied the knot in the year 2014. From their wedlock, two children were born-the first being the daughter, on 23.07.2016, and the second being the son, on 05.07.2022. The custody of the children is the subject matter of the present lis.

4. We are informed that at present, the appellant-mother is employed in an IT company which allows her to work from home. The respondent- father is reportedly, working as a General Manager in a construction company at Singapore. It seems that the spouses faced marital discord in the year 2017 and accordingly, both started living separately with occasional attempts at restoring the matrimonial ties. In one of these attempts at reconciliation in the year 2021, the appellant again conceived and gave birth to the son, who is presently about three years of age.

5. The appellant-mother felt a threat perception that the respondent- father may try to forcibly remove the children from her custody. Thus, in June, 2024, she filed an original petition, bearing O.P. (G&W) No. 1185 of 2024, seeking permanent custody of the children under the provisions of the Guardians and Wards Act, 1890 in the Family

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Hereinafter, being referred to as 'appellant-mother'.

Hereinafter, being referred to as 'respondent-father'.

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Court, Thiruvananthapuram.³ The said proceedings are still pending final adjudication.

6. The Family Court passed an order dated 7th June, 2024, restraining the respondent-father from forcibly removing the minor children from the custody of the appellant-mother.
7. On 22nd July, 2024, the respondent-father filed an application, bearing I.A. No. 02 of 2024, seeking interim custody/visitation rights of the children in the custody proceedings instituted by the appellant-mother. The Family Court vide order dated 7th October, 2024, granted visitation rights to the respondent-father, permitting him to visit and interact with the children from 10:00 a.m. to 01:30 p.m. on the second Saturday of every month at the Court premises. The respondent-father was also permitted to interact with the children via video calls from 07:00 p.m. to 07:20 p.m. (IST) on all Saturdays except second Saturday.
8. On 4th November, 2024, the respondent-father preferred an Original Petition under Article 227 of the Constitution of India, bearing OP (FC) No. 682 of 2024, assailing the order dated 7th October, 2024 before the High Court of Kerala at Ernakulam.⁴ The said petition came to be decided by the Division Bench of the High Court vide order dated 11th December, 2024, providing interim custody of the children to the respondent-father on the terms indicated below: -

“8. Considering the fact that the father also needs the custody of the children to have bonding with them till they attain the age of 18 years, we would not keep the father away from the interim custody of the children, as the children require the care and custody of both the spouses/ parents. Accordingly, we grant fifteen (15) days of custody to each in a month till the disposal of the O.P pertaining to permanent custody with the following conditions:

1. Husband shall file an undertaking regarding taking of the flat on rent bearing No.5A SFS, City space, Thiruvananthapuram, which is fully furnished as well and with regard to the

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Hereinafter, being referred to as ‘Family Court’.

Hereinafter, being referred to as the ‘High Court’.

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engagement of a Nanny within a period of one week from today.

2. He will also make arrangement of the vehicle for commutation of the children for drop on and drop off ie., to and from the flat and the school or another place.
3. He will not take the children away to Thrissur. He is at liberty to bring his mother to Thiruvananthapuram without the permission of this court.

4. He will ensure that the children are taken care healthy and congenial environment and there is no lacking in it.
9. We have been informed that every year there are summer vacations in the school from end of March, entire April and May and the school reopens on 1st of June. The similar arrangement will go on during the said period also.
10. However it is made clear that whenever there is examination, the custody of the children will be with the mother only and the custody will be given two weeks prior to the examination. The mother will give advance intimation to the husband either through whatsapp message or through any other mode, regarding the examination.
11. During the period when the children are in the custody of the husband/father, the husband/father will permit 15 minutes of video call, everyday, to the mother. This arrangement will also be carried on by the wife/mother when the children will be in the custody of the mother. In case of any violation, the liberty is granted to either of the parties to move an application. Petitioner-husband/father is also directed to undertake parental counselling.”

(Emphasis Supplied)

9. The appellant-mother has approached this Court through this appeal by special leave, assailing the said order of the High Court, granting periodical interim custody of both the children to the respondent-father.

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10. This Court, while issuing notice vide order dated 6th January, 2025, had stayed the operation of the impugned order passed by the High Court to the extent of interim custody granted to the respondent- father in respect of the minor son, and restored the arrangement made by the Family Court in this regard. However, the arrangement of interim custody granted to the respondent-father in respect of the daughter aged eight and a half years was directed to be continued as per the impugned order.
11. On the previous date of the hearing i.e., 2nd April, 2025, the appellant- mother appeared in the Court in-person whereas, the respondent- father appeared through video conferencing. At that point of time, the girl child was in the custody of the respondent-father. From 8th/9th April, 2025 onwards, the interim custody of the child has been restored to the appellant-mother.
12. After hearing both parties and the learned counsel appearing on their behalf, we felt that an interaction with the girl child would be essential to arrive at a just and fair decision in the matter. Accordingly, the matter was directed to be taken up in the Committee Room on 16th April, 2025, at 01:30 p.m. and the parties along with their daughter were directed to remain present in person.

13. We interacted 'in camera' with the litigating parents and also had a healthy and satisfying dialogue with the girl child separately. Heard the arguments advanced by the learned counsel for the parties.
14. The appellant-mother has raised serious concerns regarding the environment being provided to the daughter during the interim custody period of 15 days granted to the respondent-father by the High Court. She submitted that though the respondent-father has taken a flat bearing No. 5A, SFS, situated in City Space, Thiruvananthapuram, on rent and travels from Singapore every 15 days to gain interim custody of the child, the other conditions of the High Court's order are not being adhered to by him. Her primary and genuine concern was that the respondent-father has not engaged a nanny in terms of the High Court's direction.
15. She further submitted that home cooked food was not being provided to the girl child in this period, and that all the meals were procured by ordering from restaurants/hotels, etc. She further submitted that the child does not have any company whatsoever other than the

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respondent-father and thus, her overall growth and emotional well-being is being adversely affected owing to this isolated atmosphere due to which the child may even suffer permanent emotional scars.

16. E-converso, the respondent-father has pleaded that he is taking care of the child with all the sincerity and intent of a caring parent. He travels from Singapore religiously adhering to the timeline fixed by the High Court so that he can spend quality time with the child and develop a stronger bond with her. He urged that his mother often visits the flat at Thiruvananthapuram to provide home cooked food to the child and to keep her company. However, the fact that a nanny has not been engaged in terms of the High Court order is not disputed.
17. He further submitted that he is unequivocally prepared to abide by any condition so as to restore the matrimonial ties with the appellant-mother. We refrain from advertent to this issue as it is for the spouses to find a mutual resolution to this issue.
18. During the course of interaction with the girl child, we found her to be very intelligent, expressive and composed. She gave mature and well-balanced responses to the queries put by us. She expressed her love and affection for both her parents. However, she seemed uncomfortable by the 15 days' periodic custody arrangement dividing her time between the father and the mother. She was candid in her stand that during the period for which she stayed with the respondent-father, all the food which was provided to her had been ordered from restaurants/hotels, etc. Not one meal was a home cooked one. She also expressed that

there is no one to keep her company except for her father during this period of 15 days.

19. There are series of judgments by this Court wherein, it has been authoritatively held that in cases of child custody, the paramount consideration should be the welfare of the child. The utmost sincerity, love and affection showered by either of the parents, by itself, cannot be a ground to decide the custody of a child.
20. Keeping in view the aforesaid principles and adverting to the facts of the case at hand, we feel that the interim arrangement, as charted out by the High Court in the impugned order, granting 15 days' alternative custody of both the children to the parents, is neither feasible nor conducive to the well-being, mental and physical, of the children. The

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younger of the two children being the son aged about three years, has hardly lived with his father, who lives and works in Singapore. Thus, directing the custody of the tender aged boy to be assigned to the respondent-father, even on an interim basis for a period of 15 days each month, is grossly unjustified and may have serious adverse effects on the emotional and physical well-being of the child and may create a sense of deep insecurity in the boy owing to forced separation from the mother. The interim arrangement made by the High Court to the extent of the three-year-old son is totally uncalled for and unsustainable on the face of the record and is hereby set aside.

21. Now, coming to the aspect of interim custody of the eight years old daughter to the respondent-father. We feel that the intervening circumstances and the information provided by the child during interaction fortifies the genuine concern shown by the appellant- mother that the environment being provided to the child by the father during the interim custody period of 15 days may not be conducive to her physical and emotional well-being.
- 22.

It cannot be gainsaid that continued consumption of food procured from restaurants/hotels would pose a health hazard, even to a grown- up person, what to talk of a tender aged child of eight years. The child definitely requires nutritious home cooked food for her overall well-being, growth and development. Unfortunately, the respondent- father is not in a position to provide such nutrition to the child.

23. We could even have considered giving an opportunity to the respondent-father to make suitable arrangements for providing home cooked food to the child but the fact that the child gets no company whatsoever except for that of the father during the interim custody period of 15 days is an additional factor which weighs heavily against his claim for the child's custody at this stage.
- 24.

It cannot be expected that during the periodic custody arrangement, the father would be in a position to give continued attention to the child for the entire span of time during which he has access to the child. He would have to spare time for his job, daily pursuits etc. and during this period, the child would be left all alone without anyone to keep her company.

25.

In contrast, the parents of the appellant-mother are staying with her. She has the advantage of the facility of working from home. That

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apart, the younger brother of the girl child is there to provide her healthy company. Hence, the emotional and moral support which the child gets at her mother's home is manifold than what is being provided by the father during the interim custody period. The period of 15 days during which the daughter would be with the father would also lead to deprivation of her company to her sibling, the boy child aged three years.

26.

In this background, we feel that the High Court clearly erred in granting interim custody of the children to the respondent-father for a period of 15 days every month. The arrangement made by the High Court was not arrived at by weighing the pros and cons of the situation. The periodic division of custody is definitely adverse to the well-being; physical, mental and emotional, of the children. In a long run, this arrangement may prove extremely harmful and may cause irreversible mental trauma to both the children.

27. Hence, we are of the firm view that the impugned order passed by the High Court granting interim custody of the children to the respondent- father for a period of 15 days every month is unsustainable on the face of record.
28. However, at the same time, we cannot lose sight of the fact that the respondent is a doting father who has shown his keen desire to have an equal and effective parenting role in the upbringing of his children. Thus, depriving him of the custody of the children in entirety is neither acceptable nor justifiable and may destroy all chances of family bonding.
29. Hence, in order to provide the respondent-father fair and reasonable access to the children, we hereby direct that he shall be entitled to interim custody of the daughter on alternate Saturdays and Sundays of every month. On either of these two days, the respondent-father will be entitled to meet and have interim custody of the boy child for a period of four hours subject to the comfort of the child. This period of four hours interim custody of the boy shall be supervised by a child counsellor, who is to be engaged by the respondent-father with prior approval of the family Court. The respondent-father may either retain the same flat or

take any other suitably furnished flat in Thiruvananthapuram town to facilitate the arrangements for interim custody. The respondent-father shall make sincere efforts to provide home cooked meals to the children during this period of interim custody.

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30. The respondent-father shall be entitled to make video call/s for 15 minutes to both the children on every Tuesday and Thursday, the schedule whereof may be fixed by both the parties, either after consulting with each other or with the assistance of their respective lawyers.
31. The Family Court shall expedite the decision of the Guardianship petition, bearing O.P. (G&W) No. 1185 of 2024, filed by the appellant- mother.
32. The impugned order dated 11th December, 2024, passed by the High Court is reversed. The appeal is allowed accordingly.
33. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeal allowed.

†Headnotes prepared by: Nidhi Jain

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