HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

…

RP no.96/2022
In RFA no.04/2021

Pronounced on: 13.02.2025

…….Petitioner(s)

Through: Mr I. Sofi, Advocate

Versus

……Respondent(s)

Through: None

CORAM:
HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. Review of judgement dated 18th October 2022, passed by this Court in an appeal, RFA no.04/2021, titled as *Parvez Ahmad Khan v. Areeb* is sought for.
2. I have learned counsel for parties and considered the matter.
3. The grounds on which review is being sought are: that while passing judgement under review, appeal has been dismissed on merits whereas counsel for petitioner argued the case on preliminary issue of maintainability of appeal in terms of Order dated 19th May 2022; that appeal was fixed on 30th May 2022, on which date counsel for respondent was not available and adjournment, sought on his behalf by

proxy counsel, was granted and the matter was posted for 1st June 2022 for continuation of arguments; that on 1st June 2022, the matter was argued on maintainability of appeal and case reserved and, thus, main appeal was not argued at all on merits; that this Court has not decided the objection vis-à-vis maintainability of appeal and instead decided main appeal which was not argued on merits at all; that appeal has been decided without arguing the matter on merits and without hearing counsel for petitioner on merits which fact is born out from the records and interim orders, therefore, error and mistake apparent on the record which require recalling of the order/judgement. Reference has been made to ***Union of India v. Sandur Manganese and Iron Ores Ltd*** to state that principles of natural justice embody the right to every person to represent his interests to the court of justice and pronouncing of judgement which adversely affects the interests of the party to the proceedings who was not given a change to represent his/its case is unacceptable under principles of natural justice. It is also stated that appeal was heard and reserved on maintainability on 1st June 2022 and while rendering the judgement, this Court has overlooked the interim orders and instead passed the judgement on merits which has been apparently passed without hearing the matter on merits.

4. In RFA no.04/2021, review petitioner/appellant sought setting-aside of the Order dated 26th December 2020, passed by Principal District Judge, Srinagar, ["*Trial Court*" for short], deciding five applications, four filed by review petitioner, and one by respondent. Following judgement was passed by this Court to decide the appeal:

1. *This Appeal is directed against Order dated 26th December 2020, passed by Principal District Judge, Srinagar (for short "court below"), disposing of as many as five applications, four filed by petitioner and one by respondent.*
2. *The case set up by appellant is that appellant and respondent married; out of which respondent gave birth to a male child, namely, Ahmad, and that marriage did not continue and he divorced respondent. The minor child was with respondent who did not allow him to see the child, so he filed an application under Section 25 of the Guardian and Wards Act, which was disposed of vide order dated 19th October 2015 with a direction that respondent would produce the ward in District Mediation Centre, Srinagar, and leave custody of the ward of appellant, who would have interaction/interview with the Ward from 1.00 PM to 3.30 PM twice in a month on 1st and 4th Saturday. However, respondent is said to have not adhered to aforesaid directions and continued to commit breach and violation thereof, so he filed contempt petition on 25th April 2016, in which notice was issued to respondent. During pendency thereof, respondent also filed application seeking modification of order dated 19th October 2015 on the ground that she had been appointed as Lecturer, making it difficult for her to produce the ward on two Saturdays as both the days were working days and the time fixed for meeting was also creating a lot of trouble in discharging her duties as she had to leave in the middle of working days. This application was disposed of vide order dated 8th August 2017, directing production of ward in a month on 1st and 3rd Saturdays for meeting and conveyance charge was to be borne by appellant. It is also contended that appellant also filed an application in aforesaid contempt petition and sought modification of aforesaid two orders dated 19th October 2015 and 8th August 2017, by directing respondent to allow appellant full-fledged meeting with minor in and outside the four walls of District Mediation Centre and during interaction of appellant, respondent be directed to stay away from intimate zone and further his grandparents be also allowed to interact with the minor child in the District Mediation Centre. It is also averred that despite orders and directions passed by the court below, respondent continued to flout the same. According to appellant, respondent did not implement the orders of the court below, so he filed second contempt petition, but the court below is stated to have passed order impugned, of which he is aggrieved.*
3. *I have heard learned counsel for parties and considered the matter.*
4. *Learned counsel for appellant has stated that impugned order has been passed at the back of appellant and without hearing him and that appellant was himself pleadings the case before the court below and the said case was listed on 11th November 2020, when the court directed counsel for respondent to file written arguments and the case was posted for 2nd December 2020. Counsel for respondent filed written arguments on 2nd December 2020 and the matter was posted for 17th December 2020, on which date appellant was absent and the court below heard arguments of counsel for respondent and posted the case for appropriate orders on 26th December 2020, on which date*

impugned order came to be passed. It is also contended that impugned order is not based on facts.

5. *Aforesaid submissions of learned counsel for appellant as also those averments/grounds raised in the memo of appeal are misconceived. The reason being that impugned order is comprehensive and takes in its fold all aspects of the matter that were required for court below to take care of while passing impugned order. When impugned order is looked into, it does not suffer from any infirmity as projected in instant appeal. Last but one paragraph of impugned order is appropriate to be reproduced, in view of the case set up by appellant, hereunder:*

> *"However, keeping in view the interest and welfare of the minor and the right of the petitioner, it is directed that petitioner shall be permitted to meet the child on the last Friday of every month from 3:00 PM to 4:00 PM in the ADR Centre at Srinagar. Secretary District Legal Services Authority shall facilitate the visit and all precautions shall be taken to ensure prevention of COVID-19 pandemic. The petitioner shall pay the conveyance charges of Rs.500/- to the respondent for each visit on the day of meeting itself against proper receipt. The respondent shall facilitate the same and shall not cause any hindrance in the interaction. The petitioner is also advised to bear the expenses of the education and all related expenses of the child including the tuition fee etc, so that he can contribute satisfactorily to the health and education of the child. However, in case the petitioner ducks to bear expenses, the respondent shall always be free to pursue the appropriate legal remedy for recovery of maintenance."*

Perusal of above portion of impugned order would reveal that court below has given visitation rights to petitioner to have interaction with his son and pay conveyance charges of Rs.500/- . The court below has not only enjoined upon respondent to facilitate interaction of appellant with his son but has also cautioned respondent not to cause any hindrance in such interaction. What else could have the court below done and directed except the above one. In that view of matter impugned order does not warrant any interference.

6. *For the reasons discussed above, the instant appeal is* ***dismissed*** *with connected CM(s). Interim direction, if any, shall stand vacated.*

5. A three-Judge Bench of the High Court of Delhi in ***MAT. APP. (F.C.0 126/2019, 2024: DHC: 7994-FB***, vide its judgement dated 16th October 2024, has held that orders passed under Section 12 of the Guardian and Wards Act would be appealable under Section 19 of the Family Courts Act.

6. If the appeal, preferred by appellant/review petitioner, for a moment, is treated maintainable against the order passed by the Trial Court, yet grounds taken in the appeal cannot be heard saying from appellant/ review petitioner were noncomprehensive and required further elucidation and elaboration as it would serve no purpose except protracting the matter, so those grounds are reproduced one-by-one hereunder, and discussed and decided individually: -

i. **First Ground**:

The first ground taken by appellant/review petitioner in his appeal is that impugned order is patently illegal and bad in law. The impugned order has been passed at the back of the appellant and without hearing him. It is submitted that the appellant was himself pleading the case before the trial court and the said case was listed on 11.11.2020 when the Trial Court directed the counsel for the respondent to file written arguments. The case was posted for 02.12.2020. On 02.12.2020 the counsel for respondent filed written arguments and the case was posted for 17.12.2020. On 17.12.2020, the appellant was absent and the trial court heard the arguments of the counsel for respondents and posted the case for appropriate orders for 26.12.2020 and on 26.12.2020, the trial court passed impugned judgement at the back of appellant.

(a) The above contentions of appellant/review petitioner are impregnant with accusation against the Trial Court. Such a plea is un-condonable. Non-appearance of parties could not be made a reason for not deciding the case(s) as generally it

has become a routine to protract matters. Adjournment culture has been deprecated by the Supreme Court.

(b) The legal maxim 'justice delayed is justice denied' echoes loud and clear in our overburdened judicial system. Millions of cases are pending in the Courts throughout the India. The primary reason for huge pendency of cases is either shortage of judges, lack of infrastructure or procedural delays and adjournments.

(c) An adjournment refers to the judicial practice of deferring a scheduled hearing to a later date. Order XVII of the Code of Civil Procedure envisages rules for the Courts to follow when faced with adjournment requests. It provides that no adjournment shall be granted at the request of a party except where circumstances are beyond their control. Adjournment after adjournment has become a tool which leads to strategic delays.

(d) The Supreme Court in ***M/s Shiv Cotex v. Tirgun Auto P. Ltd and others, (2011) 9 SCC 678***, has made it clear by saying, "*Is the court obliged to give adjournment after adjournment merely because the stakes are high in the dispute? Should the court be silent spectator and leave control of the case to a party to the case who has decided not to take the case forward?"*. The Supreme Court after that proceeded to say, "*It is sad, but true, that the litigants seek - and the courts grant - adjournments at the drop of the hat. In the cases where the Judges are little proactive and refuse to accede to the requests*

of unnecessary adjournments, the litigants deploy all sorts of methods in protracting the litigation. It is not surprising that civil disputes drag on and on. The misplaced sympathy and indulgence by the appellate and revisional courts compound the malady further. The case in hand is a case of such misplaced sympathy. It is high time that courts become sensitive to delays in justice delivery system and realise that adjournments do dent the efficacy of the judicial process and if this menace is not controlled adequately, the litigant public may lose faith in the system sooner than later. The courts, particularly trial courts, must ensure that on every date of hearing, effective progress takes place in the suit." Thereafter the Supreme Court has also said that no litigant has a right to abuse the procedure provided in the Code of Civil Procedure inasmuch as adjournments have grown like cancer corroding the entire body of justice delivery system. A party to the suit is not at liberty to proceed with the trial at its leisure and pleasure and has no right to determine when the evidence would be let in by it or the matter should be heard. The parties to suit, whether it is plaintiff or defendant, must cooperate with the Court in ensuring effective work on the date of hearing for which the matter has been fixed. If they do not, they do so at their own peril.

(e) It has been said by the Supreme Court in ***Noor Mohammad v. Jetha Nand and another, (2013) 5 SCC 202***, "*In a democratic set up, intrinsic and embedded faith in the adjudicatory*

system is of seminal and pivotal concern. Delay gradually declines the citizenry faith in the system. It is the faith and faith alone that keeps the system alive. It provides oxygen constantly. Fragmentation of faith has the effect-potentiality to bring in a state of cataclysm where justice may become a casuality. A litigant expects a reasoned verdict from a temperate Judge but does not intend to and, rightly so, to guillotine much of time at the altar of reasons. Timely delivery of justice keeps the faith ingrained and establishes the sustained stability. Access to speedy justice is regarded as a human right which is deeply rooted in the foundational concept of democracy and such a right is not only the creation of law but also a natural right. This right can be fully ripened by the requisite commitment of all concerned with the system. It cannot be regarded as a facet of Utopianism because such a thought is likely to make the right a mirage losing the centrality of purpose. Therefore, whoever has a role to play in the justice dispensation system cannot be allowed to remotely conceive of a casual approach." The Supreme court further went to say that the corrosive effect that adjournments can have on a litigation and how a Lis can get entangled in the tentacles of an octopus. The philosophy of justice, the role of a lawyer and the court, the obligation of a litigant and all legislative commands, the nobility of the Bench and the Bar, the ability and efficiency of all concerned and ultimately the divinity of law are likely to make way for apathy and

indifference when delay of the present nature takes place, for procrastination on the part of anyone destroys the values of life and creates a catastrophic turbulence in the sanctity of law. The virtues of adjudication cannot be allowed to be paralyzed by adjournments and non-demonstration of due diligence to deal with the matter. One cannot be oblivious to the feeling necessities of the time. No one can afford to sit in an ivory tower. Neither a Judge nor a lawyer can ignore "the total push and pressure of the cosmos". It is devastating to expect infinite patience. Change of attitude is the warrant and command of the day. It has to be kept in mind that the time of leisure has to be given a decent burial. The sooner it takes place, the better it is. It is the obligation of the present generation to march with the time and remind oneself every moment that rule of law is the centripodal concern and delay in delineation and disposal of cases injects an artificial virus and becomes a vitiating element. The unfortunate characteristics of endemic delays have to be avoided at any cost. One has to bear in mind that this is the day, this is the hour and this is the moment, when all soldiers of law fight from the path.

(f) In ***Gayathri v. M. Girish (2016) 14 SCC 142***, the Supreme Court has highlighted that litigants pray for adjournment as if it was their right to seek adjournment on any ground whatsoever and under any circumstance, displaying a blatant disregard for the Court proceedings inasmuch as practice of

allowing frequent adjournments has become so common that it has significantly contributed to the backlog of cases.

ii. **Second Ground**:

The second ground taken by appellant/review petitioner in his appeal is that appellant was not present even on 26.12.2020. The appellant was also not present on 17.12.2020, when the trial court heard the arguments of the counsel for the respondent. The trial court as such did not hear the appellant nor afforded reasonable opportunity to make detailed submissions in the light of facts of the case and written arguments of the parties and the oral submissions made by the counsel for the respondent. The trial court has not heard the appellant at all and thus passed the impugned judgment without hearing him and hearing the counsel for respondents alone which renders the impugned judgment patently illegal and bad in law and in violation to principles of natural justice.

(a) Again, above averments of appellant/review petitioner are misconceived and specious. It has already been made clear herein before that the Courts are not mute spectators and leave control of the case to a party to the case who has decided not to take the case forward.

(b) In a democratic set up, intrinsic and embedded faith in the adjudicatory system is of seminal and pivotal concern. Delay gradually declines the citizenry faith in the system. It is the faith and faith alone that keeps the system alive. It provides oxygen constantly. Fragmentation of faith has the effect-

potentiality to bring in a state of cataclysm where justice may become a casualty. A litigant expects a reasoned verdict from a temperate Judge but does not intend to and, rightly so, to guillotine much of time at the altar of reasons. Timely delivery of justice keeps the faith ingrained and establishes the sustained stability. Access to speedy justice is regarded as a human right which is deeply rooted in the foundational concept of democracy and such a right is not only the creation of law but also a natural right. This right can be fully ripened by the requisite commitment of all concerned with the system. It cannot be regarded as a facet of Utopianism because such a thought is likely to make the right a mirage losing the centrality of purpose. Therefore, whoever has a role to play in the justice dispensation system cannot be allowed to remotely conceive of a casual approach. [Vide: ***Noor Mohammad v. Jetha Nand*** (supra)].

iii. **Third Ground**:

In this ground appellant/review petitioner states that the trial court while passing impugned order has held that respondent has filed objections both to contempt petition of appellant and also to parenting plan in which respondent refuted application. Appellant also avers that respondent did not contest contempt petition nor filed objections in contempt petition nor refuted statements and contentions of appellant made and averred in contempt petition. Therefore, it is factually incorrect that respondent filed objections to contempt petition. This non-

existent fact renders impugned order bad and reflects non-application of mind and non-perusal of record by trial court and thus impugned judgment cannot sustain in the eye of law.

The above contentions, in view of aforesaid discussions, are absurd and deplorable. It is mentioned in impugned order that respondent filed her objections both to contempt petition as also to the 'parenting plan' in which she refuted the application firstly on preliminary objections, i.e., the contents have been downloaded from the internet as the submissions are vague and only waste of precious court time and that applicant in order to harass, humiliate and intimidate respondent filed that application on false and frivolous grounds. It is also mentioned therein that applicant/appellant left no stone unturned to harm, injure, endanger the health safety, life, wellbeing of minor and is least bothered about welfare and upbringing of minor, more particularly when applicant/appellant contracted second marriage and is enjoying luxurious life and never spent quality time with the minor whereas respondent has not contracted second marriage and is continuously taking care of minor. As regards contempt petition, it is mentioned in impugned order that petition for initiation of contempt proceedings was basically pending disposal before the court of 1st Additional District Judge, Srinagar, but later on was transferred from the said court and was retained in the Trial Court for disposal on the basis of consent of parties and during pendency of petition, the Trial Court passed order on 5th November 2019, which had been passed with the

consent of the parties directing permitting appellant to meet the child on 2nd and 4th Friday of every month and respondent was directed to ensure that she did not intervene at the time of meeting between appellant and the child. Thereafter parties sought vacation/modification of order dated 5th November 2019. Appellant sought cancellation of order dated 5th November 2019. Respondent sought modification of the said order on the ground that appellant was harassing her in ADR Centre and prayed instead of ADR Centre, place of such interaction be kept before the Trial Court. It was found that no evidence was led by appellant to show wilful disobedience by respondent.

iv. **Fourth Ground**:

Here, appellant says that his case in contempt petition was that respondent did not produce the ward in mediation centre as directed for interaction of appellant and was flouting the order time and again. On request of appellant, the trial court vide order dated 18.02.2020 also directed Incharge Mediation Centre to furnish its report regarding interaction of appellant with the ward. The trial court did not wait for the said report at all and passed impugned judgment. According to appellant, aforesaid report would have clinched the issue as to whether the orders of the trial court regarding interaction of ward with appellant are being complied with or not and this was the evidence of the appellant coupled with the fact that the respondent did not rebut the allegations of the appellant made by him in the contempt petition nor filed any objections to it. The trial court ought to have waited

for the said report of mediation centre for effective disposal of the case which the trial court did not and passed impugned order, which is not based on the record nor does exist int eh record of the trial court.

Above submissions are exaggerative and absurd.

It is made clear here that the Trial Court is within its powers to get its orders implemented in letter and spirit as and when it finds non-implementation or disobedience of its orders. The Trial Court, as pointed out herein before, has discussed all facts and circumstances of the case.

v. **Fifth Ground**:

In this ground taken by appellant in his appeal, he would contend that he had sought information of attendance record of respondent and ward at his own level from Mediation Centre under which information/material was filed by him before the trial court and which record was filed by him as annexure with his main application and which record was very much part of the said application and thus was available on the records of the trial court. The said record substantiated the case of appellant that respondent was not producing the ward on the dates fixed by the trial court and incharge mediation centre had furnished the details of dates on which respondent had to produce the child but she did not produce. The trial court did not take into consideration the said information nor has considered the said record which also renders impugned order not only bad in law but perverse.

The above claims of appellants, when looked into with the impugned orders and observations made therein by the trial court, appear to be larger-than-life. It has been found by the Trial court that respondent filed an application for maintenance of minor which was being resisted by appellant tooth and nail and that petitioner/appellant ought to have paid maintenance and other expenses of the child without any legal battle and that the Trial Court also advised appellant not to engage respondent or child in legal proceedings for recovery of maintenance as litigation wastes the time of parties and also traps them in a battle which can be avoided. These observations and sayings of the Trial Court cannot be said to be bad in law and perverse.

vi. **Sixth Ground**:

Appellant says that Trial Court passed impugned judgement on the ground that child/ward was brought before the said court, he refused to talk to appellant, cried and wept and demonstrated fear. Appellant with respects submits that the said statement of the trial court is against the record. The ward was brought before the trial court only once, i.e., on 16.02.2019 when the ward met the appellant and interacted with him calmly and to the satisfaction of one another. Thereafter the ward was not produced before the trial court at any point of time nor the said fact is born out from the record. Therefore, the impugned judgement of the trial court is patently based on non-existent facts and against the records which renders the impugned judgment void and illegal.

The above contentions are belligerent and baseless. Impugned judgement, on its bare perusal, has been passed articulately by the Trial Court.

vii. **Seventh Ground**:

In this ground, it is submitted by appellant that while passing impugned order, the trial court has said that appellant is not paying maintenance of the ward and is resisting the application. The said observations of the court below are against the record and facts and is not supported by any record and material. The application for maintenance was filed on behalf of the ward which was allowed and an amount of Rs.2000/- was fixed as monthly maintenance which appellant is regularly paying without any default. The respondent later on filed an application for enhancement of maintenance to the tune of Rs.20,000/- per month which the appellant is resisting on the ground that eth said amount claimed is exorbitant keeping in view his status, income, other liabilities and therefore is resisting the claim of Rs.20,000/- as monthly maintenance for the ward. The court below has accepted the objections of the respondent that appellant is not paying the maintenance which averment is not supported by any material. Similarly the trial court has accepted the contention of respondent that appellant is resisting the application for maintenance which also is not in its true perspective. The basis for passing impugned order being without any supporting material, render the same illegal and bad in law.

a) Above contentions of appellant are based on contradictions.

b) At one place, appellant says that Trial court was incorrect in saying that he did not resist maintenance and at another place, he himself admits that he resisted enhanced maintenance sought for by respondent for minor.

viii. **Eighth Ground**:

The court below has rejected the prayer of parenting plan of appellant on the ground that appellant is talking high about parenting plan but is not paying the maintenance of the child and the parenting plan cannot be implemented in isolation. The appellant submits that it is incorrect that the appellant is not paying the maintenance in favour of the ward as awarded by the court of competent jurisdiction and there is no evidence on record in support of the said finding of the trial court. Secondly the respondent has already filed an application for enhancement of maintenance of the ward which is pending disposal before the court. The court cannot reject the application of parenting plan of the appellant ton the aforesaid sole non-existent ground. The court has to see the welfare of the child and un-interfered interaction of the child/ward with father for which the apex court has laid down the guidelines in the form of parenting plan. The trial court has miserably failed to consider the same and rejected the same on non-existent ground alleged by the respondent that too without any supporting material thereto on record which render impugned order patently illegal and against law and judgement of the apex court. The impugned order is patently against the interests of ward and his welfare. The impugned order

in effect will alienate the ward from appellant which is the object of respondent. The appellant has been repeatedly approaching the court to allow him to have smooth interaction with the ward that too as directed by the court and the trial court instead of implementing its own directions has been blaming the appellant rather than respondent who has miserably failed to comply the direction of the court from day one.

a) The above averments are again contradictory.

b) It is very much in terms of impugned order that the trial court has directed that petitioner/appellant shall be permitted to meet the child on last Friday of every month from 3.00 PM to 4.00 PM in ADR Centre at Srinagar and Secretary, District Legal Services Authority has been asked to facilitate the visit. In terms of impugned order, appellant has been directed to pay conveyance charges of rs.500/- to the respondent for each visit on the day of meeting itself against proper receipt. Appellant is bound to pay the said amount of Rs.500/- in terms of impugned order.

ix. **Nineth Ground**:

The Trial Court has held that the ward does not want to see and have interaction with appellant as he refused to do so and wept and cried and demonstrated fear when he was brough tin the court. The finding of the trial court is without any basis and not supported by record. The appellant has also submitted that the finding of trial court that appellant has chosen the path of litigation instead of reconciliation and it has affected the tender

age of child who cannot be forced to act the way the father wants him to be, is patently arbitrary and not fair. Appellant has been before the court to allow him to have visitation rights and interaction and meetings with his own son and the court passed the orders from time to time and allowed appellant to have meeting and interaction with the ward twice in a month and this order is not being implement by respondent. The appellant has right to knock the doors of the court for implementation of its own orders and to enforce rights to meet the son. The trial court, it appears, wants appellant to give up his right to see child and have meetings and interaction with the ward/son and to enforce the court direction instead of discharging its duties to see that the court orders are implemented and interests of the ward are also protected and he is allowed to meet his father. The court below has failed to consider that not allowing the father to meet the child is a violation to his rights and the rights of the father and thus has exceeded its jurisdiction by passing impugned order. To deny the father to have meeting with the son and have regular interactions with him, will alienate the child from the father which is the objection of the respondent and that is why she does not produce the child on the dates fixed. The approach of the trial court is against law and interest of the ward and appellant. Whenever the ward was allowed to have interaction with appellant be that in the court room on 16.02.2019 or in the mediation centre, the ward was very happy and enjoyed the

meeting with the appellant. This fact is born out from photographs taken while meeting the ward in the court premises.

a) Yet again, above contentions are absurd. It is by virtue of impugned order that respondent has been directed to produce the ward before the Mediation Centre to have meeting with appellant.

x. **Tenth Ground**:

The court below while passing impugned order has dismissed application for contempt/enforcement of orders. The trial court while dismissing application has held mere absence of respondent cannot assume wilful disobedience of the court passed and that respondent is a working lady and the ward is a minor, of the age of innocence, who has to be persuaded by mother to accompany her to meet appellant whom the child is unwilling to meet and similar other observations have also been made by the Trial Court in the said judgment. The said finding is also not supported by record nor pleaded nor proved by respondent and non-existent and unsupported findings makes it clear that impugned order is arbitrary, against the record and cannot sustain in the eye of law.

a) The contentions, in view of discussions already made hereinbefore, are hollow.

b) Impugned order reveals that the Trial Court did not heard only counsel for parties but parties in person as well. The Trial Court had made efforts to persuade parties to evolve consensus with regard to disposal of application as well as

visitation rights of the child, but Trial court found that parties after falling apart as husband and wife, post dissolution of the marriage, were still not in a position to reconcile with regard to the issues raised in the application. The Trial Court thereafter proceeded to point out that appellant has already married and is living with his second wife along with his new born children and the ward in the instant case is living with mother and is studying in a leading private school known as Delhi Public School and at that moment expenses regarding fee, uniform, tuition fee and all other expenses of the child were being borne by respondent and she in her objections has stated that she will never marry and will dedicate herself to the growth and development of the child.

c) The Trial Court also found that when the child was brought before it, he refused to talk to his father, cried and wept and demonstrated fear. It is worthwhile to mention here that the Trial Court has even mentioned that appellant is father of child and in his growth and development, the role of father is very important but the child is in the custody of mother and must be under an overwhelming influence of mother through in terms of order dated 5th November 2019, parties were advised to ensure that positive image of parents was created in the mind of the child including appellant but as ill luck would have it, the child has never been in the custody of appellant as he has chosen the path of litigation instead of reconciliation and this situation has affected tender age of

child who cannot be forced at that stage to act the way his father wanted him to be and that his innocence has to be preserved and slowly and gradually the child is to be motivated towards petitioner/appellant in his own interest. This, according to the Trial Court, is also causing hardships in ensuring the smooth visitation rights.

xi. **Eleventh Ground**:

The Trial Court has self-created the finding that because of Covid-19, it might not be possible for mother to bring the child physically in mediation centre twice or thrice in a month, and that it is not so pleaded in the objections by the respondent and the trial court cannot carve out a different case for respondent and justify her non-compliance of court directions.

a) The above contentions of appellant are misconceived. Impugned order itself has been passed during contagious COVID-19. Thus, the Trial Court has rightly taken everything in view particularly observation of COVID-19 precautions.

xii. Twelfth Ground:

The Trial Court has also modified earlier orders about meeting the child twice in a month. The said modification is self-created by the trial court and was not prayed for by any of the parties. The trial court has exceeded its jurisdiction that too on baseless and self-created reasons not supported by pleadings and evidence.

a) These averments, having regard to discussion made supra, are baseless. The Trial Court was within its powers to make

modifications or alterations of the orders which it, having regard to case set up by the parties, thought appropriate.

xiii. **Thirteenth Ground**:

The Trial Court has directed that the meeting and interaction be made in mediation centre and has not considered the submissions of the appellant that the respondent is creating problems there while meeting the child whenever he is brought there and is off and on interfering and making hue and cry and is not allowing the appellant to meet the ward separately in a separate room in isolation to the respondent and again has referred the parties to mediation centre which in the given facts and circumstances is bad in law. The trial court on one hand holds that the parties have levelled allegations and counter allegations against each other during meeting in mediation centre and on the other hand has again referred the parties there who have no separate arrangement and enforcement agency to allow the father to meet the son. On one hand the trial court modifies the order on this reason and on the other hand again directs the parties to the mediation centre for meeting which is contradictory and unrealistic. Respondent also filed an application for modification with the prayer that smooth meeting is not possible in the mediation centre and prayed that the meeting of the ward with appellant be fixed in the court itself. This application of respondent supported the case of the appellant that meeting with ward smoothly and without any interference of respondent is not possible in mediation centre but still the trial court directed the

parties for interaction of ward in mediation centre which patently reflets non-application of mind of the trial court.

a) Above assertions are unfounded.

b) All that has been done by the Trial Court in terms of impugned order does not warrant for any interference having regard to the fact that impugned order is comprehensive and verbose.

c) There is nothing wrong in the observations and directions made by the Trial Court.

xiv. **Fourteenth Ground**:

Application of respondent to modify place of meeting supported the cause of appellant qua parenting plan to allow meeting of appellant with ward in the school where there will be no interference of respondent but still the trial court has rejected parental plan of appellant which renders the impugned order bad in law.

a) Five applications were pending before the Trial Court. Four applications were of appellant. One application was that of respondent. Appellant sought initiation of contempt proceedings against respondent for disobeying the orders of the Trial Court. Objections to the applications for contempt and parenting plan were filed by respondent, in which she took preliminary objection, which was that contents had been downloaded from internet as the submissions were vague and appellant in order to harass, humiliate and intimidate respondent had filed application on false and frivolous

grounds. It was also alleged by respondent that appellant was least bothered about welfare and upbringing of minor child because he had never proved to be a good father, more particularly when he contracted second marriage and is enjoying his luxurious life and has never spent quality time with minor and he never saw the minor child muchless paying single penny for maintenance of minor. It was also alleged by respondent in her objections that appellant has committed mental and physical torture and had emotionally and economically abused the minor by one way or the other and on the other hand respondent has not contracted second marriage and is continuously taking care of the minor. It is also alleged by respondent in her objections that appellant has not even paid conveyance charges to minor in mediation centre which shows the character of appellant.

b) It was found by the Trial Court that basically contempt petition as pending before the court of 1st Additional District Judge, Srinagar, but later on it was transferred to the Trial Court and during its pendency, the Trial Court passed an order dated 5th November 2019, vide which it was that appellant would be permitted to meet the child on 2nd and 4th Friday of every month from 3.00 PM to 4.30 PM and respondent was directed that she would not intervene at the time of meeting between appellant and child. It is worthwhile to mention here that even the Trial Court went further to say that child was expected to love both parents as both are important for his

growth and development and that the parties might not love each other, but for the best interest of the child, parties should allow one another to equally contribute to the growth and development of the child. The Trial Court expected that the order would be complied with in letter and spirit. The modification application was accordingly disposed of.

c) Both the parties preferred applications for vacation/ modification of Trial court order dated 5th November 2019. Appellant sought cancellation of the aforesaid order and sought passing of judgement according to parenting plan. In her application, respondent prayed for modification of the order dated 5th November 2019 on the ground that appellant was harassing her in ADR Centre and prayed that instead of ADR Centre, place of such interaction be kept before the Trial Court.

d) It was also found by Trial Court that the court of 1st Additional District Judge, Srinagar, vide order dated 19th October 2015 allowed application of appellant for visitation rights, by which respondent was directed to produce ward in District Mediation Centre, District Court, Sanatghar, Srinagar, and leave the custody of ward to appellant, who would have interaction/ interview with the ward from 1.00 PM to 3.30 PM twice in a month on 1st and 4th Saturday. The said order was kept in force for a period of one year only and thereafter the as parties could have sought alteration/amendment/ modification of the said order, if they chose so.

e) It was also found by the Trial Court from the record that respondent sought modification of order dated 19th October 2015, which, in view of consensual statement made at Bar by the parties, was allowed vide order dated 8th August 2017, with a direction that father would have interaction/interview with the ward twice in the month on 1st and 3rd Saturday.

f) Appellant alleged disobedience of the orders of the court of 1st Additional District Judge, Srinagar, by respondent.

g) Perusal of impugned order passed by the Trial court would reveals that Trial Court had tried its best to persuade the parties to evolve the consensus with regard to disposal of applications, but parties remained impassive. Thereafter the Trial Court proceeded to say that appellant has moved in his life as he has contracted second marriage and is living with his second wife along with new born children, whereas the ward is living with the mother and she has not contracted second marriage as according to her she will never marry and will dedicate herself to the growth and development of child.

h) The Trial Court has also found that petitioner has not led any evidence to show that there was any wilful disobedience on the part of respondent to comply the orders. It had also been ascertained by the Trial Court that as and when respondent brought child, the meeting was not smooth and that parties have levelled allegations and counter allegations against each other during the meeting and that it impacts upon the psyche of child which is reflected from the fact that when the Trial

Court asked the child to talk to his father and to be in his lap, he started crying, weeping and wailing being under severe fear psychosis.

xv. **Fifteenth Ground**:

Order impugned as a whole is against records, facts and pleadings. The trial court has carved out a different case in absence of pleadings and records and thereby exceeded its jurisdiction. The trial court has also not recorded any reason that too valid one to reject application of appellant and prayers made therein. The trial court has also not considered the submissions of the appellant that respondent is also not allowing smooth meeting of the ward with him and that respondent also does not comply the directions of the court which has contained him to approach the court with one after another applications. The trial court has also ignored that fact to save the relations of appellant with the ward and ensure that it become closer by allowing the appellant to meet the ward in free and un-interfered atmosphere. Respondent herself had also prayed that smooth meeting of ward with appellant is not possible in mediation centre. The trial court ought to have in such circumstances allowed the appellant to meet the ward in school or as per parenting plan which the trial court has not done.

a) These assertions of appellant are baseless.

b) I have gone through impugned order. It does not suffer from any infirmity. Appellant's contentions in the appeal are repetitive and exaggerated. It is on the basis of the case set up

by both the parties that the Trial court has passed order impugned. All that has done by the Trial Court in terms of impugned order does not call for any interference as is being hammer and tongs sought for by appellant. There is no infirmness or illegality, as alleged by appellant, in impugned order.

xvi. **Sixteenth Ground**:

The Trial Court without justification and prayer of any party has enhanced the conveyance charges of its own which is patently illegal and bad in law. Respondent at many occasions did not accept the conveyance charges from appellant for *mala fide* consideration to project that appellant is not complying the directions of the Court. Fact of the matter is that appellant always sees that the orders of the trial court in all respects are implemented but respondent is regular default of the same.

a) These averments are without any basis and, as such, specious.
b) The Trial Court has been right and correct in fixing Rs.500/- as conveyance charge and same does not need to be modified at the mere asking of appellant.
c) The contention of appellant that respondent was not receiving conveyance charges, is a sham contention.
d) It is made clear here that as and when respondent declines to receive conveyance charges, appellant shall be at liberty to deposit conveyance charges before the Trial Court, which shall be released by the Trial Court in favour of respondent.

xvii. **Seventeenth Ground**:

The Trial Court has not considered written arguments of appellant nor heard him in person which amounts to denial of justice to appellant.

a) Again, these contentions are over-exaggerated. This ground has been fully answered, deliberated upon and decided by this Court in Fourteenth Ground.

b) The Trial Court, as noted above, found that learned 1st Additional District Judge, Srinagar, by virtue of its order dated 19th October 2015, had allowed appellant's application for visitation rights. In terms thereof, respondent was directed to produce ward in District Mediation Centre, District Court, Sanatghar, Srinagar, and leave the custody of ward to appellant, who would have interaction/ interview with the ward from 1.00 PM to 3.30 PM twice in a month on 1st and 4th Saturday. However, the said order was kept in force for a period of one year only as parties were given liberty to seek its alteration/amendment/ modification. The Trial Court also found that respondent was seeking modification of order dated 19th October 2015. The said application was by virtue of order dated 8th August 2017 allowed as there was consensus between the parties and it was directed that father would have interaction/interview with the ward twice in the month on 1st and 3rd Saturday. It was also found by Trial court that appellant did not lead any evidence to show non-compliance of orders by respondent. The Trial Court also viewed the parties disinclined to remain

calm and composed during interactions, causing fear psychosis to the ward, and in order to address the issue keeping in view the welfare of the child, the Trial Court found that frequent visitation rights twice or thrice in a month at that stage was not in the best interest and welfare of the child as he was in the state of fear coupled with strained relations between parents. However, the Trial Court immediately thereafter said appellant being father of the child could not be deprived of visitation rights because balance was to be struck between rights of father and welfare of child. It was in view of COVID-19 that instead of twice or thrice in a month, the Trial Court directed respondent to bring the child on the last Friday of every month in ADR Centre Srinagar.

c) Impugned order in clear cut terms shows that respondent has been directed to facilitate meeting of appellant with his son and shall not cause any hindrance in the interaction.

d) There is an advice, and not a direction, given by the Trial Court to petitioner to bear the education and all related expenses of the child including tuition fee etc. so that he can contribute satisfactorily to the health and education of the child. This advice of the Trial Court cannot be said to be wrong, incorrect or illegal.

7. Having regard to all that has been said above, the Trial Court while rendering impugned order has taken note of all aspects of the matter and as a consequence of which, it is reiterated that appeal is dismissed

as has been so done by this Court vide judgement dated 18th October 2022.

8. Based on the contexts and discussions made, review petition is also **dismissed** with costs of Rs.20,000/- to be deposited by appellant/ review petitioner within one month from today. In the event he fails to do so, Registry shall take all steps for its recovery.

9. It may not be out of place to make a mention that it appears that this Court while rendering the judgement dated 18th October 2022 did not stare at the cause-title of the appeal styled by appellant as *Parvez Ahmad Khan v. Areeb (Divorcee)*. However, while perusing Review Petition, this Court has found that the expression "*Divorcee*" has been attached and used by appellant/review petitioner with the name of respondent, which is unbecoming of and reflects his mindset.

   If appellant/review petitioner has used this word/expression of "*Divorcee*" against the name of respondent, then he should have also used the word/expression "*Divorcer*" against his name. It is in view of this fact that the aforesaid expression/word used by appellant/review petitioner against the name of respondent has not been mentioned/ typed in cause-title of this judgement.

   It is very painful to see that how a woman, even as on today, is being treated.

   If a woman is being labelled and shown as "*Divorcee*", as if it is her *Surname*/*Caste*, then a man, who divorces his wife, is also to be called and suffixed as "*Divorcer*", which, however, would be a bad practice. Such a practice should be stopped rather crushed. And henceforth if any motion/petition/appeal indicates and reflects in its

cause-title the word "*Divorcee*", against the name of a woman, such a motion / petition/appeal should not be diarised or registered muchless entertained.

10. To stop such a practice, a circular-instruction is required to be issued, instructing that if any motion/petition/appeal is found to have the cause-title with the word/expression "*Divorcee*" against the name of woman, such a petition/motion/appeal should not be diarized/registered. Such instructions should also be issued/transmitted to the Subordinate Courts.

Registrar Judicial of this Court is directed to place this judgement before Hon'ble the Chief Justice for passing of kind orders and issuance of circular instructions, in view of above.

(Vinod Chatterji Koul)
Judge

Srinagar
13.02.2025
Ajaz Ahmad, Secretary

Whether approved for reporting? Yes/no.