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

+ **CM(M) 515/2022**

BITHI ROHATGI

..... Petitioner

Through: Mr. Sushil Kumar with Mr. Kapil
Kumar, Advocates.

versus

VARUN KAKKAR

..... Respondent

Through: Mr. Vishal Gohri, Advocate.

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Date of Decision: 31st May, 2022

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

CM APPL.26280/2022 (exemption)

Exemption allowed subject to all just exceptions.

CM(M) 515/2022 & CM APPL.26279/2022 (stay)

1. Present petition has been filed challenging the summoning orders dated 27.04.2022 and 05.05.2022. The summoning orders dated 27.04.2022 and 05.05.2022 were passed in an application filed by the respondent under Section 12 of Guardians and Wards Act, 1890. Along with the application under Section 12 of Guardians and Wards Act, 1890, another application under Section 151 CPC for issuance of necessary orders or directions to produce the child in the Court and hand over the custody of the child was



also filed. The matter was listed on 27.04.2022 and on that date an application under Section 12 of Guardians and Wards Act, 1890 was listed before the learned Principal Judge, Family Court, South Saket, New Delhi. Notice was issued to the respondent for 04.05.2022. On 04.05.2022, the respondent mother, i.e., the petitioner herein appeared and the matter was adjourned to 13.05.2022 for filing of reply in the application under Section 12 of Guardians and Wards Act, 1890. The respondent mother (petitioner herein) was also directed to produce the child on 13.05.2022. On 13.05.2022, the respondent mother (petitioner herein) stated that the child could not be produced as the child got late from school and the matter was adjourned to 28.05.2022.

2. Petitioner is aggrieved of the order passed by the learned Trial Court on two grounds. Firstly, the learned Principal Judge, Family Court, South Saket, New Delhi has no territorial jurisdiction as the child ordinarily resides in Dwarka. Secondly, the learned Principal Judge, Family Court should have restrained from passing the order for the physical production of the child in view of the earlier conduct of the father wherein in contravention of the settlement arrived at between the parties, father took the child out of NCR in Chandigarh for two days.

3. Plea of the respondent is that the issue as to the territorial jurisdiction being raised by the petitioner is actually false as the divorce between the parties was by mutual consent granted by the learned Principal Judge, Family Court, South Saket, New Delhi vide order dated 13.05.2022 and even thereafter the proceedings as to the custody of the child was also conducted by the learned Principal Judge, Family Court, South Saket, New



Delhi and vide order dated 31.03.2022 though the custody was handed over to the mother but the learned Principal Judge, Family Court passed the order dated 31.03.2022, which reads as under:-

*“PRINCIPAL JUDGE
SOUTH DISTRICT
FAMILY COURT
SAKET, DELHI*

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HMA/16/360

Varun Kakka vs. Bithi Rastogi

31.03.2022

*Present: Ms. Bithi Rastogi, the applicant with Sh. Turan Garg and Sh. Dharmender Singh, Advocates.
Respondent Sh. Varun Kakkar with Sh. Dinesh Arora, Advocate.*

The child Manan Kakkar, aged about 11 years, has appeared with his father.

The respondent has brought his son and has submitted that this court may pass any order regarding the custody of the child.

I have talked to the child in my chamber. Child does not want to go with his mother. After persuasion, the child has agreed to go with his mother for five days. Custody of child has been taken by his mother. Hence, nothing survives in the contempt petition. Petition is hereby dismissed.

File be consigned to record room.

(Vinod Kumar)

*Principal Judge, Family Courts,
South, Saket, New Delhi 31.03.2022”.*

4. This Court considers that the present petition is totally frivolous. The jurisdiction of this Court under Article 227 is though wide but has to be

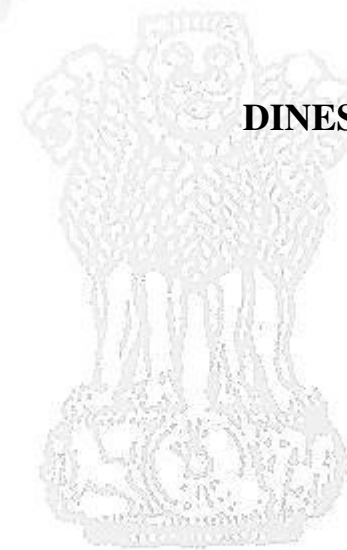


exercised with circumspect. The petitioner has raised an issue of territorial jurisdiction, which is yet to be decided by the Court of competent jurisdiction. It is beyond comprehension that why the petitioner is so hesitant in producing the child in Court, if the learned Principal Judge, Family Court has directed him to do so. It is an admitted case that as per the agreement between the parties, the father does have visitation rights.

5. There is no substance in the petition. Petition is, accordingly, dismissed.

DINESH KUMAR SHARMA, J

May 31, 2022
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