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

+ CM(M) 753/2018

BB

..... Petitioner

Through: Mr. Prashant Mendiratta, Adv.

Versus

DSB

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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10.07.2018

CM No.26908/2018 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

CM(M) 753/2018 & CM No.26907/2018 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order dated 13th April, 2018 in GS No.53/2016 of the Court of the Principal Judge, Family Courts, Shahdara, Delhi.
4. The respondent, being father-in-law of the petitioner, has filed the petition before the Family Court, from which this petition arises, under Section 25 of the Guardians and Wards Act, 1890 for custody of the minor child Divyanshi being the daughter of the petitioner. The petitioner as well as his mother and father are accused in FIR No.499 dated 16th September, 2016 under Sections 498A, 304B, 210 and 34 of Indian Penal Code, 1860 relating to the death of the wife of petitioner and daughter of the respondent.

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5. The respondent, on 13th April, 2018 presented an application under Section 12 of the Guardians and Wards Act seeking interim custody of the minor child. The counsel for the petitioner stated that no reply was required to be filed and the application can be argued.

6. The Principal Judge, Family Court, vide the impugned order, on the request of the counsel for the respondent that at least visiting rights be given to the respondent and to which the counsel for the petitioner herein objected, has directed that till further orders, respondent is allowed one visitation with the child and ordered the same to happen in the Children Room, Family Courts, Karkardooma Courts, Delhi on every 3rd Saturday from 2.30 PM to 4.30 PM commencing from the month of April, 2018. The proceedings before the Family Court are posted next on 11th July, 2018.

7. The counsel for the petitioner has argued (i) that there was no prayer in the application under Section 12 of the Guardians and Wards Act for visitation right; (ii) that the minor child cannot be left alone and the respondent, during such visitation, has to sit in the Children Room with minor on his lap; (iii) that the petitioner and his parents who are accused in the FIR aforesaid are on bail and apprehends that the respondent, taking advantage of close proximity with the petitioner and/or his parents in the Children Room, may take a false plea of the petitioner and/or his parents having attempted to influence the evidence of the respondent in the prosecution and/or the petitioner having threatened the respondent for seeking cancellation of bail.

8. No merit is found in any of the contentions.

9. The Court is always empowered to grant a lesser relief than for which application is filed, without the lesser relief being specifically claimed.

10. The other arguments are mere apprehensions and are without any basis.

11. The petitioner has approached this Court shortly before the next date before the Guardianship Judge. The impugned order directed visitation with effect from the months of April, 2018 and in terms of the order visitation for the months of April, May, June, 2018 must have already happened. The petitioner, after acquiescing to the order for the said months, has come to this Court today only. The order impugned is only till further orders and the petitioner, if needs a variation/modification, can approach the Family Court in this regard on 11th July, 2018.

12. Else, no error is found in visitation having been granted to the respondent as maternal grandfather of the minor, particularly when the mother of the minor is no more and the petitioner, though the father of the minor, is an accused relating to the death of the mother of the minor.

13. The respondent, as maternal grandfather of the minor, is rightly concerned about the welfare of the minor and the petitioner cannot be permitted to use the child as a pawn or deprive the maternal grandfather of the right to know about the welfare of the minor.

14. The counsel for the petitioner also states that the counsel for petitioner never stated that she did not want to file a reply to the application under Section 12 of the Guardians and Wards Act.

15. It will be open to the petitioner to, before the Family Court, contend so. Else, ordinarily if any incorrect statement is recorded in the order, it is

the duty of the counsel to immediately make an application to the Court which has made the order for correction thereof and which also the petitioner has not done. In this view of the matter also, the contention appears to be an afterthought.

16. The counsel for the petitioner states that the said observations will influence the decision of the Family Court.

17. Though a litigant when prefers to approach the High Court is expected to know that he/she is taking such a chance, it is still clarified that the observations made in this order are for the limited purpose thereof and the Principal Judge, Family Court will proceed with the matter as per its own merits.

18. There is no merit in the petition.

19. Dismissed.

A copy of this order be given *dasti* under the signatures of the Court Master.

RAJIV SAHAI ENDLAW, J.

JULY 10, 2018

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