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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 618/2022

ASHISH DUBEY

..... Petitioner

Through: Ms. Vandana Kejriwal, Mr. Tanmay Mehta, Advs.

versus

SARA CARRIERE DUBEY

..... Respondent

Through: Ms. Priya Hingorani, Sr. Adv. with Mr. Aman Hingorani, Mr. Himanshu Yadav and Mr. Anirudh Jamwal, Advs.

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Date of Decision: 17th 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 impugned order dated 16th June, 2022. The petitioner is aggrieved of certain observations made by the learned Trial Court which are detailed hereinunder:

- (i) *"It appears that the petitioner/father has deliberately and with mala fide intention chosen the travel package to Sikkim to restrict the respondent/mother from accompanying the minor children to Sikkim. The same is evident from the fact that the said proposed itinerary/travel package*



- i. *is valid only for Indian citizens. The respondent, a French national, is specifically debarred from the said trip to Sikkim. Thus, the respondent cannot travel to Sikkim or attend the minor children, in case the need arises.*
 - ii. *The mala fide intention of the petitioner is also apparent from the fact that he has chosen to come back from Sikkim on 25.6.2022, which happens to be his minor son's birthday. He has chosen the said day so that the respondent is unable to celebrate the birthday of the child with her.” And (ii) Prima facie, petitioner is having an extra marital affair with 'X' and the court vide order 8.10.2021 has restrained 'X' from interacting with the children during the court ordered visitations.”*
2. The learned counsel for the petitioner submits that though the petition has become infructuous yet the observations made by the learned Trial Court in the impugned judgment may come in the way and prejudice the petitioner in multifarious litigations pending between the parties.
3. Learned counsel submits that these observations have been made by the learned Trial Court without any basis and thus, the same are liable to be expunged.
4. Ms. Priya Hingorani, learned senior counsel for the respondent has vehemently opposed the petition and submits that these observations as enumerated herein above were made on the basis of the material available on record. Learned senior counsel submits that there is no ground for expunging these remarks. However, learned senior counsel agrees that the petition has become infructuous as the visitation rights were confined to the month of June.



5. The parties are at extreme variance to each other regarding the veracity of certain observations in the impugned order, as indicated herein above. The contention of the petitioner is that the same have been made without any basis, whereas the plea of the learned senior counsel for the respondent is that the observations were made on the basis of the material available on record.
6. It is an admitted fact that these statements were made by the learned Trial Court Judge in the interim order passed on an application being moved by the petitioner seeking visitation rights. It is settled proposition that such orders are interim in nature. The circumstances for grant of visitation rights are dynamic and keeps on changing from time to time.
7. The Courts while deciding such applications have to examine the matter independently without being influenced by any other material. It goes without saying that every time, the paramount consideration is the welfare of the child. It is an admitted position that the petition under Section 12 of the Guardian and Wards Act, 1890 is still pending before the learned Trial Court and is yet to be finally adjudicated. The endeavor of the Court should be to put an end to the acrimonious litigation to the extent as possible. The endeavor of the Courts should also be to keep the focus right so as to get the matter adjudicated within the framework of law and on the basis of the pleadings of the parties. In such matters, serious allegations and counter allegations by husband and wife are very common. The Courts every time, while hearing the parties, have to maintain a strict balance and is required to



see that the observations made by it are not blended with any sentiments and remain confined to the core matter in issue.

8. It is an admitted case that the visitation rights granted by the impugned order were related to the summer vacations and thus as far as this part is concerned, the petition has become infructuous. However, without going into rival contentions of the parties and merits of the case, this Court considers that if any application is moved by any of the parties for visitation right/ interim custody or while deciding the petition under Section 12 Guardian and Wards Act, 1890, finally, the Principal Judge, Family Courts shall decide the matter independently of any observation made in the impugned order.
9. It is clarified that this Court has not made any expression on the merits of the case.
10. With these observations, the petition stands disposed of.

DINESH KUMAR SHARMA, J

AUGUST 17, 2022

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