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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Judgment: 19.03.2019

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MAT.APP. (F.C.) 31/2018 and C.M. 9575/2019

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..... Appellant

Through: Mr. Jasmine Damkewala & Vaishali
Sharma, Advocate with petitioner in
person

versus

G G

..... Respondent

Through: Mr. Prashant Mendiratta &
Mr. Aayush Agarwal, Advocates with
respondent in person

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

1. Challenge in this appeal is to the order dated 18.12.2017 passed by the Family Court. The appellant is aggrieved with the observations and the directions of the Family Court that the mother has not acted in the interest of the minor child and has unauthorisedly shifted the child to a school in Faridabad from Carmel Convent School, Delhi and removed the child outside the jurisdiction of this Court.
2. Learned counsel for the appellant submits that the mother was forced to shift the child from Carmel Convent School to Manav Rachna International School, Faridabad on account of the conduct of the

respondent/husband and on account of the fact that the child was embarrassed by the visits of her father to the school. She submits that the Family Court has been influenced by the submissions of the respondent that an undertaking was given as early as in the year 2013 by the appellant that she would not shift the child from Carmel Convent School or outside the jurisdiction of Delhi whereas no such undertaking was given and thus, the order is erroneous and is liable to be quashed and set aside. She further submits that the mother has acted in the best interest of the child, since the school at Faridabad is a far better school than Carmel Convent School, Delhi where the child was earlier admitted. She submits that in the school where the child is studying at present, she is now fully accustomed and is happy with her peer group and in case the order of the Family court is upheld, serious prejudice would be caused to the rights of the child and the child would be emotionally disturbed.

3. Mr. Mendiratta, learned counsel for the respondent submits that having regard to the past conduct of the appellant, the respondent was always apprehensive that the appellant-mother would remove the child from the jurisdiction of this Court to deprive the father of visitation, which she has been successful, for the past almost 6 years. He submits that repeated orders regarding meeting with the child have

been successively disobeyed by the appellant. Mr. Mendiratta, counsel for the respondent -father submits that the respondent-father was always apprehensive that the appellant mother would remove the child from the jurisdiction of this court. He submits that an application was filed along with Guardianship petition on 09.01.2013.

In this application, the following prayers were made :

“Wherefore in light of the facts and circumstances of the case and the averments made hereinabove it is most respectfully prayed that this Hon’ble Court may be pleased to:

- a) Direct the respondent to immediately restore custody of the minor child to the petitioner;*
- b) Direct the respondent to not take or cause the minor child to be taken out of the jurisdiction of this Hon’ble Court;*
- c) Pass any other or further orders as this Hon’ble Court may deem fit and proper in the interests of justice.”*

(Emphasis added)

4. Attention of this Court is drawn to the reply to this application filed by the appellant herein wherein it was categorically denied that there was grave and immediate apprehension that the respondent will attempt to take the child out of the jurisdiction of this Hon’ble Court. Para 2 of the reply is reproduced below:

“2. That the contents of para No. 2 of the application are wrong, incorrect and denied. It is denied that there is a grave and immediate apprehension that the respondent will attempt to take the child out of the jurisdiction of this Hon’ble court so as to frustrate the rights of the petitioner or that the respondent wants to use the child as a pawn in

the litigation between the parties, as alleged in the para under reply. It is most respectfully submitted that the respondent has no intention to take the child out of the jurisdiction of the Hon'ble Court. The minor child Vaidehi is studying in Class-1A in a reputed convent school namely Carmel Convents School, Malcha Marg, New Delhi, so the question taking the child out of the jurisdiction of this Hon'ble Court does not arise. The petitioner may be put to the strict of the allegations made by him in the para under reply."

(Emphasis added)

5. Mr. Mendiratta has also drawn the attention of this Court to the order dated 18.04.2013 which has been referred to in the impugned order. Mr. Mendiratta submits that the undertaking may not be expressed in nature, but the respondent father had expressed his apprehension before the Court of the child being removed from the jurisdiction of this Court, but the counsel for the respondent had objected to the same. He submits that this objection would be a tacit assurance/undertaking on the part of the appellant herein that the child was not being removed from the jurisdiction of this Court.

It is next contended that in case the appellant had cogent reasons to remove the child from the jurisdiction of this Court, the father should have been informed if not consulted or atleast leave of the Court should have been sought knowing fully well that the father had repeatedly brought to the notice of the court that he feared that the child would be removed from Delhi. Counsel further submits that in

line with the apprehension, the respondent filed two subsequent applications, prayers of one of the applications, which was filed in the year 2016, is reproduced below:

“A. Restrain the Respondent from taking the minor child Vaidehi Gangadharan out of the jurisdiction of New Delhi.

B. Restraining the Respondent from getting the name of the Child deleted from the roll of Carmel Convent School, Chanakya Puri, New Delhi and admit her in any other School;

C. Direct the Respondent to regularly send the minor Child to Carmel Convent School, Chanakya Puri, New Delhi;

D. pass any other or further orders as this Hon’ble court may deem fit and proper in the facts and circumstances of the case.”

(Emphasis added)

6. Mr. Mendiratta submits that in response to this application, the appellant had pointed out that the child is suffering harassment and embarrassment at the hands of her father at the school and the minor was refusing to go to the school, as she was embarrassed to face her friends and teachers. Mr. Mendiratta submits that even at this point of time, neither any leave was sought from the Court nor it was disclosed that the appellant would remove the child from the jurisdiction of this Court. He submits that this reply was filed on 24.02.2017, a date which is available on the affidavit annexed to this reply. He submits that in fact, when the reply was filed, the child had, in fact, been

removed from the jurisdiction of this court.

Mr. Mendiratta also contends that the appellant herein had filed a transfer petition before the Supreme Court of India seeking transfer of the Guardianship petition filed by the respondent to the Court at Faridabad. It is submitted that the transfer petition was dismissed by an order dated 12.04.2017, the effects would be that the prayer for removing the child from the jurisdiction of this court was expressly declined even by the Supreme Court of India. Counsel further submits that the appellant mother has not acted in the benefit and the best interest of the child as she has shifted the child from Carmel Convent School, which is a highly reputed and amongst the best schools of Delhi, to an unknown school in Faridabad and that too without a transfer certificate. He submits that the implication of such admission without a transfer certificate would be that the child would not be allowed to appear in her Board examinations without a transfer certificate, as admission to the school at Faridabad cannot be regularised without the transfer certificate. In response to the submissions so made, Ms. Jasmine, learned counsel for the appellant submits that the appellant is single handedly bringing up her daughter and even no maintenance is being paid, and she has acted in the best interest of her child.

7. Mr. Mendiratta at this stage points out that successive applications made by the appellant for maintenance have been withdrawn to avoid filing her income affidavit; however, the respondent has already taken steps to make deposits in the name of the minor child and almost Rs. 10 Lacs, which stand deposited with interest which may accrue thereon.
8. We have heard learned counsel for the parties and considered their rival submissions. It is not in dispute that at the time when the Guardianship petition was filed, the child was residing within the territorial jurisdiction of this court and she was an ordinary resident of Delhi. Successive applications filed by the father leaves no room for doubt that the respondent-father was always apprehensive that the child would be removed from the jurisdiction of this Court, which is evident from the fact that his first application was made on 09.01.2013, prayer (b) of which we have extracted above is again reproduced below:-

“Direct the respondent to not take or cause the minor child to be taken out of the jurisdiction of this Hon’ble Court”

It is also evident that this prayer was pressed when the matter was listed in Court on 18.04.2013, but the apprehension of the respondent was refuted and objected to by the appellant. The

respondent thereafter filed two applications, prayer (a) of one of the applications we have reproduced in para 4 aforegoing.

9. We also find that although parties have been filing a large number of applications, which is evident upon reading the impugned order, but the appellant did not deem it appropriate to either seek leave of the Family Court much less consult/inform the respondent, who is the father of the child before removing the child from the jurisdiction of this court and from a highly reputed school of Delhi to a comparatively unknown school at Faridabad, where she is currently studying.
10. We find that in reply to the first application filed on 09.01.2013, the respondent's apprehension of the child being removed was refuted by the appellant, as is evident upon reading of the reply, which we have extracted in above-mentioned para 4 and we reproduce again:-

"2. That the contents of para No. 2 of the application are wrong, incorrect and denied. It is denied that there is a grave and immediate apprehension that the respondent will attempt to take the child out of the jurisdiction of this Hon'ble court so as to frustrate the rights of the petitioner or that the respondent wants to use the child as a pawn in the litigation between the parties, as alleged in the para under reply. It is most respectfully submitted that the respondent has no intention to take the child out of the jurisdiction of the Hon'ble Court. The minor child Vaidehi is studying in Class-1A in a reputed convent school namely Carmel Convents School, Malcha Marg, New Delhi, so the question taking the child out of the jurisdiction of this Hon'ble Court does not arise. The petitioner

may be put to the strict of the allegations made by him in the para under reply.”

(emphasis added)

11. The Supreme Court in the catena of the judgment has held that admissions in pleadings and judicial admissions made by the parties before a judge during the course of the litigation need not to be proved and stands binding on the parties, whereas the term admissions is inclusive of both the express and implied admissions. In the case of ***Nagindas Ramdas v. Dalpatram Ichharam*** reported at (1974) 1 SCC 242 in its paragraph 27 in somewhat different facts, the Supreme Court categorically held as under:-

“27. From a conspectus of the cases cited at the Bar, the principle that emerges is, that if at the time of the passing of the decree, there was some material before the Court, on the basis of which, the Court could [Ed.: The word “could” has been emphasised in original.] be prima facie satisfied, about the existence of a statutory ground for eviction, it will be presumed that the Court was so satisfied and the decree for eviction though apparently passed on the basis of a compromise, would be valid. Such material may take the shape either of evidence recorded or produced in the case, or, it may partly or wholly be in the shape of an express or implied admission made in the compromise agreement, itself. Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions

which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong.”

(Emphasis added)

12. Further in the case of ***Ram Niranjana Kajaria v. Sheo Prakash Kajaria***, reported at (2015) 10 SCC 20 in paragraph 23, the Supreme Court affirmed the position in *Nagindas (supra)*. Although while dealing with a situation where admission made was being sought to be withdrawn, the Supreme Court held that admission once made in the pleadings cannot be permitted to be withdrawn. The relevant paragraph has been reiterated as under:-

“23. We agree with the position in Nagindas Ramdas [(1974) 1 SCC 242] and as endorsed in Gautam Sarup [Gautam Sarup v. Leela Jetly, (2008) 7 SCC 85] that a categorical admission made in the pleadings cannot be permitted to be withdrawn by way of an amendment. To that extent, the proposition of law that even an admission can be withdrawn, as held in Panchdeo Narain Srivastava [Panchdeo Narain Srivastava v. Jyoti Sahay, 1984 Supp SCC 594], does not reflect the correct legal position and it is overruled.”

13. The learned Family Court has rightly mentioned that despite having expressly admitting in the pleadings that the appellant-mother will not shift the child from Carmel Convent School or outside the jurisdiction of Delhi, removed the child from the school as well as from the jurisdiction of this Court without even giving any formal intimation to the Court or to the respondent-father, got the minor child admitted to a

school in Faridabad. Accordingly, we are of the view that there is no infirmity in the order passed by the Family Court. The Court deprecates and disapproves the conduct of the appellant as he removed the child from the jurisdiction of this Court despite giving an assurance that she had no intention to remove the child out of the jurisdiction of this Court in reply as extracted in para 4 above. We also find that the conduct of the appellant would show what she could not achieve directly as her transfer petition was dismissed; she has carved out on her own showing scant regard to the rule of law.

14. We are also of the view that by removing the child from Carmel Convent School and admitting her to another school she has acted in a very irresponsible manner. The Central Board of Secondary Education (CBSE) admission rules strictly states that an authentic transfer certificate duly signed by the head of the institute should be submitted in the new institution at the time of seeking fresh admission. The relevant rule has been reiterated below:-

“6. Admission: General Conditions

....iv) Produces:

- (a) The School Leaving Certificate/Transfer Certificate signed by the Head of the Institution last attended and countersigned, if required as provided elsewhere, in these Byelaws;*

....

8. Admission Procedure

....(iii) If a student applying for admission to a school, has attended any other school, an authenticated copy of the Transfer

certificate in the format given in Annexure I, from his last school must be produced before his name can be entered in the Admission Register.”

15. Furthermore, the official website of Manav Rachna International School, Faridabad clearly mentions the requirement of transfer certificate in case of any fresh admission under the *sailent feature* of the admission procedure. The relevant list has been quoted hereunder:-

“LIST OF DOCUMENTS TO BE BROUGHT AT THE TIME OF ADMISSION

- a) 6 passport size colour photographs.*
- b) 1 passport size photograph of each parent.*
- c) Address proof (photocopy of the ration card/ electricity bill/ telephone bill)*
- d) Photocopy of report card of last 3 years.*
- e) Photocopy of birth certificate.*
- f) Transfer Certificate, where applicable.”*

16. We are also of the view that by admitting the child to the school at Faridabad without obtaining a transfer certificate from Carmel Convent School, she has not acted in the best interest of the child.

17. Having removed the child from the custody of this court, we do not find any cogent reasons to direct the Carmel Convent School to issue a transfer certificate of the minor girl, who was earlier studying in the school. Additionally, the fact that the transfer petition of the appellant

stands dismissed, is also a factor, which cannot be ignored.

18. In view of what has been stated above, we find no infirmity in the order passed by the Family Court. Resultantly, the appeal is dismissed. The order of the Family court shall be complied with forthwith.

C.M. Appl. No. 9575/2019

19. The application also stands disposed of in view of the order passed in the appeal.

G.S.SISTANI, J

JYOTI SINGH, J

MARCH 19, 2019

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