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

+ **W.P. (C) 1831/2016**

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Date of Judgment: 03rd January, 2017

ESHA DHANAWAT @ ESHA ANAND

..... Petitioner

Through: Mr. Arvind Singh, Advocate with
Mr.S.K. Gautam and Mr. V.K.
Raghav, Advocates with petitioner in
person.

Versus

THE STATE (NCT OF DELHI & ORS.

..... Respondent

Through: Mr. Rahul Mehra, Standing Counsel
(Crl.) with Mr. Tushar Sannu,
Advocate for State.

Mr. Anurag Jain, Advocate for R-5
with respondent no. 5 in person.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE VINOD GOEL

G.S.SISTANI, J. (ORAL)

1. Present writ petition has been filed by the petitioner under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure seeking production of his six and a half years old son before this Court and hand over his custody to her.

2. The brief facts of the case are that marriage between the petitioner and respondent no.5 was solemnized on 12.12.2008. Out of their wedlock, a daughter was born on 11.03.2011 and a son was born on 15.10.2009. After one day of her marriage with respondent no.5, the petitioner learnt that respondent no.5 has a criminal background. It is alleged that the petitioner was not even allowed either to visit her parental home or to speak to her parents over phone. It is further alleged that with the passage of time, the respondent no.5 and her parents have become more aggressive towards the petitioner and her children.
3. Learned counsel for the petitioner/mother submits that respondent no.5 (father) has illegally removed the son from the lawful custody of the petitioner (mother). Counsel further submits that a petition seeking divorce has been instituted by respondent no.5 while the proceedings under Domestic Violence Act have been instituted by the petitioner.
4. We have heard learned counsel for the parties. During the pendency of this matter, a mutual arrangement was worked out between the parties to enable the petitioner (mother) to spend time with her son.
5. Today, we have also interacted with the parties in the chamber. It is agreed that the present petition may be disposed of on the following terms, which will be treated as an undertaking to the court and which the court accepts: -
 - i. As an interim arrangement the father will drop the son at the residence of the mother at B-35, Second Floor, Panchsheel

Enclave, Pitam Pura, New Delhi, at 11.00 AM to enable the son to spend time with his mother and sister till 06.00 PM of all Saturdays of the month. On the second and fourth Saturdays, in addition, the son will also spend the night with the mother and the father will pick-up the child on Sunday at 03.00 PM.

- ii. Two days in a week, when the child stays over night with the mother, the daughter will accompany the father from 03.00 PM to 07.00 PM to enable the daughter to interact with the father and grand-parents.
- iii. This arrangement would continue for a period of three months from today to enable the parties to seek appropriate remedy by approaching the Family Court, if advised.
- iv. Time schedule will be strictly adhered to and the meeting will be cordial. Both the parties undertake not to discourage the children from meeting the parents/grand-parents.
- v. Should any petition be filed by either of the parents, the Family Court will decide the application for interim relief as expeditiously as possible but not later than within three months from the time the pleadings are complete. An advance copy of the petition will be served on the addresses mentioned in this petition and shall be deemed to be proper service.
- vi. The parties will co-operate with the Family Court to enable the Family Court to decide the interim application within a period of three months from the date, the pleadings are

complete. The Family Court will grant two weeks' time to file reply and one week time to file rejoinder. Documents would be filed within the same period as duly agreed in court today.

- vii. It is agreed that both the parties will be kept posted with regard to the development of the children with respect to their schooling and both the parents will participate in the Parents-Teachers Meetings.
 - viii. We make it clear that should either of the parties approach the Family Court, the Family Court would decide the matter in accordance with law and unaffected by any of the observations made by this court in the order passed today or previous orders, which have been passed.
 - ix. Parties have been explained the consequences of breach of undertaking given to the Court.
6. Accordingly, present writ petition stands disposed of in view of the above agreed terms.

G. S. SISTANI, J.

VINOD GOEL, J.

JANUARY 03, 2017

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