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

% **Date of decision: 10th July, 2023**

+ **MAT.APP.(F.C.) 194/2023 & CM APPL. 33996/2023**

PANKAJ JAIN

..... Appellant

Through: Mr. Rishabh Bansal & Ms.
Himanshi Malhotra, Advocates.

versus

PARUL JAIN

..... Respondent

Through: Ms. Malavika Rajkotia, Mr.
Ramakant Sharma, Mr. Prateek
Avasthi & Ms. Ekta Sharma,
Advocates 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)

CM APPL. 33997/2023 (Exemption)

1. Allowed, subject to all just exceptions.
2. Accordingly, the application is disposed of.

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3. *Vide* the present appeal, the appellant is seeking following relief:

“a.) Set aside the Impugned Order dated 05.07.2023 passed by the Ld Judge Family Court, Tis Hazari (West), Delhi in G.P. No. 54 of 2018 titled “Pankaj Jain vs Parul Jain”.”

4. *Vide* Order dated 07.07.2023, this Court passed the following order:

“3. Pursuant to directions of this Court the parties are

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Signature Not Verified

Digitally Signed By: RIYANKA ANEJA

Signing Date: 11.07.2023
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present in the Court. Their daughter is present in the premises, however, she is not in the Court.

4. We have interacted with the daughter in Chamber for sufficient time. We found that she is extremely intelligent and having excellent memory.

5. Accordingly renotify on 10.07.2023 at 04:00 P.M.

6. Parties along with their daughter shall remain present in the Court on the next date of hearing.

7. Interim order to continue till further orders.”

5. Today, the respondent in person is present in the Court along with her counsel, whereas the appellant is not physically present in the Court.

6. Learned counsel appearing on behalf of the appellant submits that their daughter is not willing to go with her mother.

7. On the last date of hearing i.e., 07.07.2023, we had interacted with the daughter of the parties in the Chamber for sufficient time and found that she is extremely intelligent and having excellent memory. Our opinion is that the daughter has been tutored and therefore she is not willing to go with her mother, was also conveyed to both the parties in the Chamber as well as in the open Court.

8. Though, as per the Order dated 07.07.2023, despite our passing specific direction to the parties to remain present along with their daughter in the Court on the next date of hearing, the appellant is not present in the Court, and the same amounts to contempt of the Court, however, we refrain ourselves from passing any adverse order against the appellant since it is a matrimonial case.

9. The present appeal pertains to the Order dated 05.07.2023 wherein it was observed that the appellant father had filed the Guardianship Petition for



being declared as the legal guardian of his daughter and also for seeking her custody. The parties got separated on 10.03.2018 and since then the custody of the child was with respondent mother.

10. Vide Order dated 26.03.2019 the appellant father was given overnight custody of the child on second and fourth weekend of the month. Vide Order dated 19.04.2021 he was also allowed to have interim custody of the child on certain special occasions as mentioned in the order. The child was studying in Bal Bharti School, Pitampura. However, the mother was inclined to change her school to Shri Ram School, Aravali, Gurugram, Haryana for which an application was filed. Though the application was opposed strongly by the appellant father but the same was allowed vide Order dated 22.03.2023.

11. The overnight custody of the child was handed over to the appellant father on 19.04.2021 vide Order dated 22.03.2023. But thereafter, the father in defiance of the order of the Court has failed to hand over the custody of the child.

12. The Order dated 22.03.2023 was challenged before this Court, but no stay was granted and the appellant father was directed to hand over the custody of the child to mother on 25.03.2023. The Court Counsellor was also sent by the learned Family Court vide its Order dated 25.03.2023 along with the respondent mother to ensure the handing over of the custody of the child to the mother. However, the Court Counsellor was unable to get the custody handed over to the mother. Thereafter, various efforts were made, but to no avail.

13. Special Leave Petition (SLP) was filed before the Apex Court challenging the Order dated 24.03.2023 of this Court, however, the SLP was



also dismissed on 04.05.2023. Since then various orders have been made. A Local Commissioner was also appointed for handing over the custody of the child by the appellant father to the respondent mother, but nothing has been gained.

14. Consequently, vide impugned Order, the learned Family Judge made the Order directing the appellant father to hand over the custody of the child to the respondent mother on 06.07.2023 at 10:00 A.M., failing which a fine of Rs.100/- was imposed upon him and further fine of Rs.10/- for each day default (Rs.500/- in aggregate) was directed to be paid. In addition, warrants of arrest were directed to be issued to be executed through concerned SHO for his civil imprisonment until he undertakes to return the child to the respondent mother.

15. Aggrieved by the said Order dated 05.07.2023, the present appeal was filed. However, in view of the aforesaid conduct of the appellant, the present appeal along with pending application is dismissed as the same is without any merit as well as for non-compliance of the Order dated 07.07.2023 of this Court by the appellant.

16. *Dasti* under the signature of Court Master.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

JULY 10, 2023
S.Sharma