



2023 : DHC : 7754



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

Date of decision: 19.10.2023

+ **CM(M) 715/2023**

DR MRINAL PRAKASH BARUA Petitioner

Through: Mr. Atanu Saikia, Adv.

versus

DR ANITA VERMA Respondent

Through: Ms.Sakshi Popli, Ms.Divya
Prakash Pandey & Mr.Shrey
Kapoor, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed by the petitioner challenging the order dated 03.09.2022 (hereinafter referred to as the 'Impugned Order') passed by the learned Principal Judge, Family Court, (South-District), Saket Courts, New Delhi in HMA No. 1375/2021, titled as ***Dr. Anita Verma v. Dr. Mrinal Prakash Barua***, allowing the application filed by the respondent herein under Order XXXIX Rule 1 & 2 of the Code of Civil Procedure, 1908 (in short 'CPC') and restraining the father/petitioner herein from coming within the radius of 500 meters from the respondent/mother and the minor child of the parties herein.



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2. The learned counsel for the petitioner submits that the above order has been passed in violation of the rights of the child. He submits that the child cannot be kept away from the love and affection of the father and, therefore, the Impugned Order violates not only the rights of the petitioner but also of the child. He submits that the same would also be a violation of Article 9 of the UN Convention on Rights for the Child.

3. On the other hand, the learned counsel for the respondent submits that the petitioner, instead of seeking appropriate legal remedies for the custody or visitation rights of the child, creates unpleasant scenes at the residence and other places of visit of the respondent. He submits that because of this conduct, the respondent was constrained to move from AIIMS Rishikesh to Delhi. He submits that the petitioner had earlier filed proceedings before the Additional Chief Judicial Magistrate, Rishikesh, District-Dehradun, Uttarakhand, which came to be dismissed vide order dated 12.07.2022. The Criminal Revision filed against that order, being Criminal Revision No. 483/2022, titled as ***Dr.Mrinal Prakash Barua v. State of Uttarakhand & Ors.***, was dismissed by the learned Single Judge of the High Court of Uttarakhand vide judgment and order dated 27.08.2022, *inter alia* observing that the petitioner herein has never filed a petition seeking custody of the child. The petitioner feeling aggrieved of the said order, challenged the same by way of a Special Appeal no. 358/2022, titled as ***Dr.Mrinal Prakash Barua v. State of Uttarakhand & Ors.***,



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which was also dismissed by the judgment and order dated 19.12.2022, leaving it open to the petitioner herein to avail of his remedies under the relevant laws before the Family Court. The Petitioner challenged the above order by way of Special Leave Petition before the Supreme Court, being SLP(C) Diary No. 11623/2023, titled as ***Dr.Mrinal Prakash Barua v. The State of Uttarakhand & Ors..*** The same was also dismissed by the Supreme Court vide order dated 08.05.2023.

4. He submits that in spite of the above orders, the petitioner has still not filed an application seeking custody or visitation of the child, instead, his acts are intended to merely harass the respondent. He submits that, therefore, the respondent was forced to move an application under Order XXXIX Rule 1 and 2 of the CPC before the learned Family Court, seeking restraint on the petitioner from approaching the respondent or the child. He submits that by the Impugned Order, the learned Family Court had also reserved a right with the petitioner to file an appropriate application in case he desires custody or a visitation right of the child. Such an application has still not been filed.

5. I have considered the submissions made by the learned counsels for the parties.

6. From the above narration of facts, it is evident that the petitioner has, in spite of liberty granted, not availed of his statutory and legal rights to claim custody or visitation of the child. Instead, it is the allegation of the respondent that the petitioner creates a ruckus near her house, which forced her to



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move an application seeking to restrain the petitioner from approaching her. The Impugned Order, though records that the same shall operate till the relationship between the parties improves, at the same time, leaves it open to the petitioner to file an appropriate application seeking custody or the visitation rights over the child. The impugned observation of the learned Family Court is, therefore, to be read in harmony with the liberty which has been granted. It shall be subject to any order that may be passed on an appropriate application being filed by the petitioner seeking custody or the visitation rights of the child. As noted hereinabove, the petitioner has not yet filed any application seeking custody or visitation rights over the child.

7. I, therefore, find no merit in the present petition, barring clarifying that in case the petitioner moves any application seeking custody/visitation right over the child, the same shall be considered by the appropriate Court remaining uninfluenced by any observation made in the Impugned Order.

8. There shall be no order as to costs.

NAVIN CHAWLA, J

OCTOBER 19, 2023/rv