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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: February 15, 2010

Date of Order: March 02, 2010

+ CM(M) 198/2010

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Ruchika Bindra

Through: Mr. Sanjeev Mahajan, Advocate

02.03.2010

...Petitioner

Versus

Harvinder Singh Bindra

Through: nemo

...Respondent

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

1. By way of this petition under Article 227 of the Constitution of India, the petitioner has assailed an order dated 21st January, 2010 passed by learned Guardianship Judge whereby an application of the petitioner for grant of custody of the child to the petitioner during pendency of Guardianship Petition was dismissed.

2. The petitioner herein is the mother of the child and is living separately. It is an undisputed fact that the child Ms. Savneet Kaur was living with her father and was in custody of her father exclusively from August, 2008. The child was born on 17th September 2003. She was presently aged around six and a half years. The petitioner filed a guardianship petition claiming custody of this child. The learned trial court called the child and interviewed the child on two occasions between 16th December 2009 and 16th January 2010 and after interviewing the child the trial court came to conclusion that the child preferred to stay with her father. She appeared to be attached with her grandparents, with her father and with her aunt Ms. Jasmeen. She was also fond of daughter of her paternal uncle who was residing in the same locality. She had made some friends in the neighbourhood and she was attending school and was a student of First Standard in Bhatnagar Public School, Paschim Vihar, Delhi and her school was only five kms away from the residence of her father whereas residence of the petitioner herein was more than 25 kms from her school. It was observed that her father personally used to take care of her education. After these observations, the trial court came to conclusion that it would not be appropriate to

disturb the custody of child during pendency of the proceedings and to remove the child from her familiar surroundings to a new one.

3. It is submitted by counsel for the petitioner that the since the child was a daughter and was of tender age, the Court should have not given importance to the preferences and faculties of the child but to the welfare of the child and the welfare of a girl child lies in living with her mother (petitioner). The mother would be in a better capacity to look after the girl child and therefore the custody of child should be handed over to the petitioner/mother.

4. The application made by the petitioner before the trial court was an application for interim relief during pendency of guardianship petition for custody of child. Granting custody of child to the petitioner at the interim stage would have in fact tantamounted to grant of entire relief to the petitioner, which is contrary to law. By way of an interim relief, the entire petition of a person cannot be decreed.

5. Father and mother are both natural guardian of a child. The trial court had opportunity to interview the child and to know the mind of the child. Where an order is passed by the trial court after interviewing the child and after taking into account the feeling of the child, I consider that this Court should not interfere with the order in a casual manner and on flimsy grounds. The welfare of the child was utmost in the mind of the trial court and that is the reason that the trial court interviewed the child and made observations about surrounding circumstances and atmosphere in which the child was living.

6. I consider that under Article 227 this Court should not substitute its own opinion about the welfare of the child in place of opinion rendered by learned Guardianship Court who had opportunity of having a face to face interaction with the child and had opportunity to know the feelings of child. I find no force in this petition. The petition is hereby dismissed.

March 02, 2010
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SHIV NARAYAN DHINGRA J.