* **HIGH COURT OF DELHI AT NEW DELHI**

\+ **C.M. (M) No.416/2012**

Decided on : 20th April, 2015

AJAY PALL ..... Petitioner

Through: Ms. Gurmeet Bindra & Mr. Kuber Bodh, Advocates.

versus

CHANDA PALL ..... Respondent

Through: Mr. H.S. Sharma, Advocate.

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. This is a petition under Article 227 of the Constitution of India against the order dated 04.04.2012.
2. By virtue of the aforesaid order, the learned Additional Senior Civil Judge as a Guardian Judge has decided the application of the respondent/Mrs.Chanda Pall under Section 12 of the Guardians and Wards Act, 1890 ('The Act' for short) read with Section 151 CPC for grant of interim custody of the child. This application was filed

by Mrs.Chanda Pall along with the main petition under Section 25 of the Act for permanent custody of the child baby Nandita Pall born to the parties.

3. It may be pertinent here to mention that the said application was allowed and it was observed that the petitioner was entitled to the custody of the child during the first half of the school vacations and the same was directed to be handed over to her at the end of the said first part of the vacations to the respondent. The order dated 04.04.2012 is being assailed by the petitioner/ Ajay Pall before this court.

4. The case came up before this court on 11.04.2012 for the first time and has been pending in this court for the last more than three years. During these three years, the court had an occasion to meet baby Nandita Pall and it was observed by various orders that though the custody of Baby Nandita Pall shall continue to be with the father i.e. petitioner/Mr.Ajay Pall, but directions were given from time to the petitioner to ensure that the child meets the mother at specified venues.

5. I have heard the learned counsel for the petitioner as well as the respondent. I have also gone through the record.

6. The contention of the learned counsel for the petitioner has been that the order dated 04.04.2012 passed by the learned Guardianship Judge is perverse in law, erroneous and disregarding the welfare of the child. For the purpose of supporting his submission, the learned counsel for the petitioner has drawn the attention of the court to the orders dated 28.07.2010 passed by the High Court in a habeas corpus petition bearing WP(Crl.) No.1072/2010 wherein this court had observed that the custody of the child shall continue to be with the father/petitioner herein.

7. It has been contended by the learned counsel that according to Section 6 of the Hindu Minority and Guardianship Act, 1956, the father is the natural guardian of an unmarried girl and the mother is the guardian after him. Therefore, in view of the said legal position, the fact that the respondent/mother is not mentally fit, the interim custody of the child supervised or unsupervised may not be given to the respondent/mother. Even during the vacations she should not have been permitted to meet the mother. In this regard, the learned

counsel for the petitioner has referred to the opinion of the child councillor Dr. Deepak Gupta who had met the child from time to time where he had reported that the child is reluctant, fearful and disinterested in meeting the mother. Therefore, it has been asserted that the mother may not be permitted to meet the child much less to have supervised or unsupervised custody of the child during vacations.

8. The learned counsel for the petitioner has further contended that the mother is having an extra marital relationship and the same will have serious impact on the development of the child. It has been averred that in the light of the aforesaid circumstances the interim custody of the child should be granted to the petitioner.

9. On the other hand the learned counsel for the respondent/mother has contended that the respondent is trying to frustrate the order dated 04.04.2012 and in furtherance of that he has ill-informed the school authorities against the mother and directed them to not allow the respondent/mother to meet the daughter. It is alleged that the respondent was not allowed to enter the school premises beyond a certain limit. The learned counsel for the respondent has

further quoted a specific incident dated 30.04.2012, in support of the aforesaid contentions wherein it is also alleged that the school authorities refused to comply with the order dated 04.04.2012.

10. The learned counsel for the respondent has averred that the petitioner misinformed the respondent as to the whereabouts of the child so as to prevent the mother from obtaining the interim custody in pursuance of the impugned order.

11. It has been further averred that the aforesaid actions of the petitioner tantamount to contempt of the order dated 04.04.2012 as the said order is not under stay. Further, the petitioner has also failed to comply with the order of this court dated 28.05.2012 wherein he was directed to allow the meeting of the child with the mother in his presence on every Saturday and Sunday of the summer vacations. It is the case of the respondent that although the meeting was arranged but the same took place in the presence of a number of people including the mother of the petitioner and his lawyer which was unnecessary and created a non-conducive environment for a healthy interaction. It has been further alleged that the petitioner did not allow the respondent to meet the child on

the last weekend and this amounts to clear defiance of the orders of this court.

12. The learned counsel for the respondent relying on the medical documents on record (Annexure P-S, page 66) and the Division Bench order dated 07.02.2011 passed in W.P (CRL) 1072/2010 has denied that she suffers from bi-polar disorder.

13. It has further been averred that the contention of the petitioner that the baby Nandita, herself does not wish to be in the company of the mother is betrayed by the Division Bench order dated 25.01.2011 (W.P (CRL) 1072/2010) wherein the court has observed that the child had a meaningful interaction with the petitioner in the chamber as well as separately in the court premises. It is averred that the same view was reiterated by the learned trial court in its order dated 04.04.2012. It is the case of the respondent that the child is being fed with negative thoughts against the mother as a result of which the child has developed a sense of abhorrence against the respondent/mother.

14. The learned counsel for the respondent has contested that it's a fallacy to say that the order dated 25.05.11 of the Division Bench

has not been considered by the learned Trial Court as the same is prima facie evident from the perusal of the impugned judgment.

15. It is the case of the respondent/mother that the learned trial court has minutely observed the growth and development of the child during her earlier childhood ages wherein she was under the care and protection of the respondent/mother and had also interviewed in the child in person and in the light of the aforesaid had categorically observed that the child was growing well in the care of the mother.

16. The present petition has been filed under Article 227 of the Constitution of India. The object of Article 227 of the Constitution of India is to confer on every High Court special power and responsibility over the subordinate courts and tribunals to keep them within their territorial jurisdiction for securing the ends of justice and ensuring that all such institutions exercise their powers and discharge their duties judiciously and in accordance with law. The Hon'ble Supreme Court in Ramesh Chandra Sankla etc. vs. Vikram Cement etc. AIR 2009 SC 713 has confirmed the aforesaid legal position while taking strength from the observations rendered

by the Allahabad High Court in Jodhey v. State; AIR 1952 All 788, wherein it has been held as under:

> "There are no limits, fetters or restrictions placed on this power of superintendence in this clause and the purpose of this Article seems to be to make the High Court the custodian of all justice within the territorial limits of its jurisdiction and to arm it with a weapon that could be wielded for the purpose of seeing that justice is meted out fairly and properly by the bodies mentioned herein"

17. The same principle has been repeatedly re-echoed by the different High Courts as well as by the apex court from time to time that power under Article 227 of the Constitution of India is supervisory in nature and it is both deep and pervasive on the administrative and the judicial side.

18. In the instant case, this power has been invoked by the petitioner/husband on the judicial side. The petitioner has to show to the court that there is jurisdictional error in the exercise of the powers by the Guardianship Judge or that there is impropriety or any patent illegality in the said exercise of power. There is no dispute about the fact that the High Court while disposing of the

WP(C) No.1072/2011 had passed certain observations and directed the custody to remain with the father which order was retained by the Guardian Judge.

19. The allegation of the respondent/Chanda Pall was that the child at that point of time was studying in a school in Delhi and she was taken away by the husband/petitioner and got admitted in a boarding school. It is common knowledge that in a matrimonial discord, the child is invariably made a pawn and in the instant case also the same is being done and the factum of which has been noted by the learned trial court also. It cannot be ignored that the custody of the child has been given to the father and he has overall control over the child. The said order granting sole custody to the father seems to have been made in the larger welfare of the child. But on the other hand experience has shown that the person who is in the custody and in charge of the child, spews venom against the other partner and as a consequence of which the child being of a tender age and incapable of forming his/her own independent view/opinion and starts abhorring and having negative feelings qua the other partner. This is precisely the basis of the instant case also

and is reflected from the fact that when this court met the child, the child showed disinclination to meet the mother. So far as the reports of experts are concerned, they are at best the guiding principles and there is no dearth of methods of procuring these reports. The learned trial court having taken all these factors into consideration and gave only limited permission to the respondent/wife thereby giving the custody only during the vacations for the year 2012 and thereafter since order was challenged, the court has from time to time been passing orders permitting the mother to meet the child.

20. The allegations of the mother being not in a fit state of mind or that she is carrying extra marital liaison are all allegations which are of no relevance until and unless they are proved to the satisfaction of the trial court which has passed the order. It is not for this court to regulate the interim custody from time to time by judicial orders and permit the respondent/petitioner to meet the child at different venues and keep on increasing its own work. The job of this court is to see as has been stated hereinabove as to whether the order which has been passed by the learned Trial Judge

suffers from any jurisdictional error/infirmity meaning thereby that it has failed to exercise jurisdiction or has exceeded its jurisdiction. Certainly, it is not a case where the learned trial court has exceeded its jurisdiction by permitting the respondent/mother to meet the child and have interim custody during vacations so that she can shower motherly love and affection to the child and that would be necessary for the full and complete development of the child otherwise the child is going to have a lopsided development.

21. So far as the impropriety or illegality is concerned, I feel that the learned counsel for the petitioner has not been able to show that the impugned order suffers from any impropriety, illegality or material infirmity; rather the keeping of the present petition pending before this court, the disposal of the main petition under Section 25 of the Guardians and Wards Act, 1890 gets diluted and further this court is being called upon from time to time to regulate the interim custody or the interim visits to be undertaken by the respondent/petitioner from time to time which is not warranted at all.

22. For the reasons mentioned above, I am of the view that so far as the order which is assailed before this court is concerned, the same does not suffer from any jurisdictional error, irregularity or impropriety or illegality so as to warrant any interference by this court. Accordingly, the petition is disallowed. However, the parties are free to file such appropriate application before the trial court for varying or granting any interim order as the parties may deem fit.

23. The learned Trial Judge shall proceed to dispose of the main matter under Section 25 of the Guardians and Wards Act, 1890 as expeditiously as possible without being influenced by any of the observations made in the present matter.

24. With these directions, the petition is treated as disposed of.

V.K. SHALI, J.

APRIL 20, 2015/dm