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

+ **MAT.APP.(F.C.) 294/2019 & CM APPL. 48762-48763/2019**

**JITIN GULATI**

..... Appellant

Through Mr. Jatin Sehgal, Ms. Devna Ssoni,  
Mr. Arpit Kumar Mishra, Advocates  
with the appellant in person

versus

**SHWETA GULATI**

..... Respondent

Through None.

**CORAM:**

**HON'BLE MS. JUSTICE HIMA KOHLI**

**HON'BLE MS. JUSTICE ASHA MENON**

**ORDER**

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**13.11.2019**

1. The appellant is aggrieved by a judgment dated 23.07.2019, passed by the learned Principal Judge (South), Family Court, Saket, New Delhi, whereunder a petition filed by him under Section 6 of the Hindu Minority and Guardianship Act read with Sections 9 & 25 of the Guardianship and Wards Act, 1890 for the custody of the minor daughter, has been dismissed.

2. We may note that the aforesaid petition was filed by the appellant on 22.10.2013, when the minor child of the parties, who is in custody of the respondent/wife, was 4-½-5 years old. By now, the child is 12 years old. Issues in the petition were framed on 03.09.2015. Vide order dated 04.02.2016, the appellant was directed to file an affidavit by way of evidence alongwith the list of witnesses within two weeks. Admittedly, several adjournments were granted to the appellant to file the affidavit by

way of evidence. Finally, when he failed to file the affidavit by way of evidence alongwith the list of witnesses by the impugned order dated 23.07.2019, the Family Court answered the issues framed on 03.09.2015, based on the pleadings of the parties and arrived at a conclusion that the onus to prove as to whether it was in the interest and welfare of the minor child to hand her custody over to the appellant, was cast on the appellant but since he failed to lead any evidence on the said issue despite several opportunities, the said issue was decided in favour of the respondent.

3. Learned counsel for the appellant states that the Family Court has acted mechanically and passed the impugned order by taking a hyper technical view and had failed to consider that the appellant was pursuing the matter as party in person and was trying to amicably resolve the dispute with his wife.

4. We have enquired from the learned counsel for the appellant as to in how many other litigations has the appellant been appearing in person. He states that there are several litigations between the appellant and the respondent, not only before the Family Court, but also in the High Court and in all the said litigations, the appellant has been appearing in person. In other words, the appellant is well conversant with the legal procedure and the requirements of law. Despite that, for reasons best known to him, the appellant elected not to file a list of witnesses or the affidavit by way of evidence to substantiate the averments made by him in the Guardianship Petition. The Family Court can hardly be blamed for proceeding further in the matter, more so, when the appellant failed to take any steps in the matter.

5. Learned counsel for the appellant seeks to explain that the parties

were trying to arrive at an amicable resolution of their disputes. The said talks could have continued irrespective of the dismissal of the Guardianship Petition filed by the appellant.

6. Even on merits, having perused the observations made by the Family Court, in the light of the pleas taken by the respondent/wife in the written statement and further, keeping in mind the fact that the minor daughter of the parties has all along remained in the custody of the respondent/wife from April/May, 2012 onwards. The mere say of the appellant that he would be in a position to give a more comfortable life to the child or settle her in life in a better way, cannot be the sole consideration for handing over her custody to the appellant. The best interest and welfare of the minor child encompasses a much larger consideration, which includes aspects relating to the safety, security, sense of comfort, psychological and emotional needs of the child. It appears from the impugned order that the said aspects are being well taken care of by the respondent/mother.

7. We, therefore, decline to interfere in the impugned order. The appeal is dismissed alongwith the pending applications.

**HIMA KOHLI, J**

**ASHA MENON, J**

**NOVEMBER 13, 2019/MK/s**