

Court No. - 21

Case :- FIRST APPEAL No. - 1160 of 2023

Appellant :- Smt. Shalini Kapila

Respondent :- Neeraj Kapila

Counsel for Appellant :- Rakesh Kumar Garg, Yash Garg

Hon'ble Manoj Kumar Gupta, J.

Hon'ble Donadi Ramesh, J.

1. Heard Sri Yash Garg, learned counsel for the appellant.
2. The appeal is directed against the order dated 06.10.2023 passed by Principal Judge, Family Court, Agra by which the application of the appellant dated 27.04.2023 for recall of order dated 14.10.2022 has been rejected. By the same order the Court below has issued warrant for ensuring compliance of order dated 8.5.2023 granting visitation rights to opposite party, by issuing warrant under Section 25(2) of the Guardians and Wards Act, 1890.
3. Learned counsel for the appellant at the outset submits that the appellant is ready to comply with the order dated 08.05.2023. He points out that on the previous date fixed for meeting of the minor with the opposite party there was clash of school timings. The appellant filed an application in this behalf dated 20.07.2023 before the Secretary, District Level Service Authority, Agra specifically stating that the school timing is from 07:30 am to 01:30 pm. Therefore, she could not produce the minor between 12:30 pm and 01:30 pm fixed by the Court below for meeting of the minor with his father. He submits, on instructions from the appellant, that the appellant will produce the minor so that he meets the opposite party on any other date and time except during school timings i.e. between 07:30 am and 01:30 pm.

4. Although, we find that the appellant has violated the order dated 08.05.2023 passed by Court below providing visitation right to the opposite party on the previous occasions but having regard to the fact that in case the warrant is executed in the manner provided under Section 25(2) read with the provisions of the Code of Criminal Procedure it would be detrimental to interest of the minor, we permit the appellant to appear before the Court below on 26.10.2023 alongwith true attested copy of the instant order. The appellant will inform the opposite party within 48 hours by E-mail and by speed post in advance about the order passed today so that the opposite party may also appear before the Court below on 26.10.2023. The Court below will thereafter modify the timings for meeting of the minor with the opposite party so that it is convenient to both the parties. It shall be ensured that the opposite party is able to meet the minor within two weeks from 26.10.2023 and thereafter on regular basis, as envisaged in the order dated 08.05.2023.

5. The appeal stands **disposed of**, accordingly.

6. In case the opposite party feels aggrieved by the instant order, it shall be open to him to apply for recall/modification of the instant order.

7. The warrant issued by the Court below shall remain in abeyance provided the appellant appears before the Court below on 26.10.2023 and permits the minor to meet the opposite party on the modified date and timing fixed by the Court below.

(Donadi Ramesh, J.) (Manoj Kumar Gupta, J.)

Order Date :- 18.10.2023/Ruhi H.