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

+ CM(M) 1030/2018 & CM No.35629/2018 (for stay).

TARUN SHARMA

..... Petitioner

Through: Mr. Dinesh Agnani, Sr. Adv. with Mr.
Gaurav Bahl and Ms. Aakansha Kaur,
Advs.

versus

HARSHITA ALIAS ROZY THAPA@MONA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **31.08.2018**

CM No.35630/2018 (for exemption) & CM No.35631/2018 (exemption from filing complete Trial Court record).

1. Allowed, subject to just exceptions.
2. The applications stand disposed of.

CM(M) 1030/2018 & CM No.35629/2018 (for stay).

3. This petition under Article 227 of the Constitution of India seeks certain interim orders in the Guardianship Petition No.58/2018 of the Court of Link to Principal Judge, Family Court (North-West), under Section 7 of the Guardians and Wards Act, 1890, filed by the petitioner father for guardianship/custody of the son of the parties aged 35 months.
4. The Guardianship Petition came up first before the Link Judge to Principal Judge, Family Court (North-West) on 20th August, 2018 when observing, that the Court of the Principal Judge (North-West) was lying vacant and the vacancy had not been filled up till then, notice of the petition as well as the application for interim relief under Section 12 of the Act was issued for 10th October, 2018.

5. It is the contention of the senior counsel for the petitioner father that owing to the vacancy since long in the Court of the Principal Judge, Family Court (North West), the Court of the Link to Principal Judge, Family Court (North-West) is overburdened and long dates not befitting a Family Court are being given. It is contended that the child was admitted to the Montfort School close to the residence of the parties but the respondent mother took away the child without intimating the petitioner father and the child, for the said reason, is missing school and education. Certain other reasons with respect to the respondent mother being not the suitable person for the custody and guardianship of the child are also given.

6. This Court had filled up the vacancy in the Court of Principal Judge, Family Court (North-West) long back and on making enquiry it has been found that Notification as desired by this Court to be issued of appointment of the Presiding Officer in the said Court has not been issued.

7. The legislature in its wisdom has constituted specialised courts, to be known as Family Court, considering the sensitivity of the disputes pertaining to family and need to deal with the same expeditiously. If vacancies in the said courts remain for long, it is to the detriment of the citizens.

8. A copy of this order be forwarded through Special Messenger to the Secretary (Law), Government of National Capital Territory of Delhi (GNCTD), to bring to the notice of the authorities concerned the urgent need for notifying the appointment of the Presiding Officer to the Family Court.

9. As far as this *lis* is concerned, though the senior counsel for the petitioner father has contended that notice of this petition be issued but it is

felt that this Court, in exercise of jurisdiction under Article 227 of the Constitution of India, should not in the first instance deal with the matter concerning custody of the minor child, jurisdiction with respect where to has been vested in the Family Court.

10. Though the senior counsel for the petitioner father has informed that the Court of Link Judge to Principal Judge, Family Court (North-West) is overburdened, but considering the facts and circumstances of the case it is deemed appropriate to request the said Link Judge to Principal Judge to, on an application for early hearing being made by the petitioner father, consider the matter in the light of the facts urged before this Court and to accommodate the GP No.58/18 at an early date so that consideration can be bestowed to the respective contentions of the parties. In case the grievance of the petitioner father remains, the petitioner father shall have liberty in law.

11. With the aforesaid, the petition is disposed of.

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

RAJIV SAHAI ENDLAW, J

AUGUST 31, 2018
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