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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of Judgment: 16th April, 2019*
+ **MAT.APP.(F.C.) 114/2019**
P J Appellant

Through: Ms. Malavika Rajkotia & Mr.
Ramakant Sharma, Advocates
alongwith appellant-in-person.

versus

P J Respondent
Through: Mr. Prabhjit Jauhar, Advocate
alongwith respondent-in-person.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

CAV Pet. 401/2019

1. Mr. Prabhjit Jauhar, Advocate, enters appearance on behalf of the respondent-father.
2. The caveat petition stands disposed of.

CM APPL 17930/2019 (exemption)

3. Exemption is allowed subject to all just exceptions.
4. Application stands disposed of.

MAT.APP.(F.C.) 114/2019 & CM APPL 17929/2019 (stay)

5. Challenge in this appeal is to the order dated 26.03.2019 passed on an application filed by the respondent-father under Section 12 of the Guardians and Wards Act seeking interim custody of the minor child aged about 6 years. By virtue of the said order, the Family Court has

allowed overnight visitation of minor child to the respondent-father on 2nd and 4th weekends of each month.

6. The brief facts of the case to be noticed for the disposal of the present appeal are that the marriage between the appellant and the respondent was solemnized on 22.04.2006 as per Hindu rites and ceremonies at New Delhi. On 11.02.2013, one daughter was born out of the said wedlock. The parties are living separately since 10.03.2019. The petition seeking divorce was filed by the appellant under Section 13(1)(ia) of the Hindu Marriage Act (hereinafter referred to as 'HMA') was filed by 20.03.2018, which is pending. Thereafter, on 28.08.2018, the respondent-father filed a guardianship petition under Section 7 and 25 of the Guardians and Wards Act seeking custody of the minor child alongwith an application under Section 12 of the Guardians and Wards Act seeking interim custody of the minor child, which is pending.
7. Ms. Rajkotia, counsel for the appellant-mother submits that the respondent-father is not a responsible father and his past conduct shows that he is highly vindictive in nature. Counsel further submits that when the appellant-mother did not send the child with the respondent-father for her overnight visitation in the following weekend as per the impugned order dated 26.03.2019, the respondent-father had called the police. She submits that it is an example to show the mindset of the father.
8. Mr. Jauhar, counsel for the respondent-father submits that the respondent-father wants that he should be able to meet his child, which is not being allowed by the appellant-mother and accordingly, the respondent-father was forced to call the Police. The respondent-father,

however, regrets for taking such an action. He submits that in future, if the order is not complied with, he would seek such remedy as available in accordance with law including bringing the same to the notice of the Court concerned.

9. We have heard learned counsels for the parties and considered their rival submissions. The Family Court while granting overnight custody to the respondent-father has relied upon the interaction with the child on 19.09.2018. The operative portion reads as under:

“In terms of the child interaction dated 19.09.2018 and the fact that the petitioner has been regularly meeting the child with no serious report of any discomfort or grievance relating to the child during such visitations being made, there does not appear to be any merit in the contention that the welfare of the child would suffer, if petitioner is allowed overnight visitation. Even otherwise, child has an important right to be allowed to form an emotional bond with both her parents and overnight visitation is one of such very important tools and opportunities. Accordingly, the application is allowed to the extent that the existing visitation is modified to the extent that petitioner shall be entitled for overnight visitation of the child on every 2nd and 4th weekends of the month i.e. respondent shall handover the child to the petitioner for overnight visitation on 6.00 PM of every 2nd and 4th Friday (preceding the 2nd and 4th Saturday) and petitioner shall return back the child after visitation on Sunday at 4.00 PM (i.e. two nights and two days). In case due to any justifiable reasons the visitation cannot take place on the above said days, the next week should be utilized for visitation in the aforesaid manner.”

10. In the case of **Mohan Kumar Rayana vs. Komal Mohan Rayana** reported at **(2010) 5 SCC 657**, the custody of the daughter was given by the Family Court to her mother which was also affirmed by the High Court. While the Hon’ble Supreme Court did not interfere in the

custody given to the mother, it was held that the welfare of the minor is of paramount importance. The relevant para 25 reads as under:

“25. Having the interest of the minor in mind, we decided to meet her separately in order to make an assessment of her behavioural pattern towards both the petitioner as well as the respondent. Much against the submissions which have been made during the course of hearing of the matter, Anisha appeared to have no inhibitions in meeting the petitioner father with whom she appeared to have an excellent understanding. There was no evidence of Anisha being hostile to her father when they met each other in our presence. From the various questions which we put to Anisha, who, in our view, is an extremely intelligent and precocious child, she wanted to enjoy the love and affection both of her father as well as her mother and even in our presence expressed the desire that what she wanted most was that they should come together again. However, Anisha seems to prefer her mother's company as the bonding between them is greater than the bonding with her father. Anisha is a happy child, the way she is now and having regard to her age and the fact that she is a girl child, we are of the view that she requires her mother's company more at this stage of her life.”

11. In the case of **Vivek Singh v. Romani Singh** reported at (2017) 3 SCC 231, the Hon'ble Supreme Court in para 18 observed as under:

“18. The aforesaid observations, contained in para 31 of the order of the High Court extracted above, apply with greater force today, when Saesha is 8 years' old child. She is at a crucial phase when there is a major shift in thinking ability which may help her to understand cause and effect better and think about the future. She would need regular and frequent contact with each parent as well as shielding from parental hostility. Involvement of both parents in her life and regular school attendance are absolutely essential at this age for her personality development. She would soon be able to establish her individual interests and preferences, shaped by her own individual personality as well as experience. Towards this end,

it also becomes necessary for parents to exhibit model good behaviour and set healthy and positive examples as much and as often as possible. It is the age when her emotional development may be evolving at a deeper level than ever before. In order to ensure that she achieves stability and maturity in her thinking and is able to deal with complex emotions, it is necessary that she is in the company of her mother as well, for some time.”

(Emphasis Supplied)

12. The present case has to be decided on the touchstone of the law laid down by the Supreme Court of India in the aforesaid judgments. We may note that the Family Court has relied upon the interaction with the child on 19.09.2018. As per which, the child is comfortable with the respondent-father and had been meeting him twice every month. The child loves her father as well as her grandfather, grandmother and *Bua*. The child was found willing to spend night at the house of the respondent-father and other family members. There are children of her age living in the adjoining house of the respondent-father and she could play with them during her stay with the respondent-father. It is also noteworthy that both the parents are well educated and are well placed in their lives. After taking into consideration all the facts and circumstances, we are of the view that it is the responsibility of both the parents who are well educated that they consider the paramount interest of the child. Before taking any steps against each other, the parents should weigh the impact it would have on the mind and heart of the small child. We find no infirmity in the order passed by the Family Court as the Family Court has considered the comfort level of the child after interacting with the child on 19.09.2018. The appeal is devoid of any merit. Accordingly, the appeal is dismissed.

13. The respondent-father undertakes and assures the Court that during the time, he is with the child, the respondent-father will not talk ill about the appellant-mother and any of her family members. Every effort would be made to ensure that the child is made comfortable with the respondent-father and going with the appellant-mother. The parties will ensure that the order is complied with in letter and spirit.

G.S.SISTANI, J

JYOTI SINGH, J

APRIL 16, 2019

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