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

+ CM(M) 444/2020, CM APPL. 46043/2021

PRATIK JINDAL & ANR.

..... Petitioners

Through: Ms. Malvika Rajkotia, Mr. Sudeep
Sudan, Mr. Harshit Khurana and Ms.
Akriti Tyagi, Advs

versus

SHRUTI JINDAL

..... Respondent

Through: Mr. Fanish K Jain and Mr. Manak
Goel, Advs.

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*Date of Decision: 1st August, 2022***CORAM:****HON'BLE MR. JUSTICE DINESH KUMAR SHARMA****J U D G M E N T****DINESH KUMAR SHARMA, J. (Oral)**

The present petition has been filed challenging the order dated 28th August, 2020 passed by the learned Family Courts, Tis Hazari Courts, Delhi in Old G. P. No. 23/2018, New G. P. No. 17/2019 titled as Sh. Pratik Jinda & Anr. V. Smt. Shruti Jindal” with the following prayer:

“Allow the present Petition, thereby, setting aside the Order dated 28.08.2020, passed by the Ld. Family Courts, Tis Hazari Courts, Delhi, in Old G.P No. 23/2018, New G.P No. 17/2019, titled as "Sh. Pratik Jindal & Anr. Vs. Smt. Shruti Jindal", and for further directions to the Respondent to handover the temporary custody of the Minor Daughters Tanishi Jindal and Vani Jindal to the



Petitioners for the period which this Hon 'ble Court deems fit and proper.”

Learned counsel for the petitioner submits that in the application filed under Section 12 of the Guardian and Wards Act, 1890, the interim custody for 10 days was asked for but the learned Principle Judge, Family Court has fallen into an error by declining the interim custody and weekend custody thereby granting inadequate visitation rights. Learned counsel for the petitioner further submits that being aggrieved by inadequate visitation rights, the present petition has been filed. The learned Trial Court while deciding the question of interim custody has *inter alia* held as under:

“9. It is an admitted fact from the side of petitioners that the national lockdown was implemented by Govt. of India due to outbreak of Covid-19 w.e.f. 22.03.2020 and time and again, Ministry of Home Affairs has issued circulars and have advised the children below the age of 10 years and senior citizen to stay indoors/home as they are most vulnerable to the deadly virus and that presently, unfortunately, our country is having more than 70,000/- cases per day and are at peak and admittedly touching a record high. Hence, the minor daughters cannot be exposed to the hazard of visiting Delhi at this point of time. Both the daughters are aged about 5-7 years and at present, as per the submissions of counsel for respondent, they are at Jind, along with respondent at the parental house of respondent.

10. Further, admittedly, the children have not stayed with the petitioners overnight since the last two years i.e. from August 2018. Both the children are girl child and may require the



presence of their mother on account of their special needs. Further before giving overnight custody, it is necessary to develop bonding between them. So ten days overnight custody cannot be granted at this stage. However, it is admitted fact that during the lockdown period the petitioners are interacting with the minor daughters through facetime and other digital mediums on daily basis.”

The bare perusal of para 9 and 10 of learned Trial Court order would make it clear that the prayer of interim custody or the visitation right for overnight stay was declined, pre-dominantly on the ground that at that time, Covid was at its peak. Learned Trial Court noted that there were around 70,000/- cases per day. Learned Trial Court was of the view that at that stage, the minor daughter could not have been exposed to the hazard of visiting Delhi. However, now the situation has changed. The Covid though, is still there but mercifully the numbers are not that high.

In these circumstances, the present petition is disposed of with a liberty to the petitioner to move a fresh application under Section 12 of the Guardian and Wards Act, 1890 before the learned Trial Court with a request for interim custody or the overnight visitation rights.

Learned Trial Court is requested to dispose of the application being moved under Section 12 of the Guardian and Wards Act, 1890 as expeditiously as possible and without being influenced by the earlier order dated 28th August, 2020.

During the course of arguments, learned counsel for the respondent has submitted that the Delhi Court has no jurisdiction in view of the Section



9 of the Guardian and Wards Act, 1890. It has been submitted that the children are ordinarily resident of Jind, Haryana and therefore the Court there will have the jurisdiction.

Per contra, learned counsel for the petitioner has submitted that in fact, the children were abducted by the mother and were taken to Jaipur and then Jind and therefore it cannot be said that they are ordinarily resident of Jind.

I consider that this question also needs consideration by the learned Trial Court. The learned Trial Court may consider framing a preliminary issue on the question of jurisdiction and decide it in accordance with law.

However, no expression made herein shall tantamount to be an expression on the merits of the case. The parties are at liberty to raise their contentions before the learned Principle Judge, Family Courts in accordance with law.

With these observations, petition alongwith pending application stands disposed of.

DINESH KUMAR SHARMA, J

AUGUST 1, 2022

Pallavi