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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 655/2018, CM No.22999/2018 (for stay) & CM
No.23000/2018 (for permission to file additional documents)
GARIMA JAITLEY Petitioner

Through: Mr. Vineet Tayal, Adv.

Versus

VIPIN JAITLEY & ORS Respondents

Through: Mr. Jeevesh Mehta, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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15.10.2018

1. This petition under Article 227 of the Constitution of India impugns the order dated 15th May, 2018 in GS No.06/2018 of the Principal Judge, Family Court, Shahdara on an application under Section 12 read with Section 25 of the Guardians and Wards Act, 1890 and under Sections 6 and 13 of the Hindu Minority and Guardianship Act, 1956, vesting interim custody of the minor daughter of the parties in the respondent / father.
2. This petition came up first before this Court on 28th May, 2018 when the presence of the counsel for the respondent / father was ordered. The respondent / father appeared on 31st May, 2018 and vide order of the said date, the operation of the impugned order insofar as directing the petitioner / mother to hand over custody of the minor daughter to the respondent / father was stayed. Thereafter on 5th July, 2018, the parties were referred to Mediation Cell of this Court.
3. Mediation has remained unsuccessful.

4. I have enquired from the counsel for the petitioner / mother as to how this petition under Article 227 of the Constitution of India is maintainable in the light of the remedy of appeal under Section 19 of the Family Courts Act.
5. The counsel for the petitioner / mother draws attention to ***Seema Vs. Sanjeev Godha*** ILR (1969) Delhi 291.
6. Attention of the counsel for the petitioner / mother is drawn to ***Manish Aggarwal Vs. Seema Aggarwal*** ILR (2013) I Delhi 210 of the Division Bench of this Court and the subsequent dicta in ***Jayanti Prasad Vs. Pragya Gautam*** 2018 SCC OnLine Del 11535 and order dated 28th September, 2018 in CM(M) No.1170/2018 titled ***Ojisha Sharma Vs. Anil Sharma***. It is unfortunate that inspite of Division Bench of this Court having pronounced as far back as in the year 2012, counsels, oblivious of the same, continue to file such misconceived petitions instead of invoking the remedy of appeal.
7. The petition, in the light of the remedy of appeal available, is not maintainable and is dismissed as such.
8. Needless to state that the petitioner / mother, in accordance with law shall be entitled to avail of appropriate remedy.
9. Since the stay of operation of the impugned order has remained in force since 31st May, 2018, it is deemed appropriate to extend the same till 31st October, 2018. Unless there is an order of stay of operation of the order dated 15th May, 2018 thereafter in any other proceeding, the said order shall be complied with.

Dasti.

RAJIV SAHAI ENDLAW, J

OCTOBER 15, 2018/‘gsr’..

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