



\$~11

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

+ CM(M) 154/2021, CM APPL. 11338/2022

VISHAL VERMA

..... Petitioner

Through: Ms. Aakanksha Kaul, Mr. Manek Singh, Mr. Aman Sahani, Ms. Divita Dutta and Mr. Vishal Varma, Advs.

versus

TWINKLE VINAYAK

..... Respondent

Through: Ms. Anu Narula and Mr. Naveen Kumar, Advs.

%

Date of Decision: 31st August, 2022

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. The present petition has been filed challenging the order dated 22nd January, 2021 whereby the petitioner had sought overnight custody of Master Kiaan for two nights every weekend.
2. The request of the petitioner-father was rejected by the learned Family Court, Judge taking into account Section 6(a) of the Hindu Minority and Guardianship Act, 1956 as well as the young age of the child. The Court



also took into account the situation of Covid-19 existing at that time. However, the learned Family Court Judge made an interim arrangement whereby the petitioner-father was allowed to have physical custody of the child from 10:00 Am to 6:00 PM on first and third Sunday of every month with effect from February, 2021.

3. Being aggrieved of this, the petitioner filed the present petition assailing the impugned order. However, today during the course of the proceedings in the Court, it transpired that now the age of the child is more than five years. It is also a matter of common knowledge that the situation of COVID-19 has also improved relatively.
4. Learned counsel for the petitioner submits that in the changed circumstances, as per instruction, she would move a fresh application before the learned Family Judge seeking overnight visitation rights however, learned counsel for the petitioner states that till the time the learned Family Court decides the application to be filed by her the interim arrangement of visitation right as laid down in order dated 22nd January, 2021 of the learned Family Court and further order dated 20th May, 2021 of this Court may be continued.
5. Learned counsel for the petitioner submits that in order to protect her client for any prejudice, the Family Court Judge may be directed to decide the petition without being influenced by the order dated 22nd January, 2021.
6. Ms. Anu Narual, learned counsel for the respondent vehemently argued that in fact she had moved an application before the learned Family Court Judge for recalling of the visitation right as laid down in order dated 22nd January 2021 on the ground of serious allegations against the



petitioner-father and in the said application, the notice has been issued for tomorrow.

7. Learned counsel submits that therefore no directions may be passed regarding continuation of visitation right as laid down in the order dated 22nd January 2021 of the learned Family Court and order dated 20th May, 2021 of this Court.
8. Learned counsel further submits that the learned Family Court Judge while deciding the fresh interim application under Section 12 of the Guardian and Wards Act to be moved by the petitioner-father may decide the same without being influenced by any observation made against her client also.
9. I have considered the submissions, it is a settled proposition that the orders regarding custody of the child are not permanent in nature. The paramount consideration while deciding such applications are welfare of the child. In the impugned order, the request of the petitioner-father was rejected predominantly, in view of the tender age of the child as well as the COVID-19 situation prevailing at that time.
10. I consider that since such orders are not permanent in nature and in view of the fact that now the child is of more than five years of age, the petitioner can be allowed to withdraw the present petition with liberty to move afresh application for interim custody as provided under the law before the learned Principal Judge, Family Court. The learned Principal Judge, Family Court shall decide the such application in accordance with law without being influenced by any observations made against either of the parties in order dated 22nd January, 2021. As far as interim visitation rights are concerned, the same shall continue to prevail till any order is



NEUTRAL CITATION NO: 2022/DHC/003368

passed on the application being moved by the respondent herein or on application being moved by the petitioner.

11. With these observations, the present petition along with the pending application is disposed of.

DINESH KUMAR SHARMA, J

AUGUST 31, 2022

Pallavi

