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

+ **W.P.(CRL) 2692/2018**

SMT. PADMA SINGH

..... Petitioner

Through: Mr. Praveen Kumar and Ms. Gayatri
Puri and Swati Tiwari, Advocates

versus

THE STATE GOVERNMENT OF NCT OF DELHI & ANR.

..... Respondent

Through: Mr. Chaitanya Gosain, Advocate for
Mr. Rahul Mehra, Standing Counsel,
GNCTD with Insp. Sanjay Singh
Rawat, SI Dharmendra, PS SJ
Enclave
Ms. Jaya Goyal and Ms. Manpreet
Kaur, Advocates for R-2

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE I.S. MEHTA

ORDER

09.10.2018

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1. The parties were sent for mediation. They have returned. Unfortunately, the mediation has failed since the parties have got stuck on their respective positions on certain aspects. However, on certain aspects, we are informed that they had arrived at an understanding.

2. We have heard learned counsels and the parties, and we proceed to dispose of the petition. The petitioner has preferred the present writ petition to seek a writ of habeas corpus directing the respondents, particularly respondent no.2 to return the two minor children to the petitioner. The petitioner and respondent no.2 were married on 25.11.1997. Out of the wedlock, two children were born – the first being Shatakshi born on 05.10.2003, and the second being Aaryawrat Singh born on 12.11.2005. Unfortunately, the marriage of the petitioner and respondent no.2 ran into rough weather, and they filed a petition to seek divorce by mutual consent. The marriage was dissolved by a decree of divorce obtained by mutual consent on 19.09.2016.

3. The settlement arrived at between the parties provided in clause 12 that the custody of the two minor children aforesaid would remain with the petitioner no.2 i.e. the petitioner herein, with visitation rights to petitioner no.1 i.e. respondent no.2 herein. It provided that respondent no.2 herein would be free to visit the children and take them for vacations as per mutual convenience of the parties and wishes of the children. It also recorded that Shatakshi was then studying at a boarding school, namely, Rajkumar College, Raipur and Aaryawrat was studying in Sanskriti School, Chanakyapuri. Clause 12 further provided:

“12. However, if the children so wish then they might seek transfer to the desired schools. Both the parties will not have any objection in this regard and in the interest of the education of the children they will cooperate with each other in getting the children admitted to the schools in which they want to seek admission”.

4. The case of the petitioner is that in the year 2016, the daughter Shatakshi went to spend her vacations with respondent no.2, and since then she has not returned. Aaryawrat went for his vacation to respondent no.2 on 27.05.2018, and since then he too has not returned to resume his school at Sanskriti School. The petitioner preferred a police complaint on 20.08.2018 and thereafter has preferred this petition.

5. Upon issuance of notice, respondent no.2 and the two children have appeared before the court. On 05.10.2018, we interacted with the children separately in chamber. We also interacted with the petitioner in chamber and with respondent no.2 in court. We sent the parties for mediation in the hope that they would resolve their differences with regard to custody and visitation of the two children.

6. On our interaction with the children, who are now 15 years and about 13 years respectively, we found the children to be very intelligent and expressive. They have minds of their own, and both of them expressed their desire to spend time with both the parties. They are most disturbed when their parents have a fight, and they are not happy with the filing of the present petition.

7. The agreement arrived at between the parties, no doubt, gives the custody of the two children to the petitioner herein with visitation rights to respondent no.2. At the same time, it recognises the fact that Shatakshi was studying at Rajkumar College, Raipur at the time when the settlement agreement was entered into on 23.08.2016, and it also provides that if the children so wish, then they might seek transfer to the desired schools. The

parties agreed not to have any objection in this regard and that in the interest of education of the children, they would cooperate with each other in getting the children admitted to the schools in which they seek admission.

8. Shatakshi has stated that she continues to reside in, and study at Raipur since 2016, and has not studied at Delhi. Aaryawrat, on interaction, states that he wishes to reside with his sister. The children are presently living with their Aunt (bua), who is a widow without children and is a professor in a government college at Raipur. Both the children state that their father, who is in the field of politics, comes over punctually on every weekend to spend time with them. They are both happy and satisfied with this arrangement.

9. Keeping in view the aforesaid circumstances, we are not inclined to pass any direction for return of the children to live with the petitioner. So far as the daughter Shatakshi is concerned, it is evident that she continues to live at Raipur, and study at Rajkumar College, Raipur ever since the settlement was arrived at in August 2016. So far as Aaryawrat is concerned, he has proceeded to Raipur and has been studying at Rajkumar College since June 2018.

10. Our interaction with the children and the parties brought out their common concern that, since, the children are intelligent and respondent no.2 can afford to provide them the best education, eventually they need to be shifted to a better school. It is informed that Rajkumar College is a good school in the area, but it is also admitted that much better schools are available, where the children could eventually study.

11. On our interaction with the children and respondent no.2, they have stated that Shatakshi is presently in Class IX, and after she takes the board examination on completion of Class X studies, she would be shifted to a better boarding school to pursue her Class XI and XII studies. Rajkumar College follows ICSE Board and we are informed that Shatakshi has already chosen her subjects in Class IX. Therefore, she would have to continue her studies under the said Board itself. Respondent no.2 states that when Shatakshi moves to a boarding school - like the Scindia Girls School, or Mayo Girls School, Aaryawrat shall also be shifted along with her to the boarding school. However, the children and respondent no.2 are clear that the children shall continue in the same school till Shatakshi clears her Class X Board from Rajkumar College, Raipur.

12. On the other hand, the petitioner insists that the children should be moved to a boarding school right away. Since the children are settled at Raipur and they are staying with their aunt (bua), as aforesaid, we see no reason to disturb the arrangement, particularly when the children are comfortable in that environment and they are doing well in their studies. No specific reason for shifting the children to a boarding school right away has been pointed out by the petitioner.

13. We are, therefore, of the view that the studies of the children should not be disturbed and they should continue to study at Rajkumar College, Raipur till Shatakshi clears her Class X Board Examination. Thereafter, the aspect of the children being shifting to the aforesaid boarding schools, or other similar boarding schools should be considered.

14. The children are willing to spend their holidays with the petitioner either in Delhi or wherever they may mutually decide to spend their vacations. The children are, however, clear in their mind that they would not like any other person to accompany them, and the petitioner and the children should alone be together. The petitioner is also agreeable to this condition and she has assured the court that during the days when the children are with her, no other person would be with them.

15. On this aspect, as noticed above, the parties had arrived at an understanding in mediation. The said understanding is as follows:

- a. Both the children Shatakshi and Aaryawrat agreed to spend exclusive time with the petitioner till they attain the age of majority for the following periods:
 - i. First 20 days during Summer Vacations.
 - ii. 7 days during Dussehra/Diwali holidays starting from one day after Dussehra.
 - iii. First half of the Winter Vacations
 - iv. 3 days after final examination before the new sessions starts. These 3 days shall start after one day the exams get over.

During the stay of children as per clause (iv) above, if the children are keen or desire to stay for more days with the petitioner, then they shall be free to do so and in that case their travel tickets shall be planned accordingly by the respondent no.2.

- b. Both the parties agree that the children can travel out of Delhi / country with the petitioner with due intimation in advance with

complete itinerary provided to respondent no.2 through email and whatsapp.

c. Both the parties further agree that in case of any marriages or major ceremony in the immediate family of the petitioner, the children should be allowed to attend the same as per their convenience keeping in mind their study schedule. The above event/s should be intimated to the respondent no.2 by the petitioner well in advance through email and whatsapp.

d. Both children Shatakshi and Aaryawrat agreed to stay with the petitioner /Mother at her residential address i.e. R/O B-5/96, Third Floor, Safdarjung Enclave, Near Deer Park Road, New Delhi, during the above said periods on the condition that nobody else be it her any friend should be present during their stay with petitioner /Mother.

e. Both the parties agree that travel expenses of the Shatakshi and Aaryawrat shall be borne by the respondent no.2 and he shall arrange to-and-fro air tickets for the children in advance.

f. Both the parties further agree that in case of any emergent situation relating to health of the children if any, visit of the children to Delhi to stay with the petitioner/Mother is not workable then, the respondent no.2 shall compensate the petitioner for the days for which children would not be staying with the petitioner /Mother as agreed hereinabove.

g. The petitioner further agrees and undertakes to handover original Aadhar Cards and Passports of both the children to the respondent no.2 today i.e. 09.10.2018 after the court hearing.

h. The petitioner agrees and undertakes to inform respondent no.2 immediately on email address devwratsh@gmail.com or through whatsapp on Mobile No. 9406222222 of the respondent no.2, if either of the two children gets unwell or any health related issue during their stay with the petitioner in Delhi and vice versa. In case of change in the above mentioned email address and whatsapp number of the respondent no.2, he shall update the same. Respondent no.2 shall inform the petitioner at email address padma0807@gmail.com or through whatsapp on mobile No.8800319468.

16. Respondent no.2 has stated that he is contesting the State Assembly Elections which are due to be held on 12.11.2018. The filing of nomination would start from 16.10.2018.

17. In view of the aforesaid, the children shall continue to remain with respondent no.2, and it is agreed that they shall not spend any time during Dussehra and Diwali holidays in the current year with the petitioner. However, they shall spend the first half of the winter vacations with the petitioner in terms of the aforesaid agreement. The parties shall continue to remain bound by the aforesaid settlement insofar as the aspect of the stay and visitation rights of the children are concerned. We direct both the parties to strictly adhere to the said arrangement both in letter and spirit.

18. The petitioner also undertakes to the court that she shall forthwith proceed to Sanskriti School for issuance of the Transfer Certificate in respect of Aaryawrat Singh. The same be done immediately so that the admission of Aaryawrat at Rajkumar College is regularised.

19. With these directions, the petition stands disposed of.

20. Dasti to parties.

VIPIN SANGHI, J

I.S.MEHTA, J

OCTOBER 09, 2018

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