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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ MAT.APP.(F.C.) 324/2018, CM APPLs. 53101/2018, 19073/2019 &
37398/2019

DR KAPIL KAKAR

..... Appellant

Through: Mr. Deepak Dhingra and Mr.
Harsimran Duggal, Advocates

versus

SHRUTI KAKAR

..... Respondent

Through: Ms. Vandana Kejriwal, Advocate

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

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05.09.2019

1. The appellant/father is aggrieved by an order dated 05.11.2018, passed by the Principal Judge, Family Courts, Saket, New Delhi, dismissing an application filed by him under Section 26 of the Hindu Marriage Act, 1955 and holding that it will not be in the welfare of the two minor daughters of the parties, elder one aged 13 ½ years and the younger one aged 11 ½ years, if he is handed over their temporary custody.
2. On the first date, i.e. on 17.12.2018, when the appeal was listed for admission, the predecessor Bench had passed a consent order to the effect that the children will spend time with the appellant/father on particular dates in the months of December, 2018 and January, 2019 between 11:00 a.m. and

7:30 p.m. for which he will pick them up from their residence at Noida and drop them back. Thereafter, on 14.01.2019, the parties were referred to mediation. Further, the statement of the appellant was recorded to the effect that without prejudice to his rights and contentions and purely as an interim measure, he will pay a sum of Rs.35,000/- per month to the respondent as maintenance, over and above the school fee of the children. The Court had also permitted the appellant to meet the children on 19th, 20th and 26th January, 2019 for a few hours.

3. On 25.03.2019, the Mediation Centre submitted a report of ‘non-settlement’. On 21.05.2019, the predecessor Bench had interacted with the parties and set out a schedule of the shared visitation rights of the children during the summer vacations. We are informed that the said schedule was adhered to. On the very same day, direction was issued for the children to remain present on the next date of hearing.

4. It is pursuant to the aforesaid order that the appellant, the respondent and both the children are present. We have had chamber sittings jointly with both the children, followed by separate sittings with the respondent and the appellant, spread over for almost two hours. Having interacted with both the children extensively as also the parents, we find that presently both the children only wish to meet their father together, on a weekend, preferably a Saturday, during the day time. The said suggestion has been put forward to the appellant and the respondent. The respondent states that she would have no objection if the children want to spend more time with their father, but it is for them to take a call. Though the appellant has expressed his anxiety about the welfare of the children and states that he would like to spend more time with them, as of now, having interacted with the children, we are of the

opinion that he shall have to take some constructive steps to build their confidence in him, for them to agree to spend some more time with him.

5. It is deemed appropriate to grant visitation rights to the appellant on every second Saturday commencing from 14.09.2019 from 10:30 a.m. to 05:30 p.m. The appellant shall pick up both the children from the residence of the respondent at Noida at 10:30 a.m. and drop them back by 6:00 p.m. on the same day. The children have indicated to us that they get upset with the adverse comments of the appellant against their mother. The appellant has assured this Court that he will refrain from speaking ill about the respondent to the children or other family members, spend quality time with his children so as to build their interpersonal relationship. We hope and expect that the appellant shall strictly abide by the said assurance given in Court.

6. Further, the respondent has shared with us her financial difficulty relating to the expenses to the tune of Rs.15,000/- that she has to incur on the tuition fee of both the children and the expenses on the car-pool system for the younger daughter, who is studying in Amity School, NOIDA. We may note that the elder daughter is in Class-IX and is studying in K.R. Mangalam School, Greater Kailash – II and goes to school in the School Bus but the younger daughter who is in Class-VII at Amity School, NOIDA has to be dropped and picked up by the respondent. We have enquired from the appellant if he would be willing to contribute an additional sum of Rs.15,000/- for the children. He is agreeable to pay the said amount to the respondent. Accordingly, besides the school fee and a sum of Rs.35,000/- as ordered earlier, the appellant shall pay a sum of Rs.8,000/- per month towards the tuition fee of the children and a sum of Rs.7,000/- per month towards expenses for the car-pool system of the younger daughter. In other

words, over and above the school fee and a sum of Rs.35,000/- per month that the appellant has offered to pay as maintenance to the respondent and the children, he shall also pay a sum of Rs.15,000/- towards the aforesaid expenses, totalling to a sum of Rs.50,000/- per month.

7. We are informed that the appellant has failed to pay the maintenance for the month of August, 2019 to the respondent. The appellant is cautioned not to commit any default in the future, failing which the respondent is granted liberty to approach the Court by moving an application. In case of default, the Court will be inclined to pass coercive orders against the appellant. The appellant shall pay maintenance @ Rs.50,000/- to the respondent and the children for the month of August, 2019, which amount shall be deposited directly into her Bank account through RTGS by 07.09.2019. Thereafter, purely as an interim measure effective from September, 2019, the appellant shall continue depositing a sum of Rs.50,000/- per month directly into the Bank account of the respondent through RTGS, on or before the 7th day of each month. Any default/late payment will carry interest @ 9% per annum. The above said order shall continue to operate till appropriate orders are passed by concerned Courts on pending applications moved by the respondent under Section 125 of Cr.P.C. as also under the Protection of Women from Domestic Violence Act, 2005. At that stage, necessary set offs shall be given to the appellant, if necessary.

8. The present appeal is disposed of with the direction that the aforesaid interim arrangement shall continue to operate till appropriate orders are passed by the concerned courts, where applications filed by the respondent under Section 125 of Cr.P.C. as also under the Protection of Women from Domestic Violence Act, 2005, are pending. The concerned Courts are

requested to expedite hearing in the said applications.

9. The appeal is disposed of alongwith the pending applications on the above terms, while leaving the parties to bear their own costs.

HIMA KOHLI, J

ASHA MENON, J

SEPTEMBER 05, 2019

s/MK