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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **CM(M) 1017/2022, CM APPL. 42090/2022****MANOJ KUMAR GUPTA**

..... Petitioner

Through: Mr.Vinit Trehan and Ms. Bhavya Jain, Advs. along with petitioner in person.

versus

NIBHA KUMARI & ANR.

..... Respondents

Through: Mr. Sanjeev Arora, Mr. Bipin Kumar and Mr.Suresh Sharma, Advs.
Respondent (through VC)

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*Date of Decision: 23rd 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. 42089/2022 (exemption)**

Exemption is allowed subject to all just exceptions.

CM(M) 1017/2022, CM APPL. 42090/2022

1. The present petition has been filed challenging the order dated 19th September, 2022 whereby the learned Judge, Family Court in HMA No. 415/2021 titled as *Manoj Kumar Gupta v. Niba Kumari* while disposing of the application moved by the respondent-mother dated



18th August, 2022 directed the Sanskriti School to issue the transfer certificate/School Leaving Certificate of Ms. “MG” despite objection of the petitioner-husband.

2. Learned counsel for the petitioner submits that the learned Family Court, Judge, New Delhi has passed the order without taking into consideration the fact that a guardianship petition filed by the petitioner-father bearing G. P. No.37/2022 is pending consideration before learned Judge, Family Court, East District, Karkardoom Court.
3. The grievances of the learned counsel for the petitioner is that in fact, learned Judge, Family Court, New Delhi by passing the impugned order has made the guardianship petition filed by the petitioner-father infructuous as the custody of the child stands transferred to the respondent-mother.
4. Briefly, the facts of the case are that the parties to the present petition were married in the year 2010. Thereafter, a girl child was born on 12th December, 2011. Subsequently, the twins were born on 28th July, 2019. The elder child Ms. “MG” was admitted in the Sanskriti School. The father is a senior Central Government employee and posted in Delhi. The mother has also a senior officer in the bank. Since, the mother is now been transferred to Dehradun, the respondent-mother moved an application in the petition under Section 9 of HMA No. 415/2021 filed by the petitioner-father for issuance of Transfer Certificate/School Leaving Certificate from Sanskriti School.
5. In view of the ‘No Objection’ made by the petitioner-father for the admission of the child in Dehradun, the child has provisionally been admitted in the Doon International School.



6. The respondent's case is that Transfer Certificate/School Leaving Certificate is required to be submitted in the Doon International School before 30th September, 2022. In case, the Transfer Certificate/School Leaving Certificate is not submitted, the admission of the child would be cancelled.
7. The grievances of the petitioner is that the impugned order of the learned Trial Court Judge is basically pre-empting any order passed in the guardianship petition bearing G. P. No. 37/2022. It has been submitted that the learned Judge, Family Court in HMA No. 415/2021 could not have passed any order regarding the custody of the child till the proper order is passed in the guardianship petition filed by the petitioner-father.
8. Presently, guardianship petition bearing G. P. No. 37/2022 and HMA No. 415/2021 are pending in two different courts. This Court considers that it would be expedient in the interest of justice if both the petitions are tried by the same Court. Thus, this Court exercising its power under Section 24 of HMA Act, 1955 directs withdrawal of the petition G, P No. 37/2022 titled as ***Manoj Kumar Gupta v. Niba Kumari*** from the Court of learned Judge, Family Court, East District, Kakardooma, Delhi and assigns it to the learned Judge, Family Court, New Delhi where HMA No. 415/2021 is pending.
9. The transferee Court is directed to send the entire record of guardianship petition bearing G. P. No. 37/2022 to the transferor Court.
10. Consequent upon the transfer of guardianship petition bearing G. P. No. 37/2022, the learned Judge, Family Court is directed to dispose of



the interim custody application of the petitioner-father preferably within the period of two months. Till that time, the principal Doon International School is requested not to insist for the Transfer Certificate/School Leaving Certificate and is also requested to permit the child to attend the classes on the basis of provisional admission till the interim custody application of the child i.e. Ms. “MG” is decided.

11. The issuance of the Transfer Certificate/School Leaving Certificate by the Sanskriti School shall be subject to the orders passed by the learned Judge, Family, Court, New Delhi in guardianship petition bearing G. P. No. 37/2022.
12. Copy of this order be sent to the Principal, Sanskriti School as well as the Principal, Doon International School with the request to accommodate this on administrative basis for the purpose of adjudication of question of the custody of the child. It is also to ensure that there should not be any adverse effect on the education of the child in view of the custody battle between the parents.
13. Copy of this order be sent to the learned Principal Judge, Family Court, East District, Karkardooma Court Delhi and the learned Principal Judge, Family Court, New Delhi.
14. With these observations, the present petition along with pending application stands disposed of.

DINESH KUMAR SHARMA, J

SEPTEMBER 23, 2022/Pallavi