IN THE HIGH COURT OF MANIPUR
AT IMPHAL

CRIL.REVN. PETITION NO.16 OF 2015

Smt. Huidrom Ningol Maibam Ongbi
Omila Devi, aged about 28 years, w/o
Inaobi Singh Maibam and presently
Residing at Khoyathing Pukhri Achouba
Mapal, Nagamapal Road, PO & PS
Imphal, Imphal West District,
Manipur--795001. ..Petitioner.

-Versus-

Shri Inaobi Singh Maibam, aged about
40 years, s/o Maibam Yaima Singh working
As Mobile Scientific Officer, Forensic
Science Laboratory, Pangei, Imphal East
District, PS Lamlai and having the permanent
Address at Tentha Khunjao Makha PO & PS
Wangjing, Thoubal District Manipur-795148.
..Respondent.

CRIL.REVN. PETITION NO.21 OF 2015

Shri Inaobi Singh Maibam, aged about
40 years, s/o Maibam Yaima Singh working
As Mobile Scientific Officer, Forensic
Science Laboratory, Pangei, Imphal East
District, PS Lamlai and having the permanent
Address at Tentha Khunjao Makha PO & PS
Wangjing, Thoubal District Manipur-795148.
..Petitioner.

-Versus-

Smt. Huidrom Ningol Maibam Ongbi
Omila Devi, aged about 28 years, w/o
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Residing at Khoyathing Pukhri Achouba
Mapal, Nagamapal Road, PO & PS
Imphal, Imphal West District,
Manipur--795001. .
.Respondent.

BEFORE
HON'BLE THE CHIEF JUSTICE R R PRASAD

For the Petitioners	::	Mr. M. Rarry, Advocate
For the Respondent	::	Mr.T.Rajendra, Mr.N.Samarjit, Mr.E.Robindro, Advocates
Date of hearing	::	20.10.2016

Date of judgment/order :: 26.10.2016.

JUDGEMENT & ORDER

Both the Revision Applications since arising out of a common judgment and order dated 03.10.2015 passed by the then Sessions Judge, Imphal East, were heard together and are being disposed of by this common judgment.

[2] Before adverting to the submission advanced on behalf of the parties, the facts of the case leading to filing of these two applications are that when relationship in between the applicant namely Huidrom(N) Maibam (O) Omila Devi, applicant before the court below, and husband, Inaobi Singh Maibam, respondent became strained the applicant left association of her husband and came to her parental house along with her child. Thereafter the application filed a complaint before the Judicial Magistrate, First class, Imphal East u/s 12 of the Protection of Women Against from Domestic Violence Act,2005 with the following prayers:

> **"a) An order restraining the appellant/respondent 1 and his men and agents from committing any repeated act of domestic violence against the respondent/complainant, the infant Abungo Maibam and her relatives.**
>
> **b) An order to forbid appellant/respondent 1 from making any communication with the respondent/complainant or her relatives.**
>
> **c) An order to forbid the appellant/respondent 1 or his men or agents or relatives to forcibly taking away of the infant Abungo Maibam from the aggrieved respondent/complainant.**
>
> **d) An order of ad-interim maintenance of Rs.20,000/- only and a separate residence for the respondent/complainant and the infant.**
>
> **e) An order directing appellant/respondent 1 to pay monthly maintenance of Rs.20,000/- only in favour of the respondent/complainant."**
>
> **f) An order directing O.C. Imphal Police Station for protection of the respondent/complainant.**
>
> **g) Pass any other order as the Hon'ble Court may deem fit under the circumstances in favour of the appellant/complainant."**

[3] On such application, the learned Magistrate passed an interim order directing the respondent to pay a sum of Rs.6,000/- per month as maintenance allowance to the applicant. During that period, the respondent-husband's request of visit to Child was never acceded to and therefore husband-respondent filed a Criminal Misc.(DV) Case No.5 of 2015 u/s 21 of the Protection of Women from Domestic

Violence Act, 2005 (hereinafter to be referred to as Domestic Violence Act) praying therein to grant visitation right to meet his minor son on all holidays including Sundays from 10.30 AM to 2.30 PM. That application was dismissed by the learned Magistrate on the ground that the complainant wife has never filed an application u/s 21 of the Act for custody of child nor any order on the point of grant of temporary custody has been passed and thereby in absence of any order granting temporary custody of the child u/s 21 of the Act, no direction for visitation right to the appellant can be made.

[4] Being aggrieved with that order, the respondent-husband preferred a Criminal Appeal bearing No.6 of 2015 before the Sessions Judge, Imphal East. The contention which was made before the learned Sessions Judge by the respondent-appellant is that the husband being respondent against whom a number of reliefs have been sought for including the relief of custody of the child though not directly but indirectly can maintain his application under the proviso to Section 21 of the Domestic Violence Act for visitation right irrespective of the fact whether the wife aggrieved person pursue the case relating to custody of the child or not.

Contrary to it, the stand which was taken by the wife aggrieved party is that any application in terms of the proviso to Section 21 of the Domestic Violence Act for visitation right cannot be maintained in absence of any application by the aggrieved party in terms of Section 21 of the Act relating to custody of the child. Further stand which was taken is that if the Court does hold that such application filed by the husband-respondent under the proviso to Section 21 of the Domestic Violence Act is maintained, it would amount to judicial legislation which is never permissible. Thus, the question which fell for consideration before the appellate court, which in fact was even framed, was that whether in absence of any application being filed by the aggrieved person u/s 21 of the Domestic Violence Act, any application filed by the respondent-husband in terms of proviso to Section 21 of visitation right can be maintained ?

[5] The learned Sessions Judge, having regard to all the facts and circumstances of the case as well as the aforesaid provision as contained in Section 21 came to the finding that said provision is amenable to two interpretations and thereby the court can resort to external aid in order to delve into the spirit and object of the statute. By

applying such principle the court came to the conclusion that if the interpretation given by the aggrieved party-wife is accepted, it would defeat the whole purpose of the statute. In such situation, the court, after observing that if the intent of the legislature as expressed under the proviso is taken into account with the main provision keeping in view the aim and object of the Act, it has to be held that application u/s 21 of the Act by the respondent in absence of any application, seeking custody of the child by the aggrieved party, can be made. Accordingly, learned appellate Court, while setting aside the order passed by the learned Magistrate, passed an order allowing the respondent-husband of his visitation right for visiting the child on every 3rd Saturday at the legal Clinic at Cheirap Court Complex from 2 PM to 4 PM.

[6] Being aggrieved with that part of the order whereby visitation right has been allowed, the aggrieved party, wife, has filed Criminal Revision No.16 of 2015 whereas the husband-respondent, being aggrieved with the frequency of the visiting right given, has preferred Criminal Revision No.21 of 2015.

[7] Heard Mr. M. Rarry, learned counsel for the petitioner, Mr. T. Rajendra and also Mr. Samarjit, learned counsel appearing for the respondent.

[8] Almost the same plea has been taken by both the parties in support of their stand which had been taken by them before the appellate court. Therefore, it need not be elaborated much. However, the gist of the submission which was advanced by Mr. Rarry, learned counsel appearing for the aggrieved party-wife, is that the learned Sessions Judge, while dealing with the matter relating to visitation right, has been pleased to hold that application filed under proviso to Rule 21 of the Domestic Violence Act can be maintained though it is evidently clear from the provision that such application can be entertained only upon filing of the application by the aggrieved party relating to the custody of the child and thereby any such finding would amount to a new legislation on the part of the court which is prohibited. It has been well settled principle of interpretation that court must start with the presumption that legislature did not make a mistake and it must interpret so as to carry out the obvious intention of legislature and that it must not correct or make up a deficiency nor the court read into a provision any word which is not there particularly when literal reading does not lead to an intelligible result. The said proposition of law has

been laid down in the case of ***Rajinder Pershad (dead) by LRS vs-Darshana Devi(smt) reported in (2001)7 SCC 69*** .

In this regard, it was also pointed that in interpreting a statute court must, if the words are clear, plain, unambiguous and reasonable susceptible to only one meaning, give to the words that meaning irrespective of the consequences which proposition has been laid down by the Hon'ble Supreme Court in the case of **Nathi Devi vs. Radha Devi Gupta** reported in ***(2005) 2 SCC 271.*** Relying on the said decision, it was submitted that if one reads the provision of Section 21 with its proviso, it would lead to only one conclusion that only in the event of application being filed for custody by the aggrieved party, the respondent-husband can maintain his application for visitation right and in that event the appellate court committed a gross illegality in holding otherwise.

[9] With regard to the issue, which has been raised by the husband –respondent in his Criminal Revision Petition No.21 of 2015 , it was submitted that court did pass order giving visitation right without considering the entire facts and circumstances of the case and also without considering the fact as to whether it would be in the interest of the child which was of paramount importance and thereby that order is fit to be set aside.

[10] As against this, Mr. T. Rajendra assisted by Mr. Samarjit and Mr. E. Robindro, learned counsel submits that if the interpretation which was advanced on behalf of the aggrieved party-wife is accepted, it will render the provision as contained in Section 21 as incomplete as in that event if the aggrieved party does not move an application for custody of the child, the husband-respondent will have no remedy of right to visitation which the Legislature, in his wisdom, may not have intended to and thereby the appellate court was absolutely justified in holding that the respondent can maintain his application for visitation right even in absence of application being filed u/s 21 for the custody of the child by the aggrieved party. Further, it was submitted that though the respondent-husband has given right of visitation by the court whereby the husband can visit his child once in a month which can never be said to be adequate keeping in view the interest of the child. And thereby frequency of visiting right should have been more and under the circumstances the petitioner has moved to this Court for

having an order whereby the respondent-husband be allowed to visit his child more frequently.

In the context of the submission advanced on behalf of the parties, one needs to take notice of the provision as contained in Section 21 of the Domestic Violence Act which read as follows:

> "**21.Custody orders**,- **Notwithstanding anything contained in any other law for time being in force, the Magistrate may, at any stage of hearing of the application for protection order or for any other relief under this Act grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent:**
>
> **Provided that if the Magistrate is of the opinion that any visit of the respondent may be harmful to the interests of the child or children, the Magistrate shall refuse to allow such visit."**

[11] On perusal of the provision, one would find that it does stipulate that the Court at any stage of hearing the application for protection order or any other order grant temporary custody of any child to the aggrieved person. In that eventuality, Magistrate can pass order relating to the visit of the respondent to the child. It be pointed out that it is the case of the aggrieved party-wife that after she left association of her husband, she came to her parents' house along with the child and therefore one of the reliefs which has been sought for in the application u/s 12 of the Act is as follows:

> **"c) An order to forbid the appellant/respondent 1 or his men or agents or relatives to forcibly taking away of the infant Abungo Maibam from the aggrieved respondent/complainant."**

The aforesaid relief sought for sufficiently indicates the custody of the child with the mother and hence there would not be any necessity for the aggrieved party –wife to file an application for having temporary custody of the child. In such event, if the application is filed by the husband-respondent for having visitation right, it can never be said to be one which is not in consonance with the provision as contained in Section 21 of the Act as admittedly there had been application for protection order and that the custody of the child is with the aggrieved party.

[12] Apart from this factual aspect, if we delve into legal aspect of it, as has been put forward on behalf of the parties, one can have two interpretations as is being projected by the parties-- one to the fact that

in absence of any order relating to grant of temporary custody, one cannot maintain application for visitation right and the other one is that it can maintain application even in absence of such order being there.

[13] Thus, there appears to be ambiguity or obscurity. It be stated that where there is no obscurity or ambiguity and intention of the legislature is clearly conveyed, there is no scope for the court to innovate or to take upon its task of amending or altering a statutory provisions which proposition of law has been laid down in number of cases including in a case of ***Institute of Chartered Accountants of India Vs. Price Waterhouse and Anr*** *reported in* ***(1997)6 SCC 312*** . In that case, it has been further observed that the Judges should not proclaim that they are playing the role of law-makers merely for an exhibition of judicial valour. They should remember that there is a line, though thin, which separates adjudication from legislation. That line should not be crossed. This can be vouchsafed by an alert recognition of the necessity not to cross it and instinctive, as well as trained reluctance to do so. However, where there appears to be obscurity, ambiguity, what the court is supposed to do has been dealt with in a case of **Grid Corporation of Orissa Ltd & Ors vs. Eastern Metals and Ferro Allows & Ors** reported in ***(2011) 11 SCC 334*** wherein it has been observed that the golden rule of interpretation is that the words of the statute have to be read and understood in their natural, ordinary and popular sense. Where however the words used are capable of bearing two or more constructions, it is necessary to adopt purposive construction, to identify the construction to be preferred, by posing the following questions:

> (i) what is the purpose for which the provision is made?
>
> (ii) What was the position before making the provision?
>
> (iii) whether any of the constructions proposed would lead to an absurd result or would render any part of the provisions redundant?
>
> (iv) which of the interpretations will advance the object of the provision?

The answer to these questions will enable the court to identify the purposive interpretation to be preferred while excluding others. Such an exercise involving ascertainment of the object of the provision and choosing the interpretation that will advance the object of

the provision can be undertaken only where the language of the provision is capable of more than one construction.

[14] As I have already indicated that Section 21 is amenable to two interpretations as is being highlighted by the parties, in such event only that interpretation which advanced the object of the provision can be accepted. It is worthwhile to note that the Act was enacted to prevent the occurrence of domestic violence in the society and keeping in view that, several protection orders including the safety of the aggrieved person and the '**child'** have been contemplated to be passed. Therefore, the cause of the safety of the aggrieved person or the child is always warrants to be taken into account in interpreting the provision. In such situation, if the interpretation given on behalf of the wife-aggrieved party is accepted, it will render the provision incomplete as in case where wife-aggrieved party seeks custody of the child, if the child is in custody of the husband and an order of custody is passed in favour of the aggrieved party, visitation right can be granted to the husband. But, if custody lies with the wife–aggrieved party, then the husband will have no remedy of visitation right if the interpretation as contemplated by the wife-aggrieved party is given effect to and thereby it can easily be said that interpretation given by the aggrieved party-wife will never advance the cause of the child.

[15] On the other hand, if it is held that the husband, in absence of any application for grant of custody, can maintain his application for visitation right will advance the object of the provision as in case of child being in custody of the husband, application for custody can be filed by the wife wherein the husband can have a visitation right if order is of custody of child passed in favour of the aggrieved party. In other situation, when the custody of the child lies with the wife, there would be no occasion for the wife for filing an application for custody as it has happened in the instant case. In that situation, husband will have remedy to have visitation right by filing application to that effect. Under the circumstances, I do find that the appellate court was quite justified in holding that even in absence of application for custody being there, by the aggrieved party, application of visitation right in terms of the proviso to Rule 21 can be maintained. Thus, I do not find any merit in the Criminal Revision Petition No.16 of 2015. Hence, it is dismissed.

[16] So far as the order relating to frequency of the visitation right is concerned, it does appear that the Court, without taking into

account the interest of the child and also other facts, has passed the order and thereby the Court has committed illegality and hence that part of the order giving visitation right in the manner indicated in the order is set aside. However, the matter is remanded back to the concerned Magistrate who, upon matter being agitated by either of the parties, would be deciding the matter in accordance with law.

Accordingly, Cril. Revision Petition No.21 of 2015 stands disposed of.

CHIEF JUSTICE

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