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

% *Date of Judgment: 25th of March, 2019*

+ **MAT.APP.(F.C.) 329/2018 & C.M.54109/2018**

A K

..... Appellant

Through: Mr.Prashant Mendiratta, Advocate

versus

C M

..... Respondent

Through: Mr.Sahil Munjal and Mr.Rohit Tyagi,
Advocates

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

1. The present appeal is directed against the interim order dated 22.10.2018 passed by the Family Court on an application filed by the appellant-father under Section 12 of the Guardian and Wards Act. As per the order, the appellant-father has been allowed visitation on every second and fourth Saturday of the month from 11 a.m. to second and fourth Sunday respectively up to 4 p.m.
2. The brief facts of the case to be noticed for the disposal of the present appeal are that the marriage between the parties was solemnized on 08.03.2008 at New Delhi as per Hindu rites and ceremonies. One daughter was born on 19.05.2008 out of the said wedlock, who is in the care and custody of the mother-respondent.

3. Mr.Prashant Mendiratta, counsel for the appellant-father submits that the impugned order in fact decreases the overall visitation of the appellant-father as initially the father was meeting the daughter on every weekend i.e. on every Saturday and every Sunday from 10 a.m. to 5 p.m.
4. Mr.Sahil Munjal, counsel for the respondent-mother has opposed this appeal on the ground that it is unclear as to whether the father would be staying with the child in Delhi as admittedly the father is employed at Dubai.
5. We have heard learned counsels for the parties and also given our thoughtful consideration to the matter.
6. In the present case, it is not in dispute that the daughter aged about 10 years has been meeting the appellant-father and the daughter is also comfortable with him. A careful reading of the impugned order dated 22.10.2018 would show that the respondent-mother had raised five objections for not allowing the father to spend time with the daughter in para 8 of the impugned order, which we reproduce below:

“8. On the other hand, respondent has raised five fold objection against the same which are as under;

1st objection- That petitioner is only manipulating the facts and is not interested in actual visitation of child. There were numerous occasions, when he unilaterally cancelled the visitation and left the child clueless about visitation.

2nd objection- That child being a girl child, aged about 10 years have specific needs which can only be cared by mother and petitioner would be oblivious of any such requirements.

3rd objection- That petitioner was already having visitation of entire day and no purpose will be solved by extending the

visitation overnight. It is stated that petitioner has no place in Delhi for keeping the child for overnight, visitation and was himself living with his brother and sister-in-law and one adolescent nephew. There is also an apprehension of sexual harrasment of the child during overnight visitation by the adolescent male child.

4th objection- Petitioner has never paid any maintenance for minor child at any point of time and was only pressing for his rights without undertaking to fulfill his obligations.

5th objection- That the plea of petitioner had been repeatedly rejected by various courts. There is no change in circumstances and petitioner is only interested in harassing and forcing the respondent to settle the property disputes in the garb of visitation/guardianship of minor child.”

7. 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.”

8. 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)

9. We may also note that the impugned order dated 22.10.2018 passed by the learned Family Court has not been challenged by the respondent-mother and the Family Court has dealt all the objections raised by the respondent-mother. To meet the ends of justice and having regard to the fact that the respondent-father will be traveling from Dubai only to

meet his daughter, who is attached to her father, a little extra time will go a long way for developing the bond between the father and the child, which already exists.

10. Accordingly, the respondent-father would be entitled to pick up the child from the child's school on every Friday and the child would spend overnight on Friday and Saturday with the father and the appellant-father would hand over the custody of the child to her mother on Sunday at 2 p.m. instead of 4 p.m.
11. During the time of visitation, the respondent-mother would be at liberty to speak to her daughter over the telephone including face time and the appellant-father will not deprive the daughter from speaking to her mother.
12. With the above modifications, the appeal and the pending application being C.M.54109/2018 stand disposed of. The copy of this judgment be given *Dasti* as prayed.

G.S.SISTANI, J

JYOTI SINGH, J

MARCH 25, 2019

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