

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

% *Date of Decision: August 19, 2016*

+ **MAT.APP.(F.C.) 153/2014 & CM No.20182/2014**

MADHU PAMNANI & ORS Appellants

Represented by: Appellant in person

versus

NEERAJ PAMNANI Respondent

Represented by: Respondent in person

CORAM:

HON'BLE MR.JUSTICE PRADEEP NANDRAJOG

HON'BLE MS.JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. We had heard the parties at length on August 17, 2016 and had indicated that judgment would be pronounced today. The reason was the desire of the Court to go through the pleadings and the voluminous record in the appeal which spans 569 pages. We did so for the reason the parties had argued the appeal themselves.

2. The voluminous record is replete with applications which are verbose and were disposed of on August 17, 2016. They are full of allegations and counter allegations against each other. Said pleadings are irrelevant to decide the issue which arises in the appeal.

3. The wife is aggrieved by the impugned order dated August 07, 2014 refusing to modify the visitation rights granted to the respondent to enable him to meet the son and the daughter of the parties who are now aged 16 years and 15 years respectively. The reason given by the learned Judge Family Court is that the Court is not competent to modify the order passed

by the learned Predecessor Court.

4. The reasoning is ex-facie incorrect for the reason any change in circumstance would empower a Court to modify a previous order passed concerning visitation rights.

5. The appellant and the respondent are having a very bitter relationship evidenced by the fact that the two are involved in multifarious litigations.

6. Way back in the year 2009 the respondent filed a petition under Section 25 of the Guardians and Wards Act seeking custody of the children : a boy and a girl born to the appellant and the respondent. An interim order was passed on April 05, 2010 granting visitation rights to the respondent directing that the respondent shall pay the school fee of the children apart from the maintenance which was granted to the appellant. The application seeking review of the order dated April 05, 2010 filed by the respondent was dismissed on July 27, 2010. Suffice it to highlight that seeking review the respondent wanted to wriggle out of the condition imposed that apart from he paying maintenance to his wife he would pay the school fee of the two children.

7. The guardianship petition filed by the respondent was disposed of on September 27, 2012 declining prayer made by the respondent. However, visitation rights already ordered were embodied in the final order dated September 27, 2012.

8. One would have hoped and expected that there would be a quietus to one aspect of the litigation between the couple : custody rights and visitation rights. But it was not so.

9. The appellant filed a miscellaneous application bringing to the notice of the learned Judge Family Court that the respondent was not contributing a penny towards the education of the children. It was pointed out that the

respondent is also not paying the maintenance. It was pointed out that the children show reluctance to meet their father.

10. The respondent denied not paying the maintenance. He also pointed out that the appellant has initiated proceedings under the Criminal Procedure Code in which after disclosing the maintenance already awarded to her she is praying for an enhancement, a pleading which is wholly irrelevant to decide the miscellaneous application filed by the appellant.

11. The learned Judge Family Court has dismissed the miscellaneous application filed by the appellant on the reasoning that the maintenance directed to be paid by the respondent to the appellant is being paid and that the learned Judge is not competent to modify the order passed by the previous Presiding Judge of the Family Court.

12. At the hearing held on August 17, 2016 the respondent admitted before us he not paying the school fee of the children and gave the justification that his health has deteriorated. His wife and children have abandoned him. He has to employ domestic help to sweep and clean his house. He eats his meals in a restaurant and thus has less money.

13. We had reasoned with the respondent that he has to take proactive steps to earn the love and affection of his children and one method would be to make the children financially comfortable, for if the children live in penury they would naturally develop a dislike for the father. The respondent expressed his helplessness.

14. We are thus constrained to decide the appeal as per law. It is settled law that issues concerning custody and visitation rights must focus upon the welfare of the child. Of course, every attempt has to be made for both parents to access the child for the reason it would be in the interest of the child to bond with both parents.

15. This balancing is difficult in some cases. Indeed, instant case is of the kind.

16. The children are today aged 15 years and 16 years. They are mature children. They understand the family problem. They understand that on account of their father not paying their school fee and regular maintenance in sum of ₹10,000/- is not being received by their mother they are deprived of the comforts of life. The school fee of the two children, including transport, comes to ₹8,000/- per month. The financial stringency faced by the children obviously results in some kind of repulsion developed towards their father because the children would rightly believe that their father is responsible for their poverty. If the children evince a hatred towards their father, it could be argued that the mother should try and mollify the children. But the mother would respond by urging that what can she do when the father of the children refused to part with money.

17. The countervailing points have no commonality from which a Judge can take off.

18. But, attempts have to be made to provide access to the father to meet his children. May be the father can reason out with the children when he meets them.

19. Every Family Court in Delhi is provided with two counsellors. These counsellors are trained at resolving such kinds of hard cases.

20. The legal reasoning given by the learned Judge Family Court that he cannot modify the order passed by his predecessor being legally unsound, we dispose of the appeal setting aside the impugned order dated August 07, 2014. We restore Miscellaneous Application No.16/12 filed by the wife.

21. The purpose of restoration of the application is to revive the proceedings before the learned Judge Family Court who, would try and

facilitate a meeting between the respondent and his children and for which the counsellors attached to Court could be asked to play a proactive role.

22. We would commend to the respondent to be charitable towards his children and would remind him of the adage '*Money makes the mare go*'.

23. The parties are directed to appear before the Presiding Judge of the Family Court at Saket Court Complex on September 19, 2016.

24. The appeal and CM No.20182/2014 in which prayer made is to stay the operation of the impugned order are disposed of passing above direction without there being any order as to costs.

25. Record of the Family Court be returned immediately.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

AUGUST 19, 2016
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