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

FAO (OS) 320/2013
CM APPL.10792, 10793 & 108466/2013

PERRY KANSAGRA Appellant
Through: Mr. Anupam Srivastava with
Mr. Anil Kumar Chandel and Ms. Nidhi Soni,
Advocates.

versus

MASTER ADITYA VIKRAM KANSAGRA
AND ANR. Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER
% **19.07.2013**

CM APPL.10793/2013 (exemption)

Allowed, subject to all just exception.

FAO (OS) 320/2013, CM APPL.10792/2013 (stay)
& 10846/2013 (under Order XXXII CPC)

The present appeal questions the order dated 4.7.2013 whereby
the learned Single Judge recorded as follows: -

"The present Suit is filed by the plaintiff seeking a decree of permanent injunction restraining the defendants, their agents etc. from removing plaintiff No.1 from the lawful custody of plaintiff No.2 by moving the minor plaintiff No.1 from Delhi i.e. the jurisdiction of this Court. It is submitted by learned senior counsel for the plaintiff that the defendants have already moved an

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appropriate petition before the Family Court under the Guardian and Wards Act and hence they have clearly indicated that they would be following the due process of law regarding the custody of the minor child. He submits that in view of the above, the present Suit can be decreed in terms of the prayer regarding injunction.

Learned counsel appearing for defendant submits that his client is willing to make a statement that he would not take the minor child outside the jurisdiction of this Court or the custody of plaintiff no.2, except by due process of law provided the defendants are permitted unsupervised custody of the child for three days for six hours as directed by this Court on 24th May, 2013 and four Skype meetings in a month as already directed by this Court.

In my view, in the facts and circumstances of this Case the present Suit can be disposed of at this stage itself.

List the matter for final arguments on 2nd August, 2013. On that date all pending applications shall also be heard."

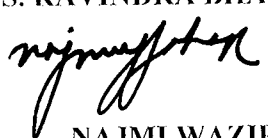
It is contended by Mr. Anupam Srivastava, counsel for the appellant/defendant that in line with the statement made before the Court, a proceeding under Sections 7 and 9 of the Guardians and Wards Act, 1890 has been preferred before the Family Court being Petition No.53/2012. In these circumstances, the appropriate forum would be the Family Court. It is, therefore, contended that the learned Single Judge fell into error in proceeding to direct that the matter would be heard finally on 2.8.2013. Counsel also faults the impugned order in not noticing that without framing the issues the suit cannot be disposed off. In addition, counsel relies upon the provisions of the Family Courts Act, 1984.

This Court is of the opinion that since no final order or order affecting the appellant has been made by the learned Single Judge, at this stage, it would be appropriate for the appellant to move the Court seized of the suit raising the contentions urged in the present appeal.

If such an application is made, learned Single Judge should consider the same before proceeding with the suit finally.

The appeal is disposed off in the above terms, along with all the applications.

Order dasti.


S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

JULY 19, 2013
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