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

+ **MAT.APP.(F.C.) No.84/2015 & CM Nos.11493-11494/2015**

DR. RAJNI GUPTA @ MITTAL Appellant
Through Mr.Rakhesh Makhija, Adv. with
appellant in person.

versus

DR. VIKAS GUPTA Respondent
Through Ms.Geeta Luthra, Sr. Adv. with
Ms.Naina Dubey, Adv. & Respondent
in person.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

% **30.07.2015**

Challenge in the present appeal is the impugned order dated 6th June, 2015 passed by the Principal Judge, Family Courts, Karkardooma, Shahdara, Delhi whereby the Principal Judge, Family Courts has disposed of the application of the appellant herein filed under Section 12 of the Guardians & Wards Act read with Order 39 Rule 4 CPC without passing any order or direction/making any arrangement of visitation, stay and meeting of minor child namely Master Utkarsh Gupta with the appellant herein. The Court vide

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order dated 29th November, 2014 by an ex parte order, restrained the present appellant from interfering with the custody of the child till further orders and to seek modification of the said order, the appellant had filed an application under Section 12 of the Guardian & Wards Act but the learned Principal Judge, Family Court without dealing with the reliefs sought by the appellant, in utter haste, disposed of the said application by granting a limited relief.

Ms.Naina Dubey, Advocate appears on behalf of the respondent. She is being led by Ms.Geeta Luthra, Senior Advocate.

Having heard counsel for the appellant and Ms.Geeta Luthra, learned Senior Advocate for the respondent, we do find that by the impugned order passed on the application preferred by the appellant herein under Section 12 of the Guardian & Wards Act read with Order 39 Rule 4 CPC, the learned Principal Judge has given a limited direction to the respondent herein to hand over the custody of the minor child Master Utkarsh to the appellant Ms.Rajni Gupta on 7th June, 2015 in order to enable the appellant to proceed along with the son for a proposed visit to Darjeeling, Guwahati etc. The Court further directed the appellant to handover the custody of Master



Utkarsh to the respondent on 18th June, 2015. Para 6 of the said order states that in the light of the said direction, the application filed by the appellant under Section 12 of the Guardian & Wards Act read with Order XXXIX Rule 4 CPC stands disposed of. To appreciate the controversy, prayer as made by the appellant in her application can be reproduced as under:-

“i. Pass necessary orders and directions thereby allowing the present application and discharging, cancelling, altering, varying and modifying the order dated 29.11.2014 as passed by this Hon’ble Court and granting the custody of the minor child namely Master Utkarsh Gupta to the respondent.

ii. Pass necessary orders and directions thereby making interim arrangement of visitation, stay and meeting of minor child namely Master Utkarsh Gupta with respondent from each Friday to Sunday evening/Monday morning besides sharing vacations/holidays etc. with the minor child as were being followed and continued by parties before passing of the order dated 29.11.2014 including of meeting and talking with the child during weekdays as per the need; till such time, the present application is not disposed of finally.”

On bare perusal of the said prayer paras, it is manifest that the learned Principal Judge has neither granted any relief in terms of the said prayer paras nor has declined the same. The learned Principal

Judge has passed a very limited direction to allow the appellant to take Master Utkarsh to Darjeeling, Guwahati etc. and restore back the custody of the child to the respondent on 18th June, 2015. In our view, perhaps, it lost sight of the learned Principal Judge to deal with other contentions raised by the appellant and reliefs claimed by him in the said application.

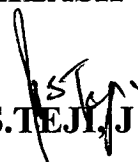
Ms.Geeta Luthra, learned Senior Advocate submits that during her stay with the appellant, the child was traumatized by the appellant and was also hit by her. This submission made by learned Senior Advocate is strongly refuted by the appellant who is present in person in Court.

Without commenting on the merits of the application, we direct the Principal Judge, Family Courts, Karkardooma, to re-hear the said application and decide the same on merits. We also direct that the learned Principal Judge shall take into consideration the wishes of the child as he has already attained the impressionable age of thirteen years, and finally dispose of the same.

The parties shall appear before the Principal Judge, Family Courts, Karkardooma on 26th August, 2015, the date already fixed.

It is directed that the learned Guardianship Court shall decide the application as expeditiously as possible.


KAILASH GAMBHIR, J


P.S. TEJI, J

JULY 30, 2015

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