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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **MAT.APP.(F.C.) 136/2015**

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Date of Judgment : 03.11.2015

PRAMEET NARULA THR ITS
SPA RANJEET SINGH NARULA Appellant
Through : Ms. Reena Jain Malhotra, Advocate.

versus

SANJEEV KUMAR CHOUDHARY Respondent
Through : Mr. Jai Bansal and Mr. Nath Mohan
Prafulla, Advocates.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J. (ORAL)

1. Aggrieved by the order passed by the Family Court dated 17.10.2015, appellant has filed the present matrimonial appeal.
2. As per the petition, appellant is the wife of respondent no.1.
3. Learned counsel for the appellant submits that the interim custody of the minor daughter was with the maternal grandparents. The respondent visited the house of the petitioner's parents and without informing them, carried the child away and thereafter approached the Court on 16.10.2015 and obtained an order of status quo on 17.10.2015.
4. The appellant learnt about the *ex parte* order on the night of 17.10.2015 when a copy of the Order was sent through "Whats App"

to the appellant. The appellant was shocked to receive the *ex parte* order as in terms of the settlement arrived at between the parties, the appellant had given up her claims towards istridhan and maintenance, however, it was agreed that the custody of the minor daughter would remain with Sh. Ranjeet Singh Narula and Smt.Satinder Narula, maternal grandparents, till the dissolution of marriage.

5. Learned counsel for the appellant submits that the child was admitted to Guru Harkrishan Public School, India Gate. The appellant in the month of June, 2015, had to go to Auckland, New Zealand, to pursue her teacher training course during which period the minor daughter was staying with her parents.
6. Learned counsel for the appellant further submits that after the passing of the aforesaid order, an application under Order XXXIX Rule 4 read with Section 151 of Code of Civil Procedure was filed on 20.10.2015 which was simply adjourned to 02.11.2015 by the Family Court forcing the appellant to knock the doors of this Court for justice.
7. Learned counsel for the appellant submits that the parties had decided to dissolve their marriage by mutual consent. Accordingly, the petition under Section 13-B (1) of the Hindu Marriage Act was filed. The first motion was recorded. In the petition, the parties had agreed on the following arrangements :

“8. That the custody of the minor Rabaani would remain with Sh. Ranjeet Singh Narula and Smt. Satinder Narula till the dissolution of marriage between the parties and that thereafter the custody of minor would remain with Sh. Ranjeet Singh

Narula and Smt. Satinder Narula.

9. That in the event of seeking custody of the minor by either of the parties to this petition for any reason whatsoever including travelling abroad, they would have to seek the legal permission from the competent authority after obtaining the consent of the legal custodians of the minor child i.e. Sh. Ranjeet Singh Narula and Smt. Satinder Narula, the father and mother of the petitioner no. 1.”

8. While recording the statement, the following was stated before the trial court :

“3. We have amicably resolved all our disputes pertaining to this marriage including istridhan, permanent alimony, dowry articles and maintenance (present, past & future). We have agreed that we will not initiate any litigation or will not raise any claim in future against each other and the family members and relatives of each other. It has been mutually agreed between us that the custody of the said child shall remain in care and custody as per para no. 8 to 10 of the petition.”

9. Learned counsel for the appellant further submits that the respondent has mislead the Family Court by suppressing and withholding material documents. She further submits that the respondent, who used to visit the house of the appellant's parents, removed the child from the custody of the maternal grand parents and thereafter filed the petition under Section 26 of the Hindu Marriage Act on the same day and obtained an order of status quo. Counsel further submits that a

copy of the petition for grant of divorce (first motion) was not placed before the Family Court although a copy of the statement was filed.

10. Notice was issued in this matter on 3.11.2015. Pursuant to the directions, the parties are present in Court. It is not in dispute that prior to 16.10.2015, the custody of the minor daughter of the parties was with the maternal grand parents in terms of the understanding arrived at between the parties and which is evident from the statement made by them before the Family Court on 12.01.2015.
11. Mr. Bansal, learned counsel appearing for the respondent submits that the respondent did not conceal any facts from the Family Court. He submits that since the mother of the child had left the child and had gone to New Zealand, the respondent upon seeing the condition of the child decided to keep the child with him for her welfare.
12. We have heard the learned counsel for the parties.
13. When the matter was listed before us on 02.11.2015, we had asked the counsel for the appellant the fate of her application under Order XXXIX Rule 4 of Code of Civil Procedure. We were informed that notice was issued for 18.11.2015.
14. During the course of hearing, we had asked the counsel for the respondent to take instructions if the respondent is willing to hand over the custody of the minor child in terms of the settlement agreement till such time the family court hears the matter on merit. After some reluctance, the respondent has agreed that the custody of the minor child be handed over to the grandparents in terms of the Agreement entered into between the parties and interim order be vacated to enable the Family Court to hear the matter on merits.

15. Before we dispose of the matter, we would like to express our displeasure in the manner the Family Court has dealt with this matter. On 17.10.2015, the following order was passed :

*“HMA No. 795/2015
Sanjeev Kumar Choudhary Vs. Prameet Narula & Anr.*

Fresh petition u/s. 13 1 (i) & (i-a) of HMA received. It be checked and registered.

Present : Petitioner with Sh. Jai Bansal, Advocate.

Let issue notice of the petition and application u/s 26 of HMA to the respondent No. 1 and respondent no. 2 on filing of PF, RC/AD and Speed Post.

I have perused the file, another address of the respondent No. 1 is also mentioned, so she also be served on that address through e-mail, courier as well as through Indian Embassy at Auckland, New Zealand.

Child is also present along with her father i.e. petitioner.

Ld. Counsel for the petitioner request that let status quo in respect to the minor child Rabaani Choudhary be passed to avoid any disputes between petitioner and the respondent No. 1.

After hearing the arguments and bearing in mind the welfare of the child, let status quo in respect of the minor child be maintain till the next date of hearing.

Put up on 22.01.2016. Copy of the order be given dasti as prayed.

*(Arun Kumar Arya)
Principal Judge Family Court
Patiala House Delhi
17.10.2015”*

16. Firstly, the Order dated 17.10.2015 is devoid of any reason, although the statements made by the parties were placed on record which show that the custody of the child was to remain with the maternal grandparents. We also find that on 17.10.2015 in a matter pertaining to custody of a minor girl notice was issued for a date in the month of January, 2016, but what is not acceptable is that when an application under Order XXXIX Rule 4 of the Code of Civil Procedure was filed on 20.10.2015 without hearing and without issuing notice, the same was adjourned to 2.11.2015. This is more shocking as in the application it had been clearly stated that as per the terms of settlement the custody of the child was to remain with the grandparents.
17. We also find that after the order was passed, the respondent did not make any attempt to file the process fee and serve the appellant herein. We also find that the respondent did not annexe the copy of the petition for grant of divorce by mutual consent (first motion) which has set out arrangements between the parties. We also find that the respondent did not send the child to the school after 19.10.2015. A certificate to this effect from the school has been filed on record. While taking this drastic step, the father did not realize the insecurity he was putting the child into.
18. The appeal stands disposed of. However, we make it clear that while deciding the petition filed under Section 26 of the Hindu Marriage Act, the Family Court will decide the same unaffected by any observation made by us while disposing of the matter today.
19. List before the Family Court on 18.11.2015, the date already fixed.

CM APPL. 25444/2015 (Stay)

20. In view of the order passed in the appeal, the application is also disposed of.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

NOVEMBER 03, 2015

SC