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

+ CM(M) 861/2018

RISHI RAJ TEJUJA Petitioner

Through: Ms. Shilpi Jain, Advocate.

versus

KIMMI KOHLI & ANR

..... Respondents

Through:

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **31.07.2018**

CM.APPL. No. 30136/18 (Ex.)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

CM(M) 861/2018

Vide the present petition, the petitioner seeks the grant of an interim ex-parte order granting custody of the minor child born out of the relationship between the petitioner and the respondent no.1 arrayed on record as respondent no.2 to the present petition and also seeks the grant of an interim ex-parte order in his favour and against the respondent no.1, i.e., the mother of the minor child arrayed on record as respondent no.2, granting visitation rights to the petitioner and permitting him access meeting and communicating with the minor child apart from seeking a restraint against the mother of the minor child from taking the minor child out of Delhi and out of India

without the permission of the father.

During the course of submissions that have been made on behalf of the petitioner, it has been brought forth that Guardianship Petition No.39/18 has been instituted on 26.07.2018 by the petitioner herein as petitioner thereof, which is pending before the Judge Family Court, South East, Saket. The proceedings of the date 26.07.2018 reflect to the effect that the petitioner therein who is the petitioner herein also had sought the grant of an ex-parte visitation rights being granted to the petitioner which were not so granted, it having been observed to the effect that there was no ground for an ex-parte ad interim order and notice of the petition and notice of the application under Section 12 of the Guardians and Wards Act, 1890 was directed to the respondent, i.e., the mother of the minor child which process has also been directed through summons, speed post, registered AD post, approved courier, whatsapp, e-mail returnable for 28.08.2018. During the course of the submissions that have been made on behalf of the petitioner, it has been submitted that there is as audio recording of the conversation between the petitioner and the minor child which would reflect the relations between the petitioner and the minor child and that the minor child is eager to meet his father and it has been submitted that the said audio recording was also so submitted before the learned Judge Family Court, South East Saket. *Inter alia* reliance is placed on behalf of the petitioner on the verdict of this Court in **CM(M)676/2017** dated 12.07.2017 in “**Nidhi Puri & Anr. Versus Sumeet Kapoor**” in which it is submitted that there was an ex-parte

order granted against the respondent to that petition from removing the minor child away from Delhi or from the territorial jurisdiction of this Court.

It is essential to observe that vide the said order dated 12.07.2017 which was also a petition under Article 227 of the Constitution, in which there was an ex-parte injunction sought against the respondent of that petition who is ex husband of the petitioner no.1 therein and the father of the petitioner no.2 from meeting the petitioner no.2, i.e., the minor child or communicating with the minor child *inter alia* on the ground that the respondent, i.e., the father being a resident of USA there was no imminent threat in relation thereto and that the school sessions had commenced and that the mother of the minor child feared that the respondent, i.e., the father will take away the minor child to USA, it was inquired vide proceedings dated 12.07.2017 whether the respondent to that petition was in Delhi and it was submitted by the respondent therein to the effect that the respondent was in USA but could visit Delhi at any time. Significantly, vide the said order dated 12.07.2017 in “**Nidhi Puri & Anr. Versus Sumeet Kapoor**” (supra) it was categorically observed to the effect:-

“8. I am of the opinion that the only ex parte order which can be granted is to restrain the respondent from removing the petitioner No.2 Ms. Shanaya Puri away from Delhi and/or from the territorial jurisdiction of this Court.

9. Need to issue notice to the respondent of this petition is not felt as the matter is coming up before the Family Court on 29th July, 2017 and this order shall be in force till 29th July, 2017 when the Guardianship Judge will consider the continuation/discontinuation thereof.”,

vide which the ex-parte order granted was only to the effect that the respondent was restraint from removing the minor child out of Delhi or the territorial jurisdiction of the Court till the date that the matter was fixed before the Guardian Judge in the District Courts which aspect was further directed to be considered by the learned Trial Judge qua the aspect of continuation or discontinuation of the said restraint of taking the minor child out of Delhi or out of the country.

On a consideration of the submissions that have been made, it is not considered appropriate to grant prayer clause (a), (b) seeking grant of interim ex-parte orders granting custody of the minor child to the petitioner- father nor the grant of an ex-parte interim order in favour of the petitioner and against the respondent no.1 granting visitation rights to the petitioner and permitting him access meeting and communication with the minor child. The said aspects are already part of the *lis sub judice* before the learned Judge Family Court, inasmuch as it has been submitted that the petition under Section 7, 8 & 10 of the Guardians & Wards Act, 1890 seeking declaration of the guardianship of the father as being the guardian of the minor child apart from seeking the relief of Section 12 of the said

enactment are pending already for the date 28.08.2018, to the said extent the prayers are declined, however, the declining of said prayers for interim ex-parte reliefs qua custody, qua interim ex-parte reliefs and qua visitation access meetings with the minor child shall not amount to an expression of the merits or demerits of the submissions that may be made in the Guardianship Petition by the parents of the minor child.

As observed vide order dated 12.07.2017 in CM(M)676/17 in **“Nidhi Puri & Anr. Versus Sumeet Kapoor”** the only prayer that can be granted to the petitioner presently ex-parte for the consideration of the welfare of the minor child which is sub judice before the learned Family Court, South East, Saket is a restraint against the respondent no.1 from taking the minor child/ respondent no.2 out of Delhi and out of India without permission of the learned Family Court, South East, Saket where the proceedings in relation to Guardianship Petition no.39/18 are pending and fixed for the date 28.08.2018 and the respondent no.1 is so restrained accordingly and the aspect of continuation and discontinuation of such restraint of the minor child being taken out of Delhi or out of India may be considered by the learned Family Court, South East, Saket when the matter is taken up for consideration on the date 28.08.2018.

A submission was made on behalf of the petitioner that the date of proceedings before the learned Trial Court, i.e., 28.08.2018 be preponed. In relation to the same, the prayer may be made by the petitioner before the learned Family Court, South East, Saket which

may be considered by the learned Trial Court in accordance with law.

With these observations, the petition is disposed of.

Compliance of Order XXXIX Rule 3 of the CPC be made by the petitioner.

Copy of the order be given Dasti under the signatures of the Court Master, as prayed and copy of this order be sent to the learned Trial Court forthwith.

ANU MALHOTRA, J

JULY 31, 2018/NC