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

% *Date of Judgment: 11.02.2019*

+ MAT.APP.(F.C.) 333/2018

S J Appellant

Through: Mr.Anuj Jain, Advocate along with
Appellant in person.

versus

D C & ORS Respondents

Through: Mr.Gurtinder Singh Gujral and
Mr.Sandeep Vishnu, Advocates along
with respondents 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 15.10.2018 passed by the Family Court on an application filed by the appellant-mother for grant of interim custody of her minor children, daughter about 08 years of age and son about 03 years of age.

2. The necessary facts which are required to be noticed for disposal of this appeal are as under:

- (i) Marriage between the parties was solemnised on 23.01.2007. Two children were born out their wedlock. The parties resided together upto 30.03.2018. It is the case of the appellant that post 30.03.2018 she was not allowed to meet both her children until she approached the Family Court and the impugned order was passed. During the period 30.03.2018 onwards, serious developments have taken place between the parties. The appellant has made a complaint to the police against the respondents and his family members. The appellant has also filed a complaint under the Domestic Violence Act and the respondent has filed a petition for grant of divorce on the grounds of cruelty. Parents of respondent no.1 have approached the Senior Citizens Tribunal, North-West. FIR has been lodged by the respondent against the appellant.
- (ii) The appellant filed a petition under Section 7 and 25 of the Guardian and Wards Act, 1890 on 13.04.2018 seeking custody of the minor children namely Davangana, aged about 8 years and Yohan, aged about 3 years. A further prayer for interim custody was also made by an application under section 12 of Guardians and Wards Act, 1890, which was filed alongwith the main petition. The matter was listed before the Link Court to the Principal Judge on 16.04.2018 and in the absence of the Presiding Officer, the same was adjourned to 26.05.2018. Notice was issued on 26.05.2018 and the matter was adjourned

to 18.07.2018. On 18.07.2018, in the absence of the Presiding Officer, the appellant moved an application under Section 151 CPC praying that the matter on interim application for custody of the children be heard. The matter was then adjourned to 15.10.2018 when the impugned order was passed.

3. The first submission of the learned counsel for the appellant is that the Family Court was completely insensitive to the fact that not only the mother was being deprived of meeting to her two minor children and the children in turn were also being denied the love, care and affection of their mother. No orders were passed on interim custody or any order pertaining to the custody between 18.04.2018 to 15.10.2018 when the impugned order came to be passed.
4. The second submission of learned counsel for the appellant is that the Family Court has completely lost track of the settled position of law that allowing the mother to meet the children twice a mother for two hours in the Children Room, Family Court, Rohini on first and third Saturday of each month would lead to a complete disconnect between the children and the mother and would amount to parental alienation. Additionally, it is contended that the Family court has not taken into consideration that the mother is the natural guardian in respect of minors, who would contribute to the welfare of the children and supervise the studies of her two growing minor children whose custody has been denied without recording any reason as to why the mother would be unfit to look after her minor children.
5. The Family court has observed in paras 8 and 9 of the impugned order, which are reproduced as under:

“8. Without commenting on the merits of the case, however bearing in mind the paramount consideration of the welfare of the children, the dislocation of the minor children, at this stage, from the custody of their father would not only impede their stability and consistency in their affairs and routine, it may also cause emotional strain and depression to them, therefore, it is not desirable to disturb the custody of the minor children, accordingly the prayer for their interim custody is declined. However, having regard to all the facts and circumstances, the visitation right is granted to the applicant/petitioner to meet the minor children Devangana and Yohan on the First and Third Saturday of each month between 03:00 PM to 05:00 PM at Children Room, Family Courts, North-West District, Rohini Courts, Delhi.

9. The Respondents are directed to produce the minor children in the Children Room, Family Court, North-West District, Rohini Courts, Delhi, on the scheduled date and time. In case of any exigency, the Respondents are not able to bring the minor children for effecting the visitation, the Respondents shall inform the Petitioner or her counsel about the same well in time. Similarly, if the Petitioner is not able to come for meeting the children on any scheduled date and time, she shall inform the Respondents or their counsel about the same well in time. For convenience, both the parties as well as the counsel for the parties shall exchange their mobile phone numbers and shall also furnish the same on record.”

6. As is evident from the reading of the aforesaid two paragraphs, the Family Court has not considered the merits of the matter and has held that considering the welfare of the children, it would not be proper to dislocate the minor children from the custody of the father as it would impede their stability and consistency in their affairs and routine.

7. Both the parties are in agreement that the order requires to be set aside and remanded back for fresh hearing on merits.
8. As we have noticed hereinabove since the order does not note the contentions of both the parties nor does it give reasons as to why the mother is not fit to look after the children and why only two meetings in a month for two hours each in the Family Court would be sufficient with no overnight stay and in the absence of any reasons to show that the mother would be disentitled for the relief sought. The matter is remanded back to the Family Court to decide the matter afresh after hearing learned counsels for both the parties in accordance with law.
9. Question which arises is, what should be the interim arrangement during the period when the application is heard by the Family Court. While learned counsel for the appellant has submitted that the custody of the children should be given to mother till the time the Family Court hears the application. Learned counsel for the respondent urged before us that unsettling the children for the interim would not be in the best interest of the children. Learned counsel for the appellant has also urged that the respondent also did not comply with the order of the Family Court and she was not allowed to meet the children even for two hours post passing of the order. This submission is disputed by the learned counsel for respondent and it is submitted that five out of seven times, children were allowed to meet the mother.
10. To meet the ends of justice and till the Family Court decides the custody, in the interim period, we modify the order of the Family Court, the children will spend time with the mother as an interim measure, from Friday 07:00 PM onwards upto Sunday 07:00 PM

including overnight stay every week till the matter is decided. Additionally, the mother would be entitled to meet the children for two hours on every Wednesday. It will be the responsibility of the father to bring the children at the residence of the mother.

11. With these directions, the appeal is disposed of.
12. Family Court concerned is directed to decide the application within a period of one month from the date of the order. Parties to appear before the Family Court on 14.02.2019 at 02:00 PM, the matter would be taken up for hearing. No adjournment will be granted to either of the parties.
13. A copy of this order be brought to the notice of the Family Court.

G.S.SISTANI, J

JYOTI SINGH, J

FEBRUARY 11, 2019

SSC