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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: February 22, 2010

Date of Order: April 08, 2010

**+ CM(M) 439/2009**

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**08.04.2010**

**Dr. Sonia Sahaye**

**...Petitioner**

Through: Ms. Kamini Jaiswal, Ms. Shomila Bakashi & Mr. Divyesh Pratap Singh,  
Advocates

Versus

**Vikramajit Singh Sahaye**

**...Respondent**

Through: Mr. K.T.S Tulsi, Sr. Advocate with Mr. Gaurave Bhargava and Mr. R.S.  
Chauhan, Advocates

**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 present petition under Article 227 of the Constitution of India, the petitioner has assailed an order dated 7<sup>th</sup> February 2009 passed by learned Guardianship Judge whereby he dismissed an application under Order VI Rule 17 CPC for amendment of the petition filed by petitioner under Section 25 of the Guardianship & Ward Act, 1890.

2. A perusal of amendment application made by the petitioner herein would show that in the amendment application, the petitioner had given the story of her marriage right from the date of her marriage till the parties separated and made allegations against her husband as to what was the attitude of her husband towards her. She stated that her husband used to torture, abuse, her etc etc. While seeking amendment of another paragraph, she wanted to introduce as to wherefrom she got the degree of BDS, what were the number of holidays available to her and at the time first birthday of her minor child, what gifts were given to the minor child by her and by her parents. She wanted to attach photographs. She also wanted to add about her

mother's qualification and her health and the fact that the mother has kept a maid to do household work. Simultaneously, she wanted to amend the petition to plead that the respondent (father) used to go to Bangkok, Singapore and Malaysia in connection with his job. He was a hot-tampered person who used to assault, humiliate, torture the petitioner herein and the mother of respondent was a heart patient and she used to continuously keep aloof and was not fit for taking care of child. She wanted to say that the minor daughter was of tender age and emotionally attached with her. Thereafter, she wanted to amend the pleadings to bring on record that on the occasion of *Diwali*, the petitioner had sent greeting cards, *diyas*, *diwali* box to the respondent for her daughter which were refused.

3. In reply, the allegations made against the respondent (father) were denied and counter allegations were leveled by the respondent herein. The learned Guardianship Judge after making observations that a guardianship court was not concerned with the matrimonial dispute nor was concerned with the attitude of respondent-father towards the petitioner-mother and the only thing for consideration of guardianship court was to see as to what was in the best interest of child, he dismissed the application for amendment. The Guardianship Judge observed that the amendment sought were not germane or relevant for the purpose of deciding the issue before Court. Mere purchase of flat by the mother of the petitioner and her capacity to engage a maid servant were not factors which were going to affect the welfare of the child.

4. In a guardianship case, it is in the interest of the parties that they should not bring in those pleadings which are not germane to the case. The allegations of cruelty and counter allegations of counter cruelties should be kept reserved by the parties for divorce proceedings or other proceedings. In a guardianship case, the only thing to be seen by guardianship court is the future and welfare of the child and what will be in the best interest of the child. However, for this purpose, the parties can bring to the notice of the court the past attitude of the mother or father towards the child,

attachment of child etc. The parties can also bring forth the financial aspect and there were habits in the parents which were not good for the growth of the child, the same can be brought to the notice of the Court, atmosphere of home where the child is staying or is to stay, the school atmosphere, the distance between the school and home, the financial incapacities etc. The Guardianship Court cannot go into allegations or counter allegations of cruelties towards each other, misbehavior towards each other. It is also appropriate that the court should not consider the allegations and counter allegations against grandparents who at the most are doing service to the child by taking care of the child, because the parents are at loggerheads.

5. I consider that the application of the petitioner under Order VI Rule 17 CPC in major part contains only allegations not germane and relevant for the purpose of deciding the petition. However, the petitioner would be at liberty before the guardianship court to depose on all those aspects which are relevant for showing that the welfare of the child lies in giving custody of the child to her, but she would not be at liberty to covert a petition before the guardianship court into a petition of acrimony between the parties where the examination and cross examination is done on the allegations against each other. The guardianship court, therefore, rightly disallowed the application. The trial court, however, shall permit the parties to lead evidence on the factors affecting welfare of the child.

6. The petition stands disposed of with above observations.

**April 08, 2010**  
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**SHIV NARAYAN DHINGRA J.**