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

+ CONT.CAS(C) 292/2014

SEEMA SINGH

..... Petitioner

Through: Ms. Malavika Rajkotia, Mr. Vaibhav
Vats, Advs.

versus

ABHISHEK SINGH

..... Respondent

Through: Mr. Prabhjit Jauhar, Ms. Anupama
Kaul, Advs.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

ORDER

% **18.01.2016**

1. The petitioner's grievance is that the respondent husband has violated clause (i) of the settlement agreement dated 17th May, 2012. Relevant portion of the said clause is reproduced hereunder:

“(i): It is agreed between the parties that in the unlikely event of a separation / legal separation/divorce between them, same shall be subjected to the jurisdiction of the courts in United States of America. The US courts will have the jurisdiction in respect of divorce, separation, legal separation, maintenance and child support between the parties. The petitioner/husband agrees that the permanent custody of the minor child Aashita shall remain with the Second Party (mother) and only in the event of divorce, separation and legal separation, the Second party (mother) shall be free to travel to India along with the minor child who is an American Citizen and the First Party shall not withhold the passport of the Second Party and the minor child in that eventuality.”

2. Learned counsel for the petitioner submits that the parties went back to USA along with the child on 7th September, 2012 and they lived together upto 21st November, 2012 when the parties separated due to differences and

the petitioner initiated proceedings for domestic violence against the respondent. It is further submitted that though the minor child Aashita is staying with the petitioner but the respondent claimed custody of the child and thereby, violated clause (i) of the settlement agreement.

3. Learned counsel for the respondent submits that the permanent custody of the minor child, Aashita is with the petitioner. It is further submitted that vide order dated 13th June, 2014, the District Judge, North Carolina, Country of Wake has ruled the sole legal custody of the minor child to the petitioner. It is further submitted that the respondent has claimed the visitation rights/interim custody of the minor child. The relevant portion of the order dated 13th June, 2014 is reproduced hereunder:

“WHEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED, as follows:

1. Plaintiff is hereby granted sole legal custody of the minor child of the parties, Aashita Singh;

2. Plaintiff is hereby granted primary physical custody of Aashita, subject to Defendant’s visitation as set forth hereinbelow;

3. Defendant is hereby granted visitation every other weekend from Friday afternoon (pick up after school) through Monday morning (drop at school). On his weekend for visitation, Defendant will pick the minor up on Friday from school and Defendant will return the minor child directly to school on Monday morning. In case the defendant wants to return the child earlier than Monday morning, then he shall give 48 hour notice to the plaintiff and return the child at 6.00 pm on Sunday evening. The custodial exchanges shall occur at McDonalds currently used by the parties.

4. The parties shall have the following holiday visitation schedule:

*a. **Christmas.** In the year 2013 and all subsequent odd-numbered years, Father shall be entitled to visitation with Aashita from noon on Christmas Eve until noon on December 25th and Plaintiff mother shall have custody from noon on December 25th until noon December 26th. In the year 2014 and all subsequent even-numbered years, Mother shall be entitled to custodial time with Aashita from noon on Christmas*

Eve until noon on December 25th and defendant father shall have custody from noon on December 25th until noon December 26th.

*b. **Diwali/Dipawal.** In the year 2014 and all subsequent even-numbered years, Aashita will be with Father for this holiday. In the year 2013 and all subsequent odd-numbered years, Aashita will be with Mother for this holiday. Tentative dates of the festival as per Hindu calendar are as follows:*

October 23, 2014

November 15, 2015

November 3, 2016

October 23, 2017

November 11, 2018

October 31, 2019

November 18, 2020

November 8, 2021

October 28, 2022

*c. **Durga Puja/Dussehra:** In the United States, this is a one day holiday. In even numbered years, the minor will be with the Mother. In odd numbered years, the minor shall be with the Father. Tentative dates of the festival as per the Hindu calendar are as follows:*

October 4, 2014

October 22, 2015

October 11, 2016

September 30, 2017

October 19, 2018

October 8, 2019

October 25, 2020

*d. **Mother's Day/Father's Day.** The honoured parent shall be entitled to spend the day with Aashita from 9.00 a.m. on Sunday until the following Monday morning.*

*e. **Summer Vacation.** During the minor child's summer vacation, each party may designate four weeks of summer vacation. The notice for the vacation shall be given sixty (60) days prior to the start of the vacation.*

*f. **Birthday.** Mother and Father shall each be entitled to have visitation with the minor child for at least two hours on her birthday every year. In the year 2014 and all subsequent even-numbered years. Mother shall have first choice as to the time with the minor. In the year 2015 and all subsequent odd-numbered years, Father shall have first choice as to the time*

with the minor child. The normal visitation schedule for the minor child's birthday shall otherwise apply. Both parties may attend any birthday party for the minor held in public.

5. If Defendant is unable to pick the minor child up at the requisite time, he shall notify Plaintiff at least forty-eight (48) hours in advance or as soon as practical to do so if that is not possible. Unless the parties agree otherwise, if Defendant does not pick up the minor as scheduled or he forfeits that visitation period.

6. The parties are prohibited from punishing the minor child by restricting or taking away visitation or other contact with the other party.

7. Both parents shall allow the minor child to have a telephone contact with the other parent. The phone call shall be every other day the child is in a parent's custodial time. The call shall occur at 7.00 p.m.

8. Both parties shall take reasonable measures to foster a feeling of affection between Aashita and the other parent and neither parent shall do or say anything, the reasonable effect of which would be to estrange the minor child from the other parent or to impact her regard for the other parent. In particular neither parent shall make or allow anyone else to make disparaging remarks about the other parent in the minor child's presence.

9. The parties will promptly notify one another by e-mail regarding the minor child's academics, extracurricular activities, religious activities, and health care appointments.

10. The minor child shall be enrolled in at least one extracurricular activity open to the public outside of school activities and which involves other children. The extracurricular activity is to be of the minor child's choice and shall be in addition to White Tiger. The minor child shall continue with White Tiger. Defendant shall be responsible for any fees associated with such activities.

11. The minor child shall continue with counselling. Defendant will contact the therapist and be available whenever the therapist asks him to come. Defendant shall be responsible for the fees associated with counselling.

12. In any year in which the parties do not agree regarding a birthday party for Aashita, there will be no such birthday party. Defendant will not exclude Plaintiff in the future from a birthday party with is given by a third party.

13. The minor child is not to change schools at this time. The parties shall leave the minor child in her elementary school as long as allowed based upon Wake County's base school system requirements.

14. Neither parent is permitted to remove the minor child from the United States without the permission of the court.

15. The Plaintiff may expose the minor child to the Indian culture and take the minor child to temple and enrol her in any activities in temple or activities pertaining to Indian culture. The defendant shall cooperate with Plaintiff and shall take the minor child to such activities that may fall on his custodial time.

16. The Plaintiff may take the minor child for Puja to the temple on occasions like Maha Shiv Ratri, Holi, Saraswati Puja, Janamasthmi, Ram Navami, Raksha Bandhan, Ganesh Chaturthi, Navratri and Makar Sankranti.

17. The Plaintiff may have the minor child present for Chat Puja, which take place 6 days from Diwali.

18. The minor child's passport shall be reissued but it is to remain in the possession of Charles R. Ullman. The parties will direct the Passport to be sent to Charles R. Ullman's office address as the address for the delivery of the Passport. If a parent's address must be listed for the Passport, Mr. Singh's address will be used the purpose of the application. The parties shall cooperate and apply for the passport by June 1, 2014.

19. The minor child's passport shall remain in the custodial possession of Charles R. Ullman until further Order of this court.

20. Plaintiff must take all steps necessary to remain in the United States. If Plaintiff must leave the United States as the result of something Plaintiff did or failed to do, the minor child will not be permitted to leave the country with Plaintiff.

21. Neither party may remove the minor child from the United States without express permission of this court.

22. The parties shall provide prompt notification of all changes to their residency status to one another.

23. Defendant is to make a digital copy of all photographs of the minor in his possession and provide such copies to Plaintiff.

24. The parties shall notify each other of any change of address within twenty-four (24) of the change.

25. The minor child will leave the country with the plaintiff in case the plaintiff is denied permanent residency or has to leave the country for no fault of her own. The defendant shall take all necessary steps to assist the plaintiff to get a green card and the plaintiff shall give full cooperation in this process.

26. If the Plaintiff is forced to leave the United States at no fault of her own, the Plaintiff shall be permitted to calendar an expedited hearing before this court and the minor child will be permitted to travel back to India with Plaintiff mother.

27. Neither party shall disparage the other parent in the presence of the minor child.

28. This Court retains jurisdiction of this matter.”

4. Learned counsel for the respondent further submits that so far as the petitioner’s right to travel to India along with the minor child is concerned, the USA Courts have restrained both the parties from removing the minor child from United States without the permission of the Court which is recorded in para 14 above. It is further submitted that vide order dated 11th June, 2015, the District Judge, North Carolina again rejected the petitioner’s application for permission to travel to India along with the minor child.

5. Learned counsel for the respondent further submits that since both the parties have submitted to the jurisdiction of the USA Courts and the US Courts have restrained both the parties from removing the minor child from the United States, there is no contempt by the respondent.

6. In the present case, since permanent custody of the minor child, Aashita is with the petitioner and the respondent is only claiming the visitation rights, no further order on the custody of the minor child is warranted. With respect to the petitioner’s right to travel to India along with the minor child recorded in clause (i) of the agreement dated 17th May, 2012, this Court is of the view that since both the parties have submitted to the jurisdiction of the US Courts, it would be appropriate for the US Courts to pass an appropriate order on the petitioner’s right to travel to India along with the minor child. The petition is disposed of in the above terms.

7. Copy of this order be given dasti to counsel for the parties under the signature of the Court Master.

J.R. MIDHA, J.

JANUARY 18, 2016

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