



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 % **Reserved on: 12th July, 2023**
Pronounced on: 01st August, 2023

+ **MAT.APP.(F.C.) 148/2023**
&
CM APPLs. 27552/2023, 27553/2023

SARA CARRIERE DUBEY Appellant
 Through: Ms. Priya Hingorani Sr. Advocate
 with Mr. Himanshu Yadav & Mr.
 Naseem Ahmed, Advocates.
 versus

ASHISH DUBEY Respondent
 Through: Mr. Tanmaya Mehta & Ms.
 Vandana Kejriwal, Advocates.

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

J U D G M E N T

NEENA BANSAL KRISHNA, J

1. The present appeal has been filed by the Appellant mother against the order dated 04.05.2023 by the Learned Judge, Family Court (South) Saket, wherein the court in light of the earlier joint decision of both the parties to send the children abroad for further studies, denied to restrain the admission of the two children in separate schools in UK and declined the request of the appellant to get both the children admitted in the same school. Further, the prayer of the appellant mother for her relocation in the vicinity of schools of the children in UK, was also disallowed.
2. The factual matrix is that the petitioner/father had filed a



Guardianship Petition under Section 7&10 r/w Section 25 of the Guardian and Wards Act, 1890 seeking custody of the children. During the pendency of the petition, the appellant had filed an application seeking directions for admission of the children in the schools in UK. On these applications, vide order dated 29.01.2022 and 20.12.2022, the court permitted the father to proceed with the procedural formalities including deposit of fee and relevant documents for securing admission in the schools in UK. The appellant herein was directed to cooperate with the petitioner in completing all the procedural formalities. Since she had an apprehension that the children may suffer psychological trauma of separation and may not be willing to undertake their further studies in UK, the court observed that the final decision with regard to sending the children to boarding school(s) in UK shall be taken only after interacting with the children.

3. The respondent filed the application under Section 151 CPC r/w Section 12 of the Guardian and Wards Act, 1890 dated 18.01.2023 in regard to the prospective admission of the children in the school in UK/British School in Delhi and made the prayers as under:-

“a) direct the Petitioner father to take necessary steps to secure the admission of the minor children at ‘The British School’, Chanakyapuri, New Delhi;

b) in the alternative, if this Hon’ble Court deems fit that the minor children’s education be completed from the schools in U.K., then the Petitioner father shall be directed to:

i) apply and make efforts to secure the prospective admission of the minor children in the same prestigious day boarding schools in U.K.; and



- ii) make arrangements to ensure the relocation of the minor children and the Respondent mother in the vicinity of the said common day boarding school in U.K. and to bear all their living expenses upon such relocation.*
- c) restrain the Petitioner father from applying/ admitting the minor children to different schools in U.K.;*
- d) pass such other/further Order(s) in the interest of justice as this Hon'ble Court deem fit and proper."*

4. The learned Judge, Family Court in terms of the earlier orders, interacted with the two children as reflected in the impugned order and found that the children were keen to study abroad. The application of the appellant mother was disposed of vide the impugned order dated 04.05.2023 wherein certain directions were given which are as under:-

"(i) The children shall go to UK for further studies- son Master Nathan Kartikey Dubey to Loughborough Grammer School, UK in September, 2023 and daughter Ms. Ananya Dubey to Badminton School UK in September, 2023.

(ii) The respondent shall fully cooperate in the admission process- in applying for Visa, in filing up the school forms/documents etc.

(iii) The entire expenses of education of both the children including their boarding, lodging etc to be borne by the petitioner/father.

(iv) The petitioner/father to bear the expenses of visit of the respondent to UK once in a year to meet children. That shall include the Return Flight Ticket from Delhi to UK and £1500 (pound) towards boarding and lodging during the stay in UK.

(v) During school vacations, the children shall come to India and shall stay with the respondent/mother. The father shall have visitation rights as per the arrangement made by the court vide previous orders.



(vi)The petitioner shall bear the expenses of Return Flight Tickets of children during vacations.”

5. The request of the mother to either get children admitted in British School, Chanakyapuri or to ensure that the admission of both the children to be in same school was declined. The request of the mother for relocation in UK in the vicinity of the schools of the children was also circumscribed by directing the father to bear her expenses for one visit in a year to the United Kingdom to meet the children.

6. Aggrieved by the said order, the present application has been filed.

7. **Submissions heard.**

8. As has been observed by the Learned Judge Family Court, the decision to send the children abroad for studies was initially a joint decision of both the parents as they wanted bright future for their children and had the financial capacity to bear the expenditure. However, differences between the parents emerged and the litigation thereafter followed that has got adversely reflected in the decision taken jointly by the parents.

9. Before delving further in the rival contentions of the petitioner it would be pertinent to refer to the observations of the Supreme Court in the case of Sheoli Hati vs. Somnath Das (2019) 7 SCC 490, wherein the Apex Court while reiterating a well settled principle that in the decisions regarding the custody or other issues pertaining to the child, welfare is the paramount consideration. The Apex Court further observed in the context of sending the children to boarding school for education that:-

“when a child has to go in the environment where there is marital discord between the parents affecting the peace of



all including the parent and the children, child suffers physical and mental distress. The ill consequences of the discord between mother and father affect the normal upbringing of the child and is a negative factor on child's personality and upbringing."

10. It was further observed that when the atmosphere in the house vitiated and rendered surcharged with tension as a result of bitter squabbles between husband and wife, causes misery and unhappiness to a child, who has to live in constant psychological strain in such a broken home in view of the bitter relationship between the parents for each of whom she has great affection, the healthy and normal growth of the child is bound to be seriously affected. It is in the interest and welfare of the child in such a case that the child is necessarily removed from such unhealthy environment of a broken home to a place where the child can live a normal healthy life and will have a good opportunity of proper education and healthy growth.

11. The Apex Court in Vivek Singh vs. Romani Singh (2017) 3 SCC 231 discussed the term '*Parental Alienation Syndrome*'. It was observed that '*The Parental Alienation Syndrome*' has at least two psychological destructive effects: -

- (i) **First**, it puts the child squarely in the middle of a contest of loyalty, a contest which cannot possibly be won. The child is asked to choose who is the preferred parent. No matter whatever is the choice, the child is very likely to end up feeling painfully guilty and confused. This is because in the overwhelming majority of cases, what the child wants and needs is to continue a relationship with each parent, as independent as possible from their own conflicts.
- (ii) **Second**, The child is required to make a shift in assessing reality. One parent is presented as being totally to



blame for all problems, and as someone who is devoid of any positive characteristics. Both of these assertions represent one parent's distortions of reality.

12. In this backdrop we may consider the contentions of the parties. The appellant mother while not seriously contesting that the children may be sent abroad, took a peculiar stand that both the children must be sent to the same school. However, it has been rightly agitated that getting admission in the schools abroad is not in the hands of the parents but is dependent upon their performance in the Assessment test. Both the children have studied hard and with their efforts and hard work, have secured admission in their respective schools. It is not always possible to secure admission in the same school, but that cannot be the reason to deny them the opportunity to study abroad or to defer their admissions till they are able to secure admission in the same school.

13. We had also interacted with the children in the chamber, who had expressed in clear and unequivocal terms, that they both are keen to study abroad and it is with great effort and hard work that they have been able to get admission in their respective schools. Both the children expressed their intelligible decision of studying abroad. So being the case, the apprehension of the appellant mother that they may suffer from psychological trauma, seems to be borne out of her own fear and anxiety which need not be transmitted to the children or be made an obstacle in the future educational path of the children.

14. The learned Judge, Family Court has considered the overall circumstances and also the wishes of the children to hold that having secured admission in UK, it cannot be stultified by insistence on getting



them admitted in British School at Chanakyapuri, Delhi or in the same school abroad. There is no infirmity in the children being permitted to join the school in United Kingdom.

15. The appellant had vehemently argued that the children are of tender age and cannot be left alone in a foreign country without there being either parent present to take care of them. She had sought that it is in the interest of the children that she may relocate herself in the vicinity of the schools in UK so as to be able to take care of them. She has claimed that the cost of her relocation/maintenance must be borne by the respondent father.

16. The anxiety of a mother for the well being of the children can never be over emphasized. The concerns may be genuine, but at the same time, it cannot be ignored and overlooked that she herself had initially taken a decision jointly with the respondent to let the children go abroad for their studies. It can also not be ignored that the children's welfare would not be compromised in any manner by sending them abroad away from the parents especially when the children have worked so hard for two years to secure the admissions and are keen to study in UK. Their own interest and hard work cannot be put to a naught because of the anxieties of the mother which may be well found as a mother, but are without any cogent basis when considered in the context of the best interest of the children.

17. Further, there is nothing which is preventing the mother from visiting UK as and when she wants or to take up residence. It is her own wish and desire to be close to the children and she is free to make her arrangements instead of claiming that her expenses for relocation must be borne by the Respondent. This Guardianship Petition may not be an



appropriate forum for the appellant to agitate her interest in relocation to UK and the consequent expenses from the husband, for which she may make an appropriate application before the appropriate forum. Her desire to relocate in UK cannot be considered as a concomitant to welfare of the children. Learned Judge, Family Court has already made provision for her to visit UK once a year to be with the children and any further claim of the appellant to seek relocation in UK has been rightly declined.

18. There is no merit in the present appeal which is hereby dismissed.

19. The pending applications also stand disposed of.

**(NEENA BANSAL KRISHNA)
JUDGE**

**(SURESH KUMAR KAIT)
JUDGE**

AUGUST 01, 2023
AT