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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 % **Date of decision: 12th September, 2023**
 + **MAT.APP.(F.C.) 41/2022 & CM APPL. 18145/2022**
MEENU GUPTA Appellant
 Through: Mr.Sameer Dewan, Advocate through
 VC.
 versus

SANDEEP KUMAR JAIN Respondent
 Through: Mr.Deepak Kataria, Advocate along
 with respondent in person.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. **The present Appeal under Section 19 of the Family Court Act, 1984** has been filed against the Order dated 21.03.2022 whereby the respondent-father has been granted visitation rights under Section 151 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*).
2. The Guardianship Petition under Sections 9, 10, 12 and 25 of the Guardians and Wards Act, 1890 has been filed on behalf of Sandeep Kumar Jain, respondent-father seeking permanent custody of the child.
3. **The facts in brief are** that the appellant and the respondent got married on 04.06.2009 according to Hindu rites and customs and one minor son Master Aarav was born. The parties had differences and they separated on 18.08.2016 since when the minor is in exclusive custody of the appellant-mother. The respondent-father had filed an application under Section 151 CPC seeking visitation rights which was disposed of vide impugned Order dated 21.03.2022 in the following terms:-

“In view of the above and keeping the interest and welfare



of the child in mind, petitioner is granted weekend visitation. In the course of hearing, learned counsel for respondent informed that the child has holiday on every 2nd and 4th Saturday of the month.

It is hereby directed that petitioner shall pick up the minor child Aarav Jain from the residence of respondent on every 2nd and 4th Saturday of each English Calendar month at 11:00 AM and he shall drop him back at the same place on next Sunday at 5.00 PM.

The application of the petitioner is hereby disposed off accordingly”.

4. Aggrieved by the impugned Order, the appellant-mother has sought the impugned order to be set aside on the ground that the child has been in her exclusive custody since 2016 i.e. for the last 6 years and cannot be separated from her for even a couple of hours. Three visitations had taken place pursuant to the Order of the order of the learned Court but they all ended in hostility which has adversely impacted the child. It is asserted that if the visitation rights are permitted to be continued, it would further impact the child.

5. This Court vide order dated 13.04.2022 noted the submissions of the learned counsel for the respondent-father that the impugned Order was passed by the learned Judge, Family Court only after a gradual process of meetings between the father and the child and after the Order was passed, when the respondent-father went to take custody of the child, the appellant-mother and all her family members & neighbours surrounded the child in the *verandah* resulting in acute pressure on the minor child. Considering the scenario, the impugned Order was modified by this Court on 13.04.2022 in the following terms:-

“9. In the meantime, respondent is permitted to meet the child Master Aarav Jain for two hours on every 1st, 3rd and 5th Saturday



of every month from 3.00 PM to 5.00 PM in the room of the Counsellor of the Family Court, West District, Tis Hazari Courts”.

6. After hearing the counsel for both the parties and also considering that the child is of tender and impressionable age of 7 years, it is considered in the interest and welfare of the child, if the interaction between the father and the child are increased gradually and after a bonding is established between them, the overnight custody may be considered.
7. Therefore, for the interim, the Order dated 13.04.2022 is confirmed and the arrangement shall continue for next 3 months. The meetings shall be monitored by the Counsellor. It is further directed that the Counsellor shall prepare a report and submit the same before the learned Judge, Family Courts. The Counsellor shall also ensure that the child does not have a mobile phone during the meetings to ensure that there are no unwarranted distractions. In case, the said date falls on a holiday, the respondent-father shall be compensated on the next working Saturday or any other day subject to mutual convenience of the parties and the child. The parties shall at liberty to seek modification/enhancement of the visitation rights by moving an appropriate application after three months before the learned Judge, Family Courts.
8. The Appeal and the pending application are hereby disposed of in the above terms.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 12, 2023
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