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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM (M) No.1238/2018, CM No.42374/2018 (for exemption) & CM
No.42375/2018 (for stay).
DISHANT TYAGI Petitioner

Through: Mr. R. D. Singh, Adv.

versus

PRIYANKA TYAGI Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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09.10.2018

1. This petition has been received at 1545 hours on listing on urgent mentioning.
2. The challenge in this petition under Article 227 of the Constitution of India is to the order [dated 8th October, 2018 in GP No.61/2018 of the Court of Judge Family Court, Shahdara] allowing the application under Section 12 of the Guardians and Wards Act, 1890 of the respondent mother and directing the petitioner father to today, at 1400 hours, hand over custody of the minor son, stated to be aged eight months, to the respondent mother and further providing that in case the petitioner father fails to comply with this order, the Judge Family Court will take forcible custody of the child from the petitioner father with the help of Police.
3. I have enquired from the counsel for the petitioner father, whether not the impugned order is appealable under Section 19 of the Family Courts Act, 1984 before the Division Bench of this Court. The Division Bench of this Court in *Manish Aggarwal Vs. Seema Aggarwal* ILR (2013) 1 Del 210 has held that orders under Sections 24 to 27 of the Hindu Marriage Act, 1956 are

appellable. Section 26 of the Hindu Marriage Act empowers the Family Court to pass interim orders in a petition thereunder and makes such provisions with respect to custody, maintenance and education of minor children. Similar power has been exercised by the Family Court in the impugned order, though under the provisions of Section 12 of the Guardians and Wards Act. What has been held by the Division Bench in ***Manish Aggarwal*** supra qua Section 26 of the Hindu Marriage Act would equally apply to Section 12 of the Guardians and Wards Act.

4. I have recently in ***Jayanti Prasad Gautam Vs. Pragya Gautam*** 2018 SCC OnLine Del 11535 and order dated 28th September, 2018 in CM(M) No.1170/2018 titled ***Ojisha Sharma Vs. Anil Sharma*** held so.

5. The counsel for the petitioner father, though does not controvert but states that this petition was preferred owing to the urgency.

6. Just like this petition was preferred, so could appeal under Section 19 have been preferred and urgency does not justify this Court to invoke its supervisory jurisdiction when the statutory remedy is available, that too before a Division Bench.

7. The petition is thus dismissed as not maintainable.

RAJIV SAHAI ENDLAW, J

OCTOBER 09, 2018

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