



\$~3

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

CM(M) 238/2022, CM APPL. 13149/2022

JYOTI PHOGAT

..... Petitioner

Through: Ms.Rekha Aggarwal, Advocate
with petitioner in person.

versus

ASHWANI KADIAN

..... Respondent

Through: Mr.Narender Singh Bisht and
Mr.Yatinder Bainsla,
Advocates

%

Date of Decision: 27th May, 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 impugned order dated 16.02.2022 whereby Principal Judge, Family Court (South-West), Dwarka passed an order, which is reproduced hereinbelow:

*“GP No. 38/2019**Ashwani Kadian**16.02.2022**Present : Petitioner with Ld. Counsel Sh. Yatinder (Ld.
Counsel through VC).**Respondent with Ld. Proxy Counsel Sh. Sanjay Kumar.*



Ld. Counsel for petitioner seeks adjournment to file list of witnesses and evidence affidavit. Allowed to do so within two weeks providing advance copy to the opposite party.

Respondent seeks adjournment to file reply to application under Section 151 CPC of petitioner seeking permission to keep his son overnight with him on alternate Saturdays and on special occasions. Allowed to do so within two weeks providing advance copy to the opposite party.

Ld. Counsel for petitioner requests for providing custody of the child to the petitioner. He submits that as ordered on 22.09.2020 petitioner is meeting with the child virtually twice in a month on 2nd & 4th Sunday of each month but for the last two years he has not met the child physically. He submits that for creating bonding between the child and father custody, atleast for two days in a month, should be given to the petitioner.

Heard.

As agreed, on 1st & 3rd Saturday of each month, respondent will hand over custody of the child to petitioner at 10:00 AM at Children Room Family Court, Dwarka and child will be handed over back to the respondent by the petitioner on the same day at 5:00PM at Children Room, Family Court, Dwarka. Petitioner will not take the child outside Delhi.

Copy of this order be given Dasti to both the parties for necessary compliance.

Put up for PE and arguments on applications under Section 151 CPC & under Section 12 of G&W Act on 25.04.2022.

-sd-

*(Sanjay Garg-I)
PJFC (SW) Dwarka,
New Delhi/16.02.2022”*

2. The grievance of the petitioner is that the present order has been passed by the learned Principal Judge, Family Court without even calling for the reply from the parties. It has been submitted that this matter requires



consideration and for the welfare of the child, the interim arrangement should not have been done without hearing the parties in detail. *Per contra*, learned counsel for the respondent submits that in fact, it was a consent order passed by the Principal Judge, Family court and therefore, now the petitioner cannot say that the order has been passed without considering the contentions of the parties.

3. Both the parties agree that the application under Section 12 of the Guardians and Wards Act, 1890 is still pending disposal before the learned Principal Judge, Family Court and the pleadings are complete in that regard.

4. Without going into the merits and contentions of the parties, the present writ petition is disposed of with the direction to the learned Principal Judge, Family Court to decide the application under Section 12 of the Guardians and Wards Act and the application under Section 151 of the CPC dated 11th October, 2021 filed by the respondent be disposed of expeditiously in accordance with law.

5. Interim order passed by this Court shall remain continued till the disposal of the aforesaid applications.

DINESH KUMAR SHARMA, J

MAY 27, 2022/rb