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

% *Date of Judgment: 31st July, 2018*

+ MAT.APP.(F.C.) 178/2018

VIJAY KUMAR JHA & ORS Appellants

Through Mr. Neeraj Bhardwaj, Advocates

versus

SHAILENDER KUMAR JHA & ANR Respondents

Through *Nemo*

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

CM.APPL 30335/2018(Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

CM.APPL30336/2018(delay)

3. This is an application filed by the appellants seeking condonation of 22 days delay in filing the present appeal. For the reasons stated in the application, the same is allowed. Delay of 22 days in filing the appeal is condoned.
4. The application stands disposed of.

MAT.APP.(F.C.) 178/2018

5. This is an appeal under Section 19 of the Family Courts Act. The appellants have impugned the order dated 19.05.2018 passed by the Family Court declining the interim custody to the appellants, being the father and grand-parents of the minor son who is stated to be 08 years of age.
6. The necessary facts for the disposal of this appeal are that marriage between appellant no.1 and deceased Suman, daughter of the respondents herein, was solemnized on 25.02.2008. Out of the wedlock, a son was born on 19.10.2009. Deceased Suman committed suicide by hanging on 19.06.2012, which led to registration of an FIR bearing No.174/2012 against the appellants on a complaint filed by her parents. In a criminal writ petition being W.P.(Crl). No.1177/2013 filed by the respondents, the interim custody of the minor child was handed over to the respondents by this Court by an order dated 04.10.2013.
7. Mr. Bhardwaj, learned counsel appearing on behalf of the appellants submits that while disposing of the writ petition, the Division Bench of this Court had noticed in the order dated 04.10.2013 that they had interacted with the child and material observations made by the Division Bench in the order so passed by this Court have been ignored by the Family Court while passing the impugned order dated 19.05.2018. Counsel for the appellants further submits that on account of change of circumstances, the Family Court has erred in not handing over the interim custody of the child to the appellants herein. It is contended that at the time when the criminal writ petition being

W.P.(Crl). No.1177/2013 was listed for hearing, the appellant no.1 was in Jail, while the appellants no.2 and 3 had been declared as proclaimed offenders. It is strongly urged before this Court that for these reasons, the Division Bench of this Court granted interim custody of the child to the maternal grand-parents. Learned counsel contends that as of today, all the three appellants are out on bail and the appellant no.1, being the father, would be the natural guardian and the best interest of the child would be served in case the interim custody is granted to the appellant No.1. Counsel further submits that continued stay of the minor child with his maternal grand-parents would have an adverse impact on the upbringing of the child, who is being continuously poisoned by the maternal grand-parents, being respondents no.1 and 2 herein, who are holding the appellants guilty for the death of the mother of the child. It is further contended that in all likelihood, the appellants would finally be acquitted before the Trial Court as the appellants had no role in the death of the deceased Suman.

8. We have heard the learned counsel for the appellants and carefully examined the order dated 19.05.2018 passed by the Family Court.
9. At the outset, we may notice that the Family Court has extended the interim custody of the child for a period of six months from the date of order, i.e., 19.05.2018. The Family Court, in our view, has taken into account the fact that the minor is not comfortable and had refused to meet or talk to the appellants. As observed by the Family Court, the child even started weeping after seeing his father, the appellant no.1 herein, in the Chamber. The Family Court also observed that the child

was not found under any pressure or tortured, but had voluntarily shown the emotions in weeping. Having examined the child, the Family Court formed an opinion that it would be highly unjust and would cause mental trauma to the child if directed to live with the appellants herein. The Family Court was also satisfied that the maternal grand-parents were properly looking after the welfare of the child, who are providing him good education according to best of their capacity and the Family Court deemed it proper to decline the interim custody of the child to the appellants herein. Importantly, the Family Court has recognized the fact that in case the child continues to meet his father in the presence of the court counsellor that would erase the bad feeling about his father and make the child comfortable with his father and grand-parents. The Family Court has further gone to observe that he would expect the respondents, appellants herein to bring “some things” such as chocolates, toys, comic books or any other reasonable thing etc., which the child demands so that it gives a chance to the child to get attracted to his father and grand-parents. We have extracted the observation of the Family Court to show that the Family Court has made all efforts to ensure that the child becomes comfortable with his father and grand-parents before a final view is taken in the matter, which in our view is the right approach having regard to the fact that the child sometimes felt extremely uncomfortable to meet his father and grand-parents as observed by the Family Court.

10. We find no infirmity in the order passed by the Family Court. The present appeal is devoid of any merits, moreover it is only an interim order. Resultantly, the appeal is dismissed.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J

JULY 31, 2018

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