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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **TR.P.(C.) 141/2018 & CM APPL. 30428-30429/2018**

RITU TANEJA Petitioner
Through: Ms. Gurmeet Bindra, Adv.

versus

VINEET TANEJA Respondent
Through: None.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **31.07.2018**

CM APPL. 30429/2018 (Exemption)

Exemption allowed, subject to just exceptions.

TR.P.(C.) 141/2018 & CM APPL. 30428/2018

Vide the present petition under Section 24 r/w Section 151 of the CPC, 1908, the petitioner seeks transfer of proceedings under Section 25 of the Guardians and Wards Act, 1890 in Guardianship Petition No.48/12 presently pending before the Court of the Principal Judge (South), Family Court, Saket submitting *inter alia* to the effect that the petitioner has lost faith in the learned trial Court and they apprehend justice. It is *inter alia* submitted on behalf of the petitioner that initially there was another transfer petition that had been filed i.e. TRP (C) 33/2018 which was pending in this Court, which was however dismissed as withdrawn along with the accompanying application on 24.05.2018 in view of the parties having been

referred to the Delhi High Court Mediation and Conciliation Centre so that the possibility of amicable resolution of the dispute could be explored, which mediation proceedings, it has been submitted, did not result into any fruitful settlement and thereafter the applicant/petitioner moved an application before the learned trial Court itself for the learned trial Court to recuse from the case submitting that the petitioner had lost faith in the Court and the Court should recuse. The learned trial Court vide order dated 07.07.2018 specifically observed to the effect that:

“Merely, because a party has alleged loss of faith in the court, is no ground for the court to recuse. Appropriate remedy for transfer wherein the respondent/applicant had the opportunity to show to the higher court that this court was acting in a prejudicial manner, having been withdrawn; the court has absolutely no reasons to recuse from the same.”

It has been further submitted on behalf of the petitioner that the petitioner apprehends injustice inasmuch as there have been repeated declining of applications filed by the petitioner herein inasmuch as an application dated 02.05.2018 filed by the applicant seeking alteration of the visitation rights had been declined inasmuch as vide order dated 09.12.2015 of the then Principal Judge, Family Courts, South, Saket, New Delhi, there was permission to the father i.e. the respondent to the present application to meet the minor child from 2:30 pm to 4:30 pm on first and third Saturdays of every month at Children Room, Family Courts, Saket, New Delhi and that in case, any of these Saturdays happen to be a court holiday, the petitioner shall meet the child on the fourth Saturday of the months, timings remaining the same, which were modified by the subsequent Principal Judge, Family

Courts, South, Saket, i.e. present incumbent with observations to the effect that:

“In partial modification of the previous arrangement, it is directed that, henceforth, the visitation shall commence from 01:30 PM, for 3 hours. Visitation shall take place in the room of Ms. Achla Shrivastav, Principal Counsellor.”

It has been submitted on behalf of the petitioner that even on the date 18.02.2017 also, despite presence of the counsel for the respondent there i.e. the petitioner herein before the learned Principal Judge, Family Courts, South, Saket qua notice of an application under Section 12 of the Guardians and Wards Act, 1890 issued to the respondents vide which the father of the minor child i.e. the respondent to the present petition had sought visitation for the birthday and the festivals, it had been observed by the learned trial Court to the effect that in view of refusal by the father of the present petitioner to accept the notice of the said application in terms of Order 5 Rule 15 of the CPC, service on the adult male family member is deemed to be complete service and the respondent having chosen not to accept the notice of the application and was absent despite service of the notice, in terms of Order 9 Rule 12 of the CPC the defence of the said application under Section 12 of the Guardians and Wards Act was struck off and that the petitioner herein is thus concerned that the welfare of the child is not being taken care of.

Reference has also been made on behalf of the petitioner to proceedings dated 23.06.2018 of the Judge, Family Court (Shahdara District) cum Vacations Judge, Family Court with observations therein to

the effect that the father of the minor child was adamant to meet the child in the Saket Court Children Room in the presence of the counsellor despite the petitioner herein having offered that he could meet the child in the Karkardooma Court Complex Children Room.

Without any observations on the merits or demerits of the proceedings in Guardianship Petition No.48/12 that are presently pending before the learned Principal Judge, Family Courts, South, Saket, it is essential to observe that the proceedings dated 21.01.2017 categorically indicate to the effect that the learned trial Court had interacted with the parties and the minor child. Vide order dated 21.01.2017, it has also been observed to the effect that it has been impressed upon the mother of the child to ensure that the child is mentally prepared for the visitation so that she did not go through any permanent mental problem and that it was ultimately for the benefit of the child that the experience of meeting the father should be congenial, comfortable and memorable and that the prayer of the petitioner to award visitation outside the children room was deferred, as of then i.e. 21.01.2017 and it was directed that it would be considered at a subsequent stage.

The proceedings dated 16.05.2018 also indicate to the effect that the visitation is presently taking place before a counsellor who is a trained person and that the Children's room is being managed by group a 'D' employee. The learned trial Court has also taken into account the counsellor's informal report that the child is now comfortable with the father during the visitation and a bond is developing. It has been further observed vide the order dated 16.05.2018 of the learned trial Court that the Court was

of the opinion that the application filed by the mother seeking a modification of the visitation rights, was misconceived and ill-designed to frustrate the visitations between the child and the respondent which became uncomfortable to her.

Significantly, vide order dated 07.07.2018 the learned trial Court, during the course of submissions made qua the application filed by the mother i.e. the present petitioner herein seeking suspension of visitation rights to the father on a ground that he had not cleared arrears of maintenance, which was not allowed, has categorically made reference to a pen drive qua which it has been submitted on behalf of the petitioner by learned counsel present in reply to a specific Court query that the said pen drive was taken pursuant to an order of this Court towards interaction between the father and the minor child and the learned trial Court has observed to the effect that the Court would see the video clipping and thereafter hear the arguments on the application for overnight visitation.

As observed hereinabove, without any observations on the merits or demerits of the case i.e. Guardianship Petition No.48/12, the proceedings before the learned trial Court of the date 21.01.2017 and 07.07.2018 repeatedly indicate the concern of the trial Court for the welfare and well-being of the minor child.

On behalf of the petitioner reliance has been placed during the course of submissions on the verdict of this Court in *Harash Talwar Vs. Rani Gadhoke* 73 (1998) DLT167 with specific reference to the observations in para-16 of the said verdict which read to the effect that:

“The determining factor in an application for transfer of a

proceeding is to assess whether the events, as reported, would give a cause of reasonable apprehension in the mind of the litigant that he may not get justice from the Court concerned. Confidence of both the parties as well as of the public being reposed in the Court is a vital element in the administration of justice. If the admitted events or facts are such as are capable of destroying the said confidence, then interference is called for. It may very often happen that the apprehension may not fully meet the strict legal standards. Yet, the said assessment has to be made from the point of view of the affected litigant. While judging the basis of the appellant's apprehension of not getting justice, Court should put itself in such a party's armchair to see how the events would affect the party's mind. Justice has not only to be done but it should be seen to have been done.”

observing *thus inter alia* to the effect that the Court ought to make the assessment from the point of view of the affected litigant nor from any strict legal standards inasmuch as if there were events of facts which were capable of destroying the confidence in the Court then interference would be called for.

As already observed hereinabove, the proceedings before the learned trial Court do indicate that the trial Court is concerned for the welfare of the minor child, which is the paramount duty of the Court of the Guardian Judge and of the Family Court as well. The applicant/petitioner if aggrieved by the orders passed by the trial Court on legal issues can always seek legal redressal in relation thereto.

On a consideration of the averments made in the petition and submissions made and also taking into account the observations hereinabove that the proceedings before the learned trial Court do not

reflect the absence of concern for the welfare of the minor child which is the duty of the Family Courts, whilst dismissing the prayer made on behalf of the petitioner seeking transfer of the proceedings from the Court of learned the Principal Judge, Family Court, South, Saket in Guardianship Petition No.48/12, it is nevertheless impressed upon the learned trial Court i.e. the Principal Judge, Family Court, South, Saket to make an endeavour to refrain from making observations on parties conduct unless necessary, taking into account the factum of highly strung proceedings in guardianship matters where tensions are very high e.g. the observations in the order dated 07.07.2018 to the effect that:

“The respondent’s prayer to this effect is another spoke in the wheel to derail petitioner’s visitation with the minor child. The respondent’s conduct of putting obstacles at every stage, in smooth visitation is deprecated and she is advised not to play with emotions of the child and cause permanent scars on the child’s psychology.”

This is so inasmuch as such observations ought not to be made until final disposal of the *lis*. With these observations which the learned trial Court is directed to bear in mind whilst conducting the proceedings in the Guardianship Petition No.48/12, the transfer petition is declined.

Copy of this order be sent to the learned trial Court for perusal and compliance.

ANU MALHOTRA, J

JULY 31, 2018/vm