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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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CR-986-2022 (O&M)

Date of Decision : 17.11.2022

Vijay Kumar Masoan

....Petitioner

VERSUS

Manisha Gupta

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Gursher Singh Bhandal, Advocate for the petitioner.

Mr. S.K. Choudhary, Advocate for the respondent.

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ALKA SARIN, J. (Oral)

The present civil revision petition under Article 227 of the Constitution of India has been filed challenging the impugned order dated 22.02.2022 passed by the Family Court granting visitation rights to the respondent-mother.

The brief facts relevant to the present lis are that the marriage between the parties was solemnized on 07.03.2011 at Shanti Kunj, Haridwar. Out of the wedlock, one son was born on 17.11.2011. On 19.10.2019 the respondent is stated to have left the matrimonial home and taken the minor child along with her. Thereafter, admittedly, the minor child continued to reside with the respondent-wife at Pathankot where he was also admitted in a school. It is the case set up by the petitioner herein that in October 2020 the minor son called up the petitioner crying and asked him to come and see him at Pathankot and that when the petitioner went to

Pathankot the respondent-wife herself handed over the custody of the minor child to the petitioner on 05.10.2020 along with his belongings. The case as per the respondent-wife is that the child was illegally snatched away by the petitioner-husband on 08.10.2020 and thereafter she approached this Court by filing a Habeas Corpus petition being CRWP-10833-2020. In the said Habeas Corpus petition, an attempt was made at mediation and a confidential report was given by the Mediator, copies of which were directed to be given to the counsel. Copy of the said report was handed over to this Court on an earlier occasion. A perusal of the report reveals that the child expressed his wish to stay with both the parents and also the minor child suggested that the mother should come to Bengaluru and that he would like to spend two months with the mother and two months with the father. Vide order dated 31.05.2022 an interim arrangement was made for the respondent-wife to visit the minor child at Bengaluru and it was directed as under :

“Keeping in view the welfare of the child as well as the fact that the child has expressed his desire to spend time with both the parents, this Court is of the opinion that for the interim, since child has vacations till 08.06.2022, the respondent-husband would transfer an amount of Rs.35,000/- in the account of the petitioner-wife. Details of the account be furnished today to the counsel for the respondent-husband. The petitioner-wife would travel to Bengaluru and would have custody of minor child from 01.06.2022 to

08.06.2022 (both days included) from 9:00 AM to 9:00 PM, daily so that the mother is able to spend quality time with the child. The respondent-husband will not accompany the petitioner-wife and the child during this period.

An apprehension was expressed by the petitioner-wife that the husband had earlier also threatened her and that is one of the reasons why she left for Pathankot. Keeping in view the apprehension of the petitioner-wife in visiting Bengaluru, it is made clear that the respondent-husband would not, in any manner threaten or try to intimidate the petitioner-wife during her visit to Bengaluru and shall make all efforts to make this a meaningful meeting between the petitioner-wife and the minor child. Both parties, keeping in mind the welfare of the child, are directed to remain cordial with each other during the petitioner-wife's visit to Bengaluru".

The counsel for the parties are ad idem that the meeting went off very well and the child was happy. It is apt to note that CR-2187-2022 was preferred by the respondent-wife, who is also aggrieved by the impugned order dated 22.02.2022. During the course of hearing today, the learned counsel for the respondent-wife sought permission to withdraw CR-2187-2022 with liberty to file afresh with better particulars since inadvertently the only prayer made in the revision petition was for

modification of the impugned order seeking for extension in time period of visitation. Vide a separate order of even date, the said revision petition has been dismissed as withdrawn with liberty to file afresh with better particulars.

In the present revision petition learned counsel for the petitioner-husband would contend that it is the welfare of the child which is of paramount importance. It is further the contention that the arrangement as directed by the Family Court would not be in the welfare of the child inasmuch as the child has been directed to be brought to Pathankot once a month to meet the respondent-wife. Learned counsel has further contended that keeping in view the welfare of the child, the said arrangement was not conducive.

Per contra, learned counsel for the respondent-wife has stated that the revision petition filed by her has been withdrawn. However, the respondent-wife is also not satisfied with the order passed by the Family Court inasmuch as the child has been directed to be brought to Pathankot only for one day in a month, which order too has not been complied with by the petitioner-husband and a contempt petition qua the same is also pending in the Family Court.

Heard.

In the present case it is not the convenience of the parties to the lis which is to be seen. It is the welfare of the child which needs to be looked after. As reported by the Mediator in the confidential report sought in CRWP-10833-2020, the child had specifically expressed his desire to spend time with both the parents. Pursuant to the order dated 31.05.2022,

the respondent-wife visited Bengaluru from 01.06.2022 to 08.06.2022 (both days included) and spent time with the child from 9:00 AM to 9:00 PM everyday. The counsel for the parties are ad-idem that the meeting between the respondent-wife and the minor child went off well and there were no complaints from any party. The arrangement as directed by the Family Court that the petitioner-husband is directed to bring the minor child once in a month to a common place at Pathankot cannot be sustained for the simple reason that the same would not be in the welfare of the child. However, the fact remains that the mother cannot be deprived of her visitation rights. The issue of custody would be decided by the Family Court once the main petition is decided. However, in the interregnum, keeping in view the wish as expressed by the child of wanting to spend time with both the parents, it would be in the best interest and in the welfare of the child that visitation rights are given to the respondent-mother though not in the manner as directed by the Family Court. On a query put by the Court as to whether the petitioner-father would be able to bring the minor child to Pathankot during the winter vacations which would commence from 24th December 2022 onwards, learned counsel, on instructions, states that the petitioner-father would not be in a position to do so since he would not be able to get leave for a period of one week from his work. He, however, states that he would have no objection if a similar arrangement as directed vide order dated 31.05.2022 is made. Learned counsel has further contended that as was done earlier an amount of Rs.35,000/- (Rupees Thirty Five Thousand only) would be deposited in the account of the respondent-wife.

Learned counsel for the respondent, on instructions, states that the respondent-mother would be satisfied if she is permitted to go and visit the minor child at Bengaluru, as was done on the earlier occasion pursuant to the order dated 31.05.2022 passed by this Court.

In view of the above and keeping in view the welfare of the child, the petitioner-husband is directed to transfer an amount of Rs.35,000/- in the account of the respondent-wife. Details of the account were already furnished on an earlier occasion. The respondent-wife would travel to Bengaluru and would have custody of the minor child from 24.12.2022 to 01.01.2023 (both days included) from 10:00 AM to 8:00 PM so that the respondent-mother is able to spend quality time with the child. The petitioner-husband would not accompany the respondent-wife and minor child during this period. Both the parties, keeping in mind the welfare of the child, are directed to remain cordial with each other during the respondent-wife's visit to Bengaluru.

The present petition is disposed off in the above terms. Meanwhile, the Family Court is requested to decide the petition expeditiously preferably within a period of six months from the date of passing of this order. Pending applications, if any, also stand disposed off.

November 17, 2022
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO