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

% *Date of Judgment: 28th August, 2018*

+ MAT.APP.(F.C.) 44/2018

MADHU PAMNANI

..... Appellant

Through Ms. Samiksha Godiyal, Advocate for
the appellant along with appellant in
person.

versus

NEERAJ PAMNANI

..... Respondent

Through Mr. Anil Sharma and Mr. Manoj
Kumar Sood, Advocates

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

1. This is an appeal filed against the order dated 25.11.2017 passed by the Principal Judge (South), Family Court, Saket by which an execution petition filed by the appellant has been dismissed.
2. Learned counsel for the appellant submits that while passing an interim order in a petition pending before the Guardianship Court, six conditions were laid for allowing the visitation rights which find mentioned in the order dated 05.04.2010. She further submits that the petition filed before the Guardianship Court was finally decided by an order dated 27.09.2012. The visitation rights as ordered were to continue to remain in force. The complaint of the appellant is that condition no.6 with regard contribution towards educational expenses

of the children has not been complied with by the respondent which forced the appellant to file an execution petition.

3. Counsel appearing on behalf of the respondent submits that the respondent continues to pay maintenance in terms of the orders passed in proceedings arising out of Section 125 Cr.P.C. initiated by the appellant, which has attained finality and in the said order, there is no reference of making separate payments towards educational expenses. Counsel for the respondent submits that the respondent is a diabetic person and also looking after his 70 years widowed ailing mother and thus, he is not in a position to pay more than the amount fixed. It is also submitted that there is no infirmity in the order so passed on 25.11.2017.
4. We have heard the learned counsels for the parties. The short question which arises for our consideration is whether an execution petition would lie against the order dated 05.04.2010 passed by the Court of JSCC-cum-ASCJ cum-Guardian Judge. It would be useful to reproduce the relevant part of the order dated 05.04.2010, which reads as under:

“Present is an interim stage. At this stage, I am not inclined to pass the order of custody of children to the petitioner. However, I grant visitation rights to the petitioner as follows:

1. The petitioner(father) (not any relative from the side of petitioner) alone will meet the children in the presence of respondent once every week i.e. on every Sunday in between 9 AM to 7 PM at any mutually decided venue,

which can be the respondent's residence also. If for any reason, the meeting does not take place on any Sunday in a particular month, it would take place on the following Sunday or any other day, mutually agreed upon them. If, however, petitioner for any reason is unavailable to make it to the meeting venue, he shall intimate the same in advance to respondent to avoid inconvenience.

2. Petitioner is entitled to meet children at such mutually agreed venue on birthdays of children. Such arrangement shall continue on important Hindu festivals for same duration that may be mutually agreed upon.
3. Both petitioner and respondent will mutually adjust and accommodate each other with regard to the time and duration of visitation, on such occasions.
4. The respondent can take the children out of Delhi but with the consent of petitioner or else with permission of Court.
5. Petitioner shall have a right to be informed about children's progress in education, health, overall development etc and on monthly basis to respondent whenever necessary and respondent shall allow children to talk to petitioner over telephone as and when desired by children.
6. Since Petitioner is desirous of making contribution towards educational expenses of children, he shall contribute monetarily towards the education and misc. expenses of both children by providing the same to respondent in cash on being informed by

respondent of such expenses apart from clearing all the arrears paid by respondent with school.

The aforesaid visitation rights are subject to modification on change of any circumstances and the other arrangement shall remain the same till further orders.

Copy of order be given dasti to both parties.

To come up on 27.7.2010 for admission/denial of documents and framing of issues.”

5. This petition was finally disposed of by an order dated 27.09.2012. Operative portion of the order dated 27.09.2012, reads as under:

“As discussed above, I am of the considered view that it would be in the interest and welfare of the children, who are of tender age, to live with the respondent who is intrinsically better equipped to look after the children. Both the children, namely, Master Pratham and Baby Radhika, are doing well in the school in her company. The petitioner, on the other hand, does not appear to have ample time to look after the basic needs of the children due to his job restraints and above all, he is also living alone, there is no elderly member in the family to look after the children in his absence.

In view of the above findings, the prayer of the petitioner/father for handing over the custody of children, Master Pratham and Baby Radhika, is hereby declined. However, the visitation rights as already ordered by this court shall remain in force till further orders.”

6. It is not in dispute that the appellant had filed a petition under Section 125 Cr.P.C. for grant of maintenance. The aforesaid petition was allowed by an order dated 05.11.2016, the operative portion of which reads as under:

“17.1 As far as the children are concerned, taking into account the fact that the respondent had been paying their school fee @ Rs.7,000/- pm till September 2012 and has also been paying Rs.5,000/- pm to the petitioner towards maintenance, I am of the considered opinion that an amount of Rs.2,500/- pm each, till disposal of this petition; and at the rate of Rs.6,000/- pm each, from the date of this order, shall meet the ends of justice.”

7. As per the order of the Principal Judge, Family Court, maintenance @ Rs.6,000/- per month for each child (total Rs.12,000/- per month) has been granted. While passing the order dated 05.11.2016, the Family Court took note of the fact that respondent has paid school fee upto September, 2012 which has been duly accepted by the appellant herein as the said order has not been assailed. As far as the order passed by the Guardianship Court is concerned, six conditions have been laid down with regard to meeting the children as reflected in the interim order dated 05.04.2010, which we have reproduced in para 4 aforegoing. The petition was finally disposed of by an order dated 27.09.2012. In case the respondent fails to comply with any of the conditions imposed, the necessary consequence would follow. However, the executing court has rightly dismissed the execution petition as the issue with regard to maintenance also stands decided in proceedings initiated by the appellant under Section 125 Cr.P.C. The

order dated 05.11.2016 passed by the Principal Judge, Family Court has attained finality.

8. Thus, we find no infirmity in the impugned order dated 25.11.2017 passed in the execution proceedings. Accordingly, the appeal is dismissed.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J

AUGUST 28, 2018

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