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

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Date of Judgment: 2nd May, 2019

+ MAT.APP.(F.C.) 107/2019

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..... Appellant

Through: Mr. Girindra Kumar Pathak, Mr. R.N. Sharma & Mr. Saurabh, Advocates with appellant and child in person

versus

K K

..... Respondent

Through: Ms. Vijaya Lakshmi, Advocate

+ MAT.APP.(F.C.) 110/2019

K K

..... Appellant

Through: Ms. Vijaya Lakshmi, Advocate

versus

S

..... Respondent

Through: Mr. Girindra Kumar Pathak, Mr. R.N. Sharma & Mr. Saurabh, Advocates with respondent and child in person

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

CM APPL. 17289/2019 (delay) in MAT.APP.(F.C.) 110/2019

This application has been filed by the appellant/applicant seeking condonation of 80 days' delay in filing the appeal.

Prayer made in this application is not opposed. Delay of 80 days in filing the appeal is condoned.

The application stands disposed of.

MAT.APP.(F.C.) 107/2019 & CM APPL. 16583/2019
MAT.APP.(F.C.) 110/2019

1. Two appeals arise out of a common order dated 21.12.2018 passed on an application filed by the respondent/husband seeking permanent custody of the child, who is at present 7 years of age. The Family Court has, after recording of evidence on a petition filed under Sections 7, 9, 25 of the Guardianship & Wards Act, granted visitation rights to the father as under:

“43. Issue No. 3. Relief:-

In view of my findings on issue no. 1, it is held that permanent custody of Master Abhigyaan shall remain with the respondent. However, petitioner shall be entitled to visitation rights qua the minor child Abhigyan @ Love on every second and fourth Saturday and Sunday. The petitioner shall take custody of Master Abhigyan at 10.00 AM on every second and fourth Saturday from the residence of the respondent and shall return the custody of minor child Abhigyaan on every second and fourth Sunday at 5:00 PM at the residence of respondent. The petitioner shall also be entitled for temporary custody of minor child Master Abhigyaan for half of the period during Summer Vacations as well as during Winter Vacation as per the convenience of the child. The petitioner shall also be permitted to attend Parents Teachers Meeting and Annual Function in the school of minor. The petition filed by the petitioner/father under section 7, 9 and 25 of the Guardians and Wards Act for appointment/declaration of the petitioner/father as the guardian of minor child namely Master Abhigyaan is accordingly disposed of. Decree sheet be accordingly prepared. File be consigned to Record Room after due compliance.”

2. The appellant mother has expressed certain reservations with respect to the visitation rights. It is submitted that since the child is only 7 years of

age and has been residing with the mother since 2014, he would not be comfortable with continuous overnight stay with the father. She further submits that whenever the child is in the company of the father, the father takes this opportunity to talk ill about her and it has caused a bad influence over the child. The father, on the other hand, submits that the visitation rights which have been provided do not take into consideration the festivals and permission to speak to the child regularly over mobile and FaceTime/other ways of communication.

3. We have interacted with the parties in the chamber. We had also passed over the matter to enable the parties to seek advice from their respective counsels. Both the appeals are being disposed of by the following agreed common order:

- (i) The visitation rights as per para 43 extracted above is modified to the extent that during vacations, the child will spend with the father, three days with a break of two days and thereafter further three days, in this pattern. However, it is agreed that during the period the child is with the father, the child would be permitted to speak to the mother at any time as per his convenience and his comfort.
- (ii) Similarly, when the child is with the mother, he would be allowed to speak to the father at least once in two days including through video call, FaceTime etc.
- (iii) Parties agree that when the child is in their company they will not talk ill about each other or their family members or influence or poison the mind of the child.
- (iv) It is agreed that on festivals like Holi, Diwali, Chhat, Durga

Puja, the child will spend three hours with the father.

- (v) During vacations of more than five days, the child will spend two days with the father.
- (vi) The child will also spend three hours with the father on the father's birthday and the father will spend at least one hour with his son on his son's birthday.
- (vii) The respondent/father agrees that the name of the child shall be included in his service book as his nominee.

4. Counsel for the respondent submits that once the child grows up, the break during the period of stay may not be required. Leave is granted to seek modification of the aforesaid order, when the need so arises.

5. It may also be noted that even during the period of three days if the child feels the necessity of meeting his mother, the father will take the child to meet the mother to make him comfortable. Both parties undertake to the Court that the arrangement arrived at shall be followed in letter and spirit.

6. Both the appeals, along with the accompanying application, are disposed of in the above terms.

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G.S.SISTANI, J

JYOTI SINGH, J

MAY 02, 2019

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