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

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Judgment delivered on: 25.05.2023

+ **MAT.APP.(F.C.) 98/2022 & CM APPLS. 30689/2022,
32963/2022, 37834/2022, 56225/2022**

MR NITIN KHETAN

..... APPELLANT

versus

MRS EKTA KHETAN

..... RESPONDENT

Advocates who appeared in this case:

For the Appellant: Mr. Bharat Arora and Mr. Abdul Israr, Advocates.

For the Respondent: Ms. Tanya Kathuria and Mr. Saksham Advocates.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Appellant impugns order dated 08.06.2022, whereby the Family Court has returned the petition on the ground of territorial jurisdiction.

2. The Family Court has held that in the petition petitioner has not disclosed that he is residing at Mohali, Chandigarh or that he alongwith the respondent had shifted to Indirapuram, Ghaziabad in the year, 2015 and thereafter, the children had shifted to Kanpur, Uttar



Pradesh to the parental home of the respondent with no intention of returning back to Indirapuram.

3. Learned counsel for appellant submits that the impugned order has been passed on 08.06.2022 without giving any opportunity to either party to prove the factual matrix or the place of residence of the children. He submits that the appellant had categorically stated in the petition that the children were born and were residing permanently at Lakshmi Nagar, Delhi. He submits that respondent had filed a written statement on 07.06.2022, contending that the children had shifted to Kanpur. He submits that no opportunity was given to the appellant to controvert the said averment or to the parties to establish the correct factual matrix. He submits that arguments were heard on 07.06.2022 and the impugned order was passed on the very next day.

4. It is noticed that on 10.12.2021, the Family Court had *prima facie* observed that both the children were not residing within the jurisdiction of this Court and were residing in Uttar Pradesh, however, no opportunity was given to the appellant to file any document to show that both the children were residing within the jurisdiction of this Court. Appellant thereafter filed a petition before this Court being CM (M) 1027/2021, primarily on the ground that a long date had been given and appellant had been deprived of the right of visitation with respect to the children.



5. Said petition i.e., CM (M) 1027/2021 was decided on 27.05.2022, directing the trial court to take up the matter on the next date i.e., 02.06.2022 and decide the question of jurisdiction as well as the application for visitation in accordance with law.

6. Thereafter, the Family Court on 02.06.2022 adjourned the proceedings, at the request of learned counsel for respondent, to 06.06.2022. On 06.06.2022, parties were referred to the counsellor but the disputes could not be settled and matter was thereafter listed on 07.06.2022.

7. On 07.06.2022, respondent filed the written statement and arguments on jurisdiction were heard and matter was reserved for orders for 08.06.2022. Subsequently, an application was filed under Order VII Rule 11 by the respondent on 07.06.2022 at 4.45 P.M., which was also put up on the following date.

8. On 08.06.2022, none appeared for the parties and the matter was kept at 4 P.M. for orders. At 4.45 P.M., the impugned order had been pronounced holding that the Court does not have jurisdiction. The proxy counsel on behalf of the petitioner is shown as present.

9. It is an admitted position that no opportunity was given to the parties to controvert the factual averment of the opposite party with regard to the permanent place of residence of the children.



10. Petitioner in the petition has categorically stated that the permanent place of residence of the children was Lakshmi Nagar, Delhi. On the other hand, respondent has categorically stated that prior to filing of the petition, the children had permanently shifted to Kanpur, Uttar Pradesh and as such, they were permanent residents of Kanpur.

11. With regard to the factual controversy, there is no material on record as to how the Court has finally concluded it is only Kanpur, which had the territorial jurisdiction and not Delhi.

12. In view of the fact that an opportunity was not granted to parties to establish their respective factual averment, we are of the view that the impugned order is not sustainable and the matter is liable to be remitted to the Family Court to permit parties to lead evidence with regard to the domicile of the children.

13. In view of the above, the impugned order is set aside. The matter is remitted to the Family Court to frame an issue with regard to jurisdiction and after framing the issue for giving an opportunity of hearing to the parties to lead evidence.

14. Parties shall appear before the Family Court for directions on 03.06.2023. Appellant shall file replication to the written statement filed by the respondent on or before the said date. Family Court shall



thereafter proceed with the proceedings in accordance with law, however, expeditiously.

15. Learned counsel for appellant submits that since school summer holidays are coming, he would like to approach the Family Court to consider his request for grant of interim visitation/access to the children.

16. It is clarified that the Family Court shall consider the application, if moved by the appellant without awaiting the final outcome on the issue of jurisdiction.

17. The appeal is disposed of in the above terms. It is clarified that this Court has neither considered, nor commented upon the merits of the contentions of either party with regard to the jurisdiction of the Family Court and the permanent place of residence of children. All rights and contentions of the parties are reserved.

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

SANJEEV SACHDEVA, J

MAY 25, 2023
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MANOJ JAIN, J

Signature Not Verified

Digitally Signed
By: RASHMI KAPOOR
Signing Date: 30.05.2023
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