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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 175/2012, CM APPL. 20553/2022

AMIT KAUSHIK

..... Petitioner

Through: Mr. Rajat Aneja, Ms. Aparna Shukla
and Ms. Aditi Shastri, Advs.

versus

KAVITA

..... Respondent

Through: Mr. Tejasvi Malik, Adv.

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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 17th January, 2012, whereby the following directions were issued:

“30. For the reasons recorded above, this application is allowed. The respondent is directed to hand over interim custody of the minor child to the petitioner. The order dated 24.9.11 directing visitation is no longer continued. However, this order be subject to the following conditions:

(a) The petitioner shall produce the minor child in court for visitation of the respondent on the first, third and fourth Saturday and every second Monday of the month between 2.00PM to 5.00PM till further orders,

(b) Since the minor child is 3 years old the petitioner shall take all necessary measures to ensure the education of the child by



*getting him admitted in a school commensurate to the age of the minor child and the status of the parties,
(c) The respondent will be at liberty to move this court seeking variation of this order if the circumstances to protect the interest and welfare of the child so warrant.”*

2. Learned counsel for the petitioner submits that in fact at the time when this order was passed the child was aged around three and half years old. The child is now 14 years old and studying in Arwachin International School in the 9th standard. Learned counsel for the petitioner submits that in fact the mother has lost all interest and had not been coming forward to meet the child.

4. Sh. Tejasvi Malik, advocate appears on behalf of the respondent-mother and submits that he has been engaged recently.

5. After hearing the learned counsel for the petitioner at some length, this court considers that after passing of this order, 10 years have already passed.

6. Learned counsel for the petitioner has submitted that this Court vide its order dated 13th February, 2012 stayed the operation of the impugned order and thereafter this Court vide order dated 15th September, 2012, passed the following orders:

“ ORDER

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15.09.2012

Having heard both the parties in person and their counsel, jointly and separately, as also having observed the behaviour of the child, it is felt that for the time being the child should remain in the custody of the petitioner. However, the visitation and meeting rights of the respondent Kavita with the child need to be maintained so as to strengthen bonds of love which the child which has been lost because of her not meeting for about one year.



In these circumstances, it is directed that the petitioner will take the child on every working Saturday from 2 pm to 5 pm at Medication Centre, Karkardooma District Court, where respondent Kavita would be allowed to have free access and meeting with the child. The time between 2 pm to 5 pm would not be rigid in the sense that it would be flexible depending upon the wish and convenience of the child. However, that would be under the observation of the Incharge, Mediation Centre, Karkardooma District Courts.

This is only a temporary arrangement and this arrangement shall be reviewed after two months on the next date and in case of any special circumstance or any change required in this temporary arrangement before the next date of hearing, depending upon how the things move, the Incharge would be at liberty to modify this arrangement and for this both the parties shall be free to approach the Incharge and seek her advice.

Renotify on 06.12.2012.”

7. Subsequently, this order was slightly modified vide order dated 11th March, 2014 whereby the respondent-mother was permitted to continue to meet the child on every Saturday from 1.00 to 5.00 pm at the Mediation Centre at Karkardooma District Court.

8. Without going into rival contentions of the parties, I consider that the impugned order has lost relevance because of passage of considerable time.

9. Custody orders are always interim in nature and are liable to be modified taking into account the interest of the child. The interest of the child is a dynamic concept depending upon the age, education and other such attendant circumstances. Thus, this court considers that in the interest of both the parties and in the paramount interest of the child, let this order be not given effect to. The respondent-mother may move a fresh application under Section 12 of the Guardian and Wards Act, 1890 if, she so desires before the learned Trial Court. The learned Trial Court shall decide the same in accordance with law without being influenced by the impugned order



dated 17th January, 2012. It is also pertinent to note that the child namely Dhuv Narayan Kaushik is present in the Court and I have briefly interacted with him. However, it is made clear that nothing contained herein amounts to an expression on the merits of the case.

10. Accordingly, the present petition along with pending application stands disposed of.

11. However, it is clarified that the visitation rights granted vide order dated 17th January, 2012 will remain effective till eight weeks or till any fresh visitation orders are made by the learned Trial Court. In case, the respondent-mother does not move any application for visitation rights/ interim custody of the child during this period, the petitioner-father shall be absolved of producing the child in compliance of the visitation orders passed by this Court and the visitation rights as granted by this Court shall stand suspended.

DINESH KUMAR SHARMA, J

AUGUST 17, 2022

Pallavi