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

+ **CM(M) 924/2022**

ADITI BAKHT

..... Petitioner

Through: Mr. Prashant Mendiratta and
Mr. Jasmeet S. Chadha, Advs.

versus

ABHISHEK AHUJA

..... Respondent

Through: Ms. Geeta Luthra, Sr. Adv. with Ms.
Asmita Narula and Ms. Apoorva
Maheshwari, Advs.

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Date of Decision: 7th September, 2022

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

CM APPL. 39439/2022 (exemption)

Exemption is allowed subject to all just exceptions.

CM(M) 924/2022

1. The present writ petition has been filed challenging the impugned order dated 31st August, 2022 passed by the learned Principal Judge, Family Court, South East, Saket in G. P. No. 33/2022 titled as “*Abhishek Ahuja v. Aditi Bakht*”.



2. The learned Principal Judge, Family Court vide the impugned order rejected the application of the petitioner-wife to take on record an additional affidavit pleading that there are changes in the circumstances.
3. Mr. Prashant Mendiratta, learned counsel for the petitioner has submitted that the learned Principal Judge, Family Court has rejected the application for taking the affidavit on record on twin grounds. Firstly, the additional affidavit changes the whole nature of the reply originally filed by the petitioner-wife to the application under Section 12 of Guardians and Wards Act (*'the Act'*), and secondly, such affidavit cannot be allowed to be taken on record without seeking an amendment in her pleadings.
4. Learned counsel for the petitioner submitted that this order is wholly erroneous as the learned Principal Judge, Family Court has not only rejected the application for taking on record the affidavit pleading the change in the circumstances but has also shut the doors for moving an application under Order 6 Rule 17 CPC.
5. In view of the observation that the additional affidavit changes the whole nature of the reply filed by the petitioner-wife to the application under Section 12 of the Act, it has been submitted by the learned counsel of the petitioner that this Court in CM (M) 211/2022 vide order dated 22nd July, 2022 had permitted the petitioner-wife to make the pleas regarding the change in the circumstances before the learned Principal Judge, Family Court and such changed circumstances are required to be taken on record for proper adjudication of the matter in dispute.



6. Ms. Geeta Luthra, learned senior counsel for the respondent-husband has submitted that the present application has been moved only to delay the disposal of the application under Section 12 of the Act. Learned senior counsel submitted that in fact, the petitioner-wife has been challenging almost every order of the learned Trial Court before this Court. It has been submitted that the petitioner has even frustrated several visitation rights granted vide order dated 3rd June, 2022 in CM (M) 47/2022 and CM (M) 211/2022. It has been submitted that from 3rd June, 2022 till date, the petitioner-wife has moved the following petition/applications:

CM(M) 47/2022,

CM (M) 211/2022,

CM APPL. 30072/2022 in CM (M) 211/2022,

CM (M) 836/2022 and

CM (M) 924/2022.

7. Learned senior counsel has also very fairly submitted that the respondent-husband has moved CM (APPL) 32198/2022 in CM (M) 211/2022 and contempt petition bearing CONT.CAS (c) 803/2022.

8. Learned senior counsel has further submitted that all the petitioner-wife has been filing various petitions and applications to frustrate the visitation rights granted by this Court vide order dated 3rd June, 2022 despite specific directions that these visitation and interim custody rights shall continue till the disposal of the application under Section 12 of the Act.



9. Learned senior counsel has also submitted that the petitioner-wife has invoked the jurisdiction of this Court under Article 227 of the Constitution of India which is gross abuse of the process of law.
10. In rebuttal, Mr. Prashant Mendiratta, learned counsel for the petitioner-wife has submitted that the fact that visitation could not be fructified, cannot solely be attributed to the petitioner-wife. It has been submitted that on some occasions, even the respondent-husband was not willing to conduct the visitation. It has been submitted that now, the visitations are taking place and the petitioner-wife shall dutifully obey the orders of this Court till the application under Section 12 of the Act is decided by the learned Principal Judge, Family Court.
11. The custody petitions for the children are very sensitive in nature. While entertaining these petitions, the welfare and interest of the children are of paramount importance. Unfortunately, when the relationship between the husband and wife gets disturbed generally is the fight over the custody of the children. The Court while deciding such petitions, sometimes has to go beyond the procedure so as to ensure that interests of the child is not forgotten in the complexities of the law. This is quite unfortunate, that in such litigations, the allegations and counter allegations which are made are really disturbing. The expediency in conducting such proceedings in the foremost necessary.
12. In the present case as has been narrated above, while the application under Section 12 of the Act is yet to be decided by the learned Principal Judge, Family Court, the petitioner-wife has approached this Court around four times and the respondent-husband has also approached this



Court once by filing an application and once more in contempt petition alleging non-compliance of the orders of this Court.

13. Be that as it may be, it seems that both the parties intend to make this Court work as a Headmaster of the Trial Court. To the mind of this Court, this is not at all permissible. The Trial Courts have to be given functional independence to discharge their judicial obligations. This Court cannot interfere with the orders of the Trial Court on everyday basis. If the petitions/applications are filed so frequently, the learned Principal Judge, Family Court may also get apprehensive which will ultimately be detrimental to the interest of the child.
14. As far as jurisdiction under Article 227 of the Constitution of India is concerned, it can be summarized as laid down in the latest judgment **“Garment Craft v. Prakash Chandra Goel”** (2022) 4 SCC 181. It was held as under:

“15. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.



16. Explaining the scope of jurisdiction under Article 227, this Court in “**Estralla Rubber v. Dass Estate (P) Ltd**”.² has observed:-

“6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.”

15. Thus, the bare perusal of the above judgment makes it clear that the Court can interfere with the impugned order under Article 227 of the Constitution of India only if there is gross perversity, illegality or the learned Trial Court has done something which is totally beyond the jurisdiction vested in it. The routine orders made on procedures cannot be interfered with by this Court. This Court hopes and believes that both the learned counsel appearing on behalf of the parties, being the senior



officers of the Court shall assist the learned Principal Judge, Family Court in deciding the guardianship petition pending before it. This Court is also conscious of the fact that it cannot restrain the parties from filing the petitions however. However as a Court vested with supervisory jurisdiction, it expects that the trial courts be allowed to function smoothly and without any fear or apprehension.

16. Coming to the facts of the present case, I do not find any ground to interfere with the order passed by the learned Principal Judge, Family Court. However, in order to strike the balance between the parties and to ensure their interest, both the parties may argue the changed circumstances, if any, before the learned Principal Judge, Family Court and the learned Principal Judge, Family Court shall decide the guardianship petition wholesome in accordance with the law.
17. In order to avoid any further controversy, the learned Principal Judge, Family Court may also direct both the parties to file their written submissions before it.
18. With these observations, the present petition stands disposed of.

DINESH KUMAR SHARMA, J

SEPTEMBER 7, 2022

Pallavi