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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.M. (Main) No.1253 of 2009

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19.04.2010

RAJ LONSANE

.....Petitioner

Through: In person.

versus

RUCHI LONSANE

.....Respondent

Through: Mr. Anniruddha Choudhary, Advocate
with respondent in person.

Reserved on : 11th March, 2010
Pronounced on : 19th April, 2010

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?

J U D G M E N T

1. The petitioner has assailed an order dated 29th September, 2009 whereby two applications made by the petitioner seeking modification of order dated 23rd May, 2008 were dismissed.

2. Brief facts relevant for the purpose of deciding this petition are that the two children baby Adya born in December, 2003 and baby Arya born in January, 2006 are in custody of the respondent-mother. The petitioner-father filed a guardianship petition under Section 12 of the Guardianship and Wards Act seeking visitation rights and custody rights. The petitioner and respondent are living separately due to temperamental differences. The respondent is living with both the children at her parental house. The petitioner is a software consultant running his own firm. The respondent-mother is also

working as a merchandiser in Liliput Kids Wear firm. The petitioner-father had voluntarily agreed to deposit Rs.10,000/- per month for daughters in a joint account to be opened by the respondent in the name of minors and herself wherein she would be the guardian. The petitioner had also undertaken that in case of need of children, he would be willing to spend more as and when informed by the respondent-mother.

3. Regarding custody of the children, it was agreed between the parties before the trial court that the respondent-mother would produce both the children at Spice Mall, Noida at M/s. Haldiram Restaurant on every Sunday at 11:30 a.m. and the father shall have exclusive visitation right for both daughters from 11:30 a.m. to 1 p.m. without the right to take the children out of the Mall. He was also permitted to take with him his parents on alternative visit and to give gifts and eatables to children. In case of his inability to come to visit children, he was to inform the respondent at least 24 hours in advance. A similar information was to be given by the respondent if she was not able to bring children to the said Mall on any Sunday. It was provided that respondent would not defer the visitation for more than once a month. This order was passed by mutual consent of both the parties.

4. Thereafter, the petitioner made applications for modification of interim arrangement wherein he stated that the petitioner had to travel from Nasik to Delhi once a week for availing visitation rights and had to spend around Rs.20,000/- every time for one and a half hour meeting with the children and sometimes this visitation was not provided in a cordial atmosphere. He submitted that respondent had been incorporative and had not agreed to numerous offers given by the petitioner to arrange visitation in such a way that it was beneficial for the children. The respondent also failed to honour the order of the court regarding gifts and did not allow the petitioner to give gifts, new clothes to

children during Diwali and had returned gifts, etc. to the petitioner. These gifts were given by the petitioner after asking the children of their liking and gifts were enjoyed by the children but they were snatched by the respondent after the children reached home and returned to the petitioner. The petitioner was also not allowed to talk to doctor of the children as the respondent refused to disclose the name and telephone number of the doctor. He submitted that children were very comfortable and happy in his company and longing for spending more time with him. Keeping in view this fact, the petitioner permanently shifted to Delhi and took a flat on rent just 200 meters away from the residence of wife so that during the period when the petitioner was staying in Delhi alone, he could spend more time with the children. However on the contrary, respondent cancelled two visitation meetings when the petitioner was staying in Delhi just 200 meters away without fixing alternative days and offering dates not suitable to the petitioner. He submitted that respondent (wife) was using children as a tool and was not agreeing to any arrangement so that children had proper love and affection of the father and could spend more time with the father. It is submitted that the petitioner was a consultant for his clients in USA and used to remain free during day time and worked late at night and early morning. During day time, he could look after the children in a better manner while the wife during day time was working and had no time for the children. The petitioner, who had taken a house just 200 meters away, should be permitted to look after the children during day time so that children can spend their time with the father. He submitted that it was in the welfare and interest of children that the court should modify the visitation rights.

5. In response, the wife had stated that the order dated 23rd May, 2008 was passed by consent of both the parties. The petitioner could not seek modification of a consent order

and the application was filed by the petitioner with the intention of delaying the proceedings. It was stated that the respondent-wife was living with her mother and minor children were being looked after by her and her mother in best manner and any change in the lifestyle of minors, as desired by the petitioner, would be against the interest of the children. She denied that she had created any hindrance between the father and the children from giving gifts or eatables, rather had allowed the father to meet children at other places apart from the agreed venue and had also allowed the petitioner to meet children for 2-3 hours instead of one and a half hour on the date fixed for visitation. All other allegations were denied.

6. The learned Additional District Judge observed that there were no change in circumstances after passing of the order dated 23rd May, 2008 warranting modification of the order and in case the applications were allowed, it would amount to handing over custody of both the children to the petitioner for six days in a week. The petitioner was trying to have the custody of children from the respondent in the garb of applications. He, therefore, dismissed the applications.

7. During the pendency of the present petition, an effort that parties should come to some terms for modification of the visitation rights did not succeed. The petitioner has placed on record e-mails exchanged between them. A perusal of these e-mails would show that the concern of the petitioner and the respondent for the children cannot be doubted. Neither it is a case where the mother was creating bitterness amongst the children against father nor it is a case where the father was making any kind of effort through litigation to harass the mother. The present petition seems to be genuine concern of father to spend some more time with the children. The petitioner-father was having his business in Nasik and mother is working in Delhi and is living with her mother. It is not

disputed by mother that she was working during day time and the petitioner had his day time free. It is also not disputed that the petitioner had taken a house just 200 meters away from the house of the wife. It is not the case of respondent that the children were unwilling to visit the father or they were unhappy with the father. The children are growing. They are presently around 5 and 3 years of age and I consider that it would be in the welfare of the children that the children spend some more time with the father, instead of spending only one and a half hour in one week.

8. There is no doubt that the order dated 23rd may, 2008 was passed with consent of the parties but at that time the father was living in Nasik and he had no place of residence in Delhi and had to come all the way from Nasik to meet children and that is why, this arrangement was agreed between the parties. Since the father, in order to spend more time with children has established a home just near the house of the wife, this was a big change of circumstance which the trial court failed to consider. During the arguments, the wife was even prepared to live with the husband along with children, however, it seems that the husband still had apprehensions in his mind and was not willing to live with the wife but I consider the children may act as a bridge between the two and they may succeed in bridging the gap between the two. Even for that reason, it is advisable that the children should spend some more time with the father. It will be in the interest and welfare of both the children that they get not only maintenance from father but proper love and affection of the father and spend some more time with the father. Development of children is complete only when they get love from both father and mother and they understand their relationship with both. It also helps in psychological development of the children.

9. I, therefore, allow this petition to the extent that on every Saturday and Sunday, the children shall be given to the father whenever he is in Delhi at his house around 10:30 a.m. The father shall spend the day with the children and shall handover the children to the mother around 6 p.m. The school going daughter would bring her homework, books to the father who can help her in studies. The petitioner-father, during this period, can take the children for outing within NCR region, however, the children would not be taken out of NCR region without leave of the court. The children may be handed over in the morning and evening at a place agreed by the parties. The petitioner's parents can also stay with him during the period when children are with him. The petition is allowed in terms of the above directions.

SHIV NARAYAN DHINGRA J.

APRIL 19, 2010
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