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

Date of Decision: 24.08.2023

+ **CM(M) 1374/2023**

PANKAJ JAIN

..... Petitioner

Through: Mr.Prashant Mendiratta,
Mr.Rishabh Bansal, Ms.Himanshi
Malhotra, Ms.Somyashree, Advs.
along with petitioner in person.

versus

PARUL JAIN

..... Respondent

Through: Ms.Malvika Rajkotia, Mr.Mayank
Grover, Ms.Sajal Arora, Ms.Ekta
Sharma, Mr.Ramakant Sharma,
Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CM APPL. 43630/2023 (exemption)

1. Allowed, subject to all just exceptions.

CM(M) 1374/2023 & CM APPL. 43629/2023

2. This petition has been filed by the petitioner challenging the order dated 16.08.2023 passed by the learned Principal Judge Family Court, West, Tis Hazari Courts, Delhi (hereinafter referred to as the learned 'Principal Judge') in Misc. DJ no.52/2023, titled ***Pankaj Jain v. Parul Jain***, dismissing the application filed by the petitioner



herein under Section 24 of the Code of Civil Procedure (in short CPC) for transfer of the Guardianship Petition No. 54 of 2018, titled ***Pankaj Jain v. Parul Jain***, pending adjudication before the learned Judge, Family Court, West, Tis Hazari Courts (hereinafter referred to as the learned “Family Court”).

3. The learned counsel for the petitioner submits that there was an apparent bias of the learned Family Court against the petitioner herein. In support, he submits that the petitioner herein had filed objections dated 08.06.2023 against the affidavit by way of evidence filed by the respondent herein. The learned Family Court, without supplying a copy of the order purported to have been passed on this application, insisted upon the petitioner to conduct the cross examination of the respondent on 03.08.2023, when the case was fixed for that purpose. The learned Family Court, in fact, insisted that the cross-examination be concluded on that very date whereas the respondent had been granted 23 days spanning more than 50 hours to cross-examine the petitioner.
4. The learned counsel for the petitioner further submits that the petitioner had also filed an application before the learned Family Court seeking adjournment of the proceedings on 05.08.2023, which was also disallowed by the learned Family Court.
5. He submits that the learned Family Court, by an order dated 11.07.2023, had also issued non-bailable warrants against the petitioner on an application filed by the respondent, without even issuing notice on such application to the petitioner herein.



6. He submits that the learned Family Court had also passed various other orders particularly, orders dated 22.03.2023, 25.03.2023, 01.04.2023 and 05.07.2023, which in the opinion of the petitioner, reveal an ingrained bias of the learned Family Court against the petitioner.
7. The learned counsel for the petitioner submits that during the cross-examination of the respondent conducted on 03.08.2023, various pertinent questions were put by the petitioner to the respondent, especially with respect to the proceedings of the Court Counsellor appointed by the learned Judge to take over the custody of the child. The same were, however, disallowed by the learned Family Court.
8. He submits that the above shows an inherent bias of the learned Family Court against the petitioner and, therefore, the petitioner had sought transfer of the cases from the particular learned Judge, Family Court to another Judge, Family Court.
9. The learned counsel for the petitioner submits that the learned Principal Judge, in its Impugned Order, has, however, failed to take note of the above circumstances and has wrongfully dismissed the application filed by the petitioner seeking the transfer of the case.
10. On the other hand, the learned counsel for the respondent, who appears on an advance notice, submits that the present petition is a gross abuse of the process of the Court. She submits that the petitioner, instead of challenging the order dated 03.08.2023, has filed an application seeking transfer of the cases in an attempt to forum shop.



11. I have considered the submissions made by the learned counsels for the parties.
12. It needs no reiteration that the transfer of the case from one Judge to another cannot be ordered merely on a perceived notion of bias in a litigant. The Court is to pass orders, which may be against the interest of one or the other party. The same, however, does not reflect any bias of the learned Judge. The learned Judge decides the cases in accordance with the facts presented before the learned Judge and the law applicable to them. The litigant always has a right to challenge the order(s) passed, in accordance with law. In **R. Balakrishna Pillai v. State of Kerala**, (2000) 7 SCC 129, the Supreme Court laid down the principles in deciding the transfer petition on allegation of bias, as under:-

“10. Further, the contention raised by the learned counsel for the petitioner that one of the Judge of the Bench was appointed and has worked as an Advocate to assist Justice K. Sukumaran Commission to inquire into mal practices in the execution of the rectification work in Hydro Electric Project called Edamalayar Project and, therefore, the petitioner is not likely to get justice if the appeal is decided by the said Bench, deserves to be rejected. It is true that one of the principles of the administration of justice is that justice should not only be done but it should be seen to have been done. However, a mere allegation that there is apprehension that justice will not be done in a given case is not sufficient. Before transferring the case, the Court has to find out whether the apprehension appears to be reasonable. To judge the reasonableness of the apprehension, the state of the mind of the person who entertains the apprehension is no doubt





relevant but that is not all. The apprehension must appear to the Court to be a reasonable, genuine and justifiable. In the present day scenario, if these types of applications are entertained, the entire judicial atmosphere would be polluted with such frivolous petitions for various reasons. Dealing with the transfer petition, this Court in Maneka Sanjay Gandhi v. Rani Jethmalani observed:

“2. Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperilling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioners grounds on this touch-stone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances.”

13. In the present case, from the history of litigation, which has been reflected and shown by the petitioner himself, the petitioner has been availing his rights against the orders that have been passed by the learned Family Court and even this Court, from time to time.





One such proceeding is, in fact, even today pending adjudication before the Hon'ble Supreme Court in form of Special Leave Petition(C) No.14915 of 2023.

14. As far as the issue of non-bailable warrants against the petitioner vide order dated 11.07.2023 is concerned, the learned counsel for the respondent has stated that by an earlier order dated 05.07.2023 passed by the learned Family Court, it had been directed that the petitioner shall hand over the custody of the child to the respondent on 06.07.2023, failing which warrants of arrest would be executed against the petitioner by the concerned SHO. This order was challenged by the petitioner before the Division Bench of this Court in the form of MAT APP. (F.C.) no.194 of 2023. The Division Bench of this Court dismissed the said appeal vide its order dated 10.07.2023. The learned Family Court, thereafter, passed the order dated 11.07.2023, recording therein that as the appeal stands dismissed and the custody of the child has still not been handed over to the respondent, the learned Family Court has been left with no other option but to issue warrants of arrest against the petitioner. The petitioner has challenged the order passed by the Division Bench of this Court, before the Hon'ble Supreme Court, and such challenge is pending before the Hon'ble Supreme Court.
15. I have narrated the above submission of the learned counsel for the respondent only to show that allegation of bias against the learned Judge cannot be sustained on basis of the order dated 11.07.2023 passed by the learned Family Court. In any case, the learned counsel



for the petitioner admits that the order dated 11.07.2023 of the learned Family Court, has not been challenged by the petitioner. I, therefore, need not express any opinion on the merits of the said order, but to say that the same does not give any ground of apprehending bias of the learned Family Court against the petitioner herein. The learned Family Court was merely trying to enforce its order, which, as on that day, stood confirmed by the Division Bench of this Court.

16. The submission of the learned counsel for the petitioner that certain questions that were being put to the respondent during the course of her cross-examination were disallowed by the learned Family Court, also does not give me a reason to transfer the cases from the said learned Family Court. The questions were on the conduct of the proceedings by the Court Counsellor appointed by the learned Family Court. It has been brought to my notice that the objections of the petitioner to the report of the Court Counsellor had been rejected by the learned Family Court vide order dated 05.07.2023. As noted hereinabove, the said order has been confirmed by the Division Bench of this Court, and challenge thereto is today pending adjudication before the Hon'ble Supreme Court. The petitioner also has a remedy against the disallowance of the questions put by the petitioner to the respondent. In any case, the order dated 03.08.2023 of the learned Family Court is not in challenge before this Court nor was in challenge before the learned Principal Judge, Family Court. Merely because the learned Judge felt that certain questions were



irrelevant to the proceedings, would not give rise to a reasonable apprehension of bias against the learned Family Court. The petitioner always has remedies to challenge such orders in accordance with law.

17. The learned counsel for the petitioner could also not show how the orders dated 22.03.2023, 25.03.2023, 01.04.2023 and 05.07.2023, can be said to have given rise to a reasonable apprehension of bias in the mind of the petitioner. As stated above, merely because the order is against the interest of a litigant, it cannot be said that the judge pronouncing the same is biased against the litigant. In fact, the petitioner has filed, with this petition, orders passed by this Court as well. It is not shown that the above orders were interfered with by this Court on challenge.
18. The allegation of bias on the ground that the learned Family Court insisted on the petitioner to cross-examine the respondent, and did not grant an adjournment of the proceedings, also cannot give rise to an apprehension of bias. It is worth mentioning here that this Court, vide its order dated 28.03.2022 passed in Cont. Cas (C) 392/2021, has directed the learned Family Court to complete the proceedings in the Guardianship Petition within eight months of the said order. Therefore, no fault can be found in the learned Family Court trying to expedite the trial of the Guardianship Petition by declining request for adjournment.
19. In view of the above, I find no merit in the present petition. The same is dismissed with costs quantified at Rs.50,000/- to be



deposited by the petitioner with the Delhi High Court Legal Services Committee. The pending application also stands disposed of.

NAVIN CHAWLA, J

AUGUST 24, 2023
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