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

Date of Decision: 29.08.2023

+ **CM(M) 508/2022**

PANKAJ JAIN

..... Petitioner

Through: Mr.Prashant Mendiratta,
Mr.Rishabh Bansal, Ms.Himanshi
Malhotra, Mr.Sanchit Saini,
Ms.Somyashree, Ms.Aditi
Chaudhary, Ms.Tanya Bhutani,
Advs.

versus

PARUL JAIN

..... Respondent

Through: Mr.Ramakant Sharma, Mr.Prateek
Avasthi, Mr.Sajal Arora, Ms.Purva
Dua, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed challenging the orders dated 27.04.2022 and 21.05.2022 passed by the learned Additional Principal Judge, Family Courts, West District, Tis Hazari Courts, Delhi (hereinafter referred to as the 'Family Court') in Guardianship Petition bearing GP No.54/2018 titled *Sh.Pankaj Jain v. Smt. Parul Jain*.
2. By the order dated 27.04.2022, the learned Family Court allowed the petitioner herein to file additional evidence by way of affidavit, however, at the same time, directing expunction of paragraphs 10,



- 20, 22, 23, 24, 62, and the first line of paragraph 63 thereof.
3. By the subsequent impugned order dated 21.05.2022, the learned Family Court dismissed the application of the petitioner seeking review of the order dated 27.04.2022.
 4. The learned counsel for the petitioner, placing reliance on the judgment of the Supreme Court in ***Nil Ratan Kundu And Another v. Abhijit Kundu***, (2008) 9 SCC 413, submits that in a dispute relating to the custody of the minor, the Court has to *inter alia* determine the paramount welfare and well-being of the child and in this regard has to give due weightage not only to the child's ordinary comfort, contentment, health, education, intellectual development, and favourable surroundings, but also the moral and ethical values that would be provided to the child. He submits that the allegations contained in the additional evidence by way of affidavit were aimed at showing how the environment that would be provided by the respondent to the child would be detrimental to the child's interest.
 5. Placing reliance on the judgment of this Court in ***Brij Prakash Gupta v. Ashwini Kumar***, 2019 SCC OnLine Del 10325, he submits that in such matters, the Court should allow the affidavit to stand and determine the admissibility or the effect of the statements contained thereunder at the time of final hearing/adjudication of the Guardianship Petition. He submits that at the stage of mere tendering of the evidence, the issue of the veracity of these statements should not have been gone into by the learned Family Court. In support of his submission, he places reliance also on the judgment of this Court in ***Exide Industries Ltd v. Exide***



Corporation USA & Ors., Neutral Citation no.2012:DHC:5498.

6. On the other hand, the learned counsel for the respondent submits that the assertions made in the paragraphs which have been ordered to be expunged from the evidence by way of affidavit filed by the petitioner herein, were scandalous and were aimed only to defame and cause embarrassment to the persons who are not even the parties to the *inter se* disputes between the parties herein.
7. Placing reliance on the order dated 02.03.2023 passed by the learned Additional Sessions Judge-03, Central District, Tis Hazari Courts, Delhi in Crl. Rev. 93 of 2023 titled ***Pankaj Jain v. State (Govt. of NCT of Delhi)***, the learned counsel for the respondent submits that the learned Additional Sessions Judge has also observed that the complaint filed by the petitioner herein against the brother and the sister-in-law of the respondent were with an ulterior motive of wreaking vengeance on the respondent due to the marital discord between the petitioner and the respondent, and that such kind of frivolous and vexatious litigation must be nipped in its bud. He submits that, therefore, the learned Family Court has rightly directed the expunction of the paragraphs which contain scandalous statements in the additional evidence by way of affidavit filed by the petitioner herein.
8. I have considered the submissions made by the learned counsels for the parties.
9. I have also perused the contents of the paragraphs 10, 20, 22, 23, 24, 62, and the first line of paragraph 63 of the additional evidence by way of affidavit dated 20.04.2022 filed by the petitioner herein.



10. As far as the contents of paragraphs 10 and 20 are concerned, the petitioner has made allegations against the brother of the respondent regarding his professional conduct and his educational qualifications. Whether the same can have any effect on the claim of the custody of the child is not to be considered by this Court at this stage. What only is to be considered is whether these allegations can stand in the evidence by way of affidavit, leaving the effect and admissibility thereof to be determined by the learned Family Court at the stage of the final hearing of the Guardianship petition.
11. Though the learned counsel for the respondent has vehemently submitted that these allegations are totally frivolous, vexatious, scandalous, and made with an ulterior motive by the petitioner, in my opinion, for the present, the same should have been allowed to remain in the evidence by way of additional affidavit filed by the petitioner. As noted by this Court in its judgment in ***Brij Prakash Gupta*** (supra) and ***Exide Industries Ltd.*** (supra), the effect and the admissibility of such evidence should have been left by the learned Family Court to be considered at the stage of the final hearing of the Guardianship Petition.
12. The above can, however, not be said for the contents of paragraphs 23, 24 and 62 of the additional evidence by way of affidavit filed by the petitioner herein. The contents of the said paragraphs relate to a third party, which has no concern with the welfare of the child. The petitioner has also been unable to show how the averments made therein have any concern or connection with the determination of the welfare of child. It is clear that the petitioner was seeking to



scandalise this third party and embarrass the respondent and this third party, rather than have the welfare of the child determined by the learned Family Court. Such scandalous averments in the additional evidence by way of affidavit and, in fact, even in the pleadings cannot be allowed to sustain. They are completely extraneous to the controversy to be determined by the learned Family Court. The parties, including the third party mentioned therein, are already in litigation in an independent suit filed by the third party, and such third party cannot be prejudiced by introducing the averments in that regard into the disputes which relate only to the petitioner and the respondent herein, and has absolutely no concern to the subject matter of the present litigation pending before the learned Family Court.

13. As far as the contents of the first line of paragraph 63 of the additional evidence by way of affidavit are concerned, the same state that the newspaper report published in the 'Pioneer' on 13.07.2021 has resulted in the respondent's parental alienation efforts moving to a higher level. In my view, the said assertion should have been allowed by the learned Family Court to be made by the petitioner, without prejudice to the rights and contentions of the respondent as the respondent has all the chance of cross-examining the petitioner on the same.
14. As far as the contents of paragraph 22 of the additional evidence by way of affidavit are concerned, the learned counsel for the petitioner, on instructions from the petitioner, who appears in person in Court, submits that he is not pressing for the contents of the said



paragraph to be read in evidence. The order insofar as it directs the expunction of paragraph 22 is, therefore, sustained.

15. Accordingly, the present petition is disposed of modifying the impugned orders dated 27.04.2022 and 21.05.2022 passed by the learned Family Court to the limited extent that the contents of paragraphs 10, 20 and the first line of paragraph 63 of additional evidence by way of affidavit dated 20.04.2022 filed by the petitioner herein shall be read in the evidence. The impugned orders insofar as they direct expunction of paragraphs 22, 23, 24 and 62 from the said affidavit, shall, however, be sustained.
16. This Court by its interim order dated 27.02.2023 had directed that the proceedings in the Guardianship Petition may continue subject to the outcome of the present petition. As certain paragraphs of the petitioner's evidence by way of additional affidavit have been restored, the respondent is granted an opportunity to cross-examine the petitioner on those aspects. For the said purpose, the learned Family Court shall pass appropriate directions.
17. The present petition is disposed of in the above terms.

NAVIN CHAWLA, J

AUGUST 29, 2023
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