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

+ CM(M) 1009/2022, CM APPL. 41867/2022 & CM APPL.
41868/2022

ASHISH DUBEY

..... Petitioner

Through: Mr.Tanmay Mehta and Ms.Vandana
Kejriwal, advocate (through VC)

versus

SARA CARRIERE DUBEY

..... Respondent

Through: Ms.Priya Hingorani, Sr.Adv. (through
VC) with Mr.Himanshu Yadav and
Mr.Anirudh Jamwal, advocates

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Date of Decision: 23.09.2022

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

CM APPL. 41868/2022 (exemption)

Exemption is allowed subject to all just exceptions.

Application stands disposed of.

CM(M) 1009/2022 & CM APPL. 41867/2022 (stay)

1. Present petition has been filed challenging the order dated 17.09.2022 passed by the learned Principal Judge, Family Court, South District,



Saket, New Delhi whereby the learned Principal Judge, Family Court has passed the following directions:

- (i) *Petitioner is allowed to take the child Nathan Karttikey Dubey to United Kingdom for a period of seven days in the month of September/October, 2022.*
 - (ii) *Petitioner shall bear all the traveling and lodging expenses of respondent to United Kingdom for the aforesaid period.*
 - (iii) *If the respondent wants to take the elder child namely Ananya Dubey along with her to UK, petitioner shall also bear her traveling and lodging expenses without the flight risk.*
 - (iv) *Both the parties shall cooperate and extend all the facilities to enable the child to take admission in Harrow School. The parties shall cooperate with each other in releasing the passports of the children which are deposited in Hon'ble High court Of Delhi and after return from United Kingdom, the said passports would be deposited in Hon'ble High court Delhi with seven working days of return.*
 - (v) *The children, who are residing with the petitioner, shall continue to do so during their hotel stay in United Kingdom. However, this shall not preclude the petitioner from spending time and interacting with them. Petitioner shall be entitled to visit and take out children for excursion of any two days for three hours only during that period.*
 - (vi) *If parents of respondent choose to visit and meet the children during their stay in United Kingdom, they may do so at their own expenses.*
2. The petitioner has challenged the impugned order predominantly on the following grounds:
- (i) The relation between husband and wife is very acrimonious and if they visit UK together for the purpose of admission of the child, the



possibility is that the purpose of visit will stand frustrated. Learned counsel submits that there is a possibility that there may fight between the two.

- (ii) The elder daughter namely Ananya has to appear for an examination in the British Council from 03.10.2022 to 10.10.2022 and if she visits UK from 25.09.2022 to 02.10.2022, she may not be in the right frame of mind to appear for the examination. The visit will also hamper her preparation of the exam. Learned counsel also submits that during this period, Ananya will also miss her school.
 - (iii) The petitioner had earlier undertaken to bear the expenses of the UK visit. However, now since the monthly maintenance at Rs.1,80,000/- for the wife and children is being paid, therefore, petitioner may not be burdened with the cost of traveling/lodging/boarding expenses of the wife.
3. Learned counsel for the petitioner has submitted that the directions of the learned trial court in the impugned order are also liable to be modified to the extent of permitting overnight stay with the petitioner-father in view of the order dated 17.09.2022 whereby the overnight visitation rights have been granted in favour of the petitioner. Learned counsel for the petitioner has further submitted that in order to have the meeting points, he proposes that some arrangements for the UK visit may be done in the following manner:
- (i) That the mother may take the child for the purpose of admission and the father may remain here with the daughter so that she does not miss the school and also may prepare for the examination



without prejudice to the contention of the petitioner regarding flight risk.

(ii) That the father shall accompany the child for the first stage in admission process. During this time, the mother may remain with the daughter, so that she does not miss the school and also may prepare for the examination.

(iii) If both the parents are to visit with the children as directed by the learned trial court, the petitioner-father may be given at least three days overnight stay with the children in UK during their stay from the period 25.09.2022 to 02.10.2022.

(iv) The expenses made on the traveling/lodging/boarding expenses of the mother may be adjusted in the maintenance to be paid by the petitioner to the respondent.

4. Ms.Priya Hingorani, learned senior counsel for the respondent has vehemently opposed the same on the following grounds:

(i) That the petitioner-father may not be allowed to take the son namely Nathan Karttikey to the United Kingdom as he cannot be allowed to have the exclusive custody of the child for seven days.

(ii) The respondent-mother has to travel along with son Nathan Karttikey Dubey for the purpose of admission in the school.

(iii) The respondent-mother cannot leave daughter Ananya either alone in India or in the custody of petitioner-father.

(iv) The maintenance being paid by the petitioner-father to the respondent-mother is not even sufficient to meet the day-to-day expenses and therefore there is no question of adjusting the expenses made on travelling/lodging/boarding from the maintenance.



(v) The apprehension of the petitioner-husband that there will be fight between the husband and wife is misplaced. Learned senior counsel submits that respondent-mother is extremely conscious of the career of the children and there is no question of creating any situation which may hamper the career of the children.

5. I have heard Mr.Tanmay Mehta, learned counsel for the petitioner and Ms.Priya Hingorani, learned senior counsel for the respondent in detail.
6. It is quite painful to note that the parties who are well-placed in their lives and perusal of the various orders, to which both the learned counsel have taken through this court, indicate that both are quite attached to their children. Learned counsel for the petitioner has also taken through an observation of learned Principal Judge, Family court to the effect that the children are also attached to the petitioner-father and are not averse to have visitation rights with them occasionally. The God has been so kind to the children that their parents are trying to get them admitted in the best school of the world. However, the bitterness between the two is creating these troubles.
7. Before proceeding further, it is also pertinent to refer to the order passed by this court in CM(M) 350/2022. This order was passed on the earlier occasion when the same child had to travel to UK for the purpose of admission. At that time, better sense prevailed upon the parties and the following consent order was passed :

“The present petition has been preferred against the order of 23 March 2022 passed by the Principal Judge, Family Court, Saket. In terms of the impugned order the Family Judge has essentially disposed of applications which were made for the purposes of putting in place an interim arrangement for the impending travel



of the minor son for a second stage assessment process at Eton College, United Kingdom. The issue essentially relates to the proposed travel of the family and the minor children to the United Kingdom where the minor son is to take the second stage assessment process examination at Eton College. The petitioner here had additionally sought permission and prayed for the minor children being permitted to accompany her and travel with her to France as an extension of the proposed visit to the United Kingdom. However, thereafter learned counsels for respective parties have agreed to the following interim arrangements being put in place:-

- a) The petitioner shall extend all cooperation and facilitate the renewal of the passports of the two minor children. The passport shall continue to bear and record the address as already existing. The petitioner shall also cooperate and extend all assistance and facilities for the purposes of applying for Visa and other travel related formalities that may be required to be completed. Upon receipt of the passports, the same shall be duly handed over to the respondent who shall retain the same in his custody till the return of the family to India.*
- b) The stay in the United Kingdom shall extend for a period of 10 days commencing from 01 May 2022 to 10 May 2022.*
- c) Immediately thereafter, the passports shall be placed in deposit with the Registrar General of this Court subject to further orders being passed on this petition.*
- d) The respondent has additionally agreed to bear the expenses of the petitioner accompanying the family to the United Kingdom as also that of her parents if they choose to visit and meet the grandchildren while and during their stay in the United Kingdom. In terms of this, the respondent shall be obliged to meet reasonable expenditure that may be incurred on account of the purchase of air tickets of the petitioner, the hotel stay of all concerned and other miscellaneous expenditure that may be incurred towards local travel, sightseeing and food.*



- e) *The petitioner shall intimate a proposed and tentative itinerary of travel of her parents well in advance to enable the respondent to make appropriate arrangements.*
- f) *Both parties agree to cooperate and extend all facilities to enable the minor son to take the proposed second stage assessment process which is slated to be held on 03 and 04 May 2022.*
- g) *The children who have been residing with the petitioner shall continue to do so during the period of their stay in the United Kingdom. However, this shall not preclude the respondent from spending time and interacting with them. The parties have further agreed that the respondent shall be entitled to visit and take out the children for excursions on 7 and 8 May 2022 for a period of 3 hours from 10 A.M. to 1 P.M.*

The Court further expresses the hope that the petitioner as well as the respondent, being parents shall endeavour that the children are duly looked after and not inconvenienced in any manner.

List on 18.07.2022.”

8. At that time the parties could not visit UK in connection of the admission for administrative reasons including non-issuance of visa. However, now both the parties are not agreeable for any consent order for the reasons as mentioned above. It is also pertinent to mention that this court while exercising the revisional jurisdiction has a very limited sphere to travel. The court can only interfere with the order of the trial court if there is some illegality or perversity in the order. The court is conscious of the fact that while entertaining the custody petitions, the court has to go beyond technicalities and has to see the paramount welfare of the children. In such a dispute where the relationship between the parties is so bitter, it is almost impossible to have any



order which may satisfy both the parents. Thus, the court is required to see what is the best interest of the children. This court considers that taking into account the welfare of the children, the petition can be dispose with the following directions:

- (i) The petitioner-father is allowed to take the child Nathan Karttikey Dubey to United Kingdom for seven days from 25.09.2022 to 02.10.2022.
- (ii) The petitioner shall bear all the traveling expenses of the respondent-mother to the United Kingdom for the aforesaid period. However, these expenses shall be adjusted towards the maintenance which is to be paid to the respondent-mother. It is pertinent to mention that this adjustment will be towards the arrears to be paid by the petitioner-father. The parties are at extreme variance to the bearing of cost towards lodging expenses of respondent-mother. Now, since the journey is to commence from 25th September, 2022 i.e. day after tomorrow, in order to avoid any last minute hitch, the petitioner-father may bear the hotel bill of the respondent-mother. However, the issue that whether it is to be adjusted towards maintenance or not shall be determined at the time of final disposal of the petition by learned trial court. However, this shall not be taken as a precedent.
- (iii) The petitioner-father shall intimate about the hotel bookings and ticket reservations of the respondent-mother positively by tomorrow.
- (iv) The daughter Ananya Dubey shall also visit along with the parent to the United Kingdom. The petitioner-father himself has



volunteered to bear all the traveling/lodging/boarding expenses of daughter Ananya.

- (v) Both the parties shall cooperate and extend all the facilities to enable the child Nathan Karttikey Dubey to undergo admission process in Harrow School and they shall cooperate with each other in release of the passports of the children which are deposited in this court.
- (vi) The petitioner shall retain the passport during the travel and stay in U.K. and shall deposit the same with the registry of this court after their return. The petitioner-father shall also have two overnight visitation with children during the visit to the United Kingdom on 28th and 29th September, 2022. However the petitioner-father shall ensure that the respondent-mother is accommodated in hotel/guesthouse/inn within the 1 km. radius of the residence place of the petitioner-father and particularly during the two overnight visitations.
- (vii) Out of the remaining five days, the petitioner-father shall have unsupervised visitation rights of five hours (10 a.m. to 4 p.m.) including traveling time.
- (viii) During the overnight stay and the visitation hours, the children shall remain telephonically available to the respondent-mother.
- (ix) The Court further expresses the hope that the petitioner as well as the respondent, being parents shall endeavour that the children are duly looked after and not inconvenienced in any manner.



9. With the above observations, the writ petition along with the pending application stands disposed of.
10. Copy of the order be given *dasti* under signatures of the Court Master.

DINESH KUMAR SHARMA, J

SEPTEMBER 23, 2022

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