



2023:DHC: 8750



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 06.12.2023***+ **CM(M) 43/2022 & CM APPL. 2547/2022, CM APPL. 36320/2023, CM APPL. 36417/2023, CM APPL. 40876/2023, CM APPL. 40877/2023****AJAY KUMAR GUPTA** Petitioner

Through: In person (through VC)

versus

DEEPTI GUPTA RespondentThrough: Mr.Ashish Upadhyay, Adv.
along with respondent in
person.**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed challenging the Order dated 09.12.2021 (hereinafter referred to as 'Impugned Order') passed by the learned Additional Principal Judge, Family Courts (West-District), Tis Hazari Courts, Delhi (hereinafter referred to as 'Family Court') in GP No. 23/2021, titled *Shri Ajay Kumar Gupta v. Smt. Deepti Gupta*, whereby the learned Family Court has been pleased to dismiss an application filed by the petitioner herein under Section 12 of Guardians and Wards Act, 1890 (hereinafter referred to as the 'Act') seeking interim custody/ visitation *qua* the child, and directed that the petitioner shall be entitled to meet the child only on the first Saturday

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of each month at the Children Room, Tis Hazari Courts, Delhi.

SUBMISSIONS OF THE PETITIONER

2. The petitioner, who appears virtually, submits that the learned Family Court has wrongly taken into consideration an application sent by the petitioner to the respondent, which was produced by the respondent before the learned Family Court in the absence of the petitioner and after the orders had been reserved in the abovementioned application filed by the petitioner. He submits that the learned Family Court has erred in not seeking any explanation from the petitioner regarding the contents of the said application while taking the same into account against the interest of the petitioner and passing adverse remarks against the petitioner based thereon.

3. He further submits that the learned Family Court has erred in dismissing the application by observing that the petitioner tried to mislead the court by giving his Date of Birth wrongly for the purpose of claiming visitation. He submits that though, as per the records, his date of birth is 10th June, however, he has always been celebrating his birthday on 10th December of each year. In support of his submission, he has drawn my attention to the greetings received from the respondent over a number of years on the 10th day of December.

4. He submits that, therefore, the Impugned Order is based on erroneous consideration and is liable to be set aside.

SUBMISSIONS OF THE RESPONDENT

5. The learned counsel for the respondent, on the other hand, submits that the present petition has been rendered infructuous

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inasmuch as a subsequent application filed by the petitioner seeking *interim* visitation, vide an Order dated 17.10.2022, also came to be dismissed by the learned Family Court. He submits that, in fact, the learned Metropolitan Magistrate, (Mahila Court-05), (West-District), Tis Hazari Courts, Delhi, in an Order dated 26.11.2021 passed in MC No. 287/2021, titled as ***Deepti Gupta v. Ajay Gupta***, has also taken note of the conduct of the petitioner herein, and observed that the petitioner shall appear before the said court only through a counsel.

6. He submits that, in fact, the whereabouts of the petitioner are not known as he has not disclosed his current address. He submits that the petitioner is not at all interested in meeting the child but is only using these proceedings to harass the respondent.

ANALYSIS AND CONCLUSION

7. I have considered the submissions made.

8. Paragraphs 10 and 11 of the Impugned Order read as under:

"10. While the matter was adjourned for orders on the application, the respondent appeared again on 09.12.2021 and produced application sent to her by petitioner through speed post wherein he has stated in para 9 that "petitioner will inform Delhi Police as well for smooth process and don't want to involve in any further talks/ discussion/ legal cases etc."

11. After carefully considering the submissions made before me and upon perusal of record, it is apparent that the petitioner has failed to approach the court with clean hands. He has falsely claimed that his birthday fell on 10th December when his recorded date of birth is 10th of June. Further, he has threatened respondent of involving police in the matter to pressurize her further. The order passed by the

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Court in natural course is expected to be complied with the parties and seeking police aid is last resort and not permissible without directions of the Court. The petitioner instead of focusing on improving his relationship with the minor child is bent upon taking advantage of order which he obtained from the Court by concealing correct facts as well as the facts which were not in the notice of the Court due to inadvertence on the part of previous counsel for respondent. In these facts and circumstances, petitioner does not deserve any leniency from the Court and hence order dated 20.11.2021 passed by the Court is modified to the extent that petitioner would not be entitled to custody of the minor child for two hours on 10.12.2021 and 29.12.2021 as directed earlier.”

9. A reading of the above would show that after the orders had been reserved by the learned Family Court, the respondent appeared before the learned Family Court and handed over a copy of an application which she had received from the petitioner. The learned Family Court, without seeking any explanation on the contents of the said application, proceeded to consider the contents of the said application and made adverse remarks against the conduct of the petitioner and refused him relief based on the contents of the said application. The above action of the learned Family Court is a clear violation of the principles of the natural justice and therefore, the Impugned Order cannot be sustained in law.

10. The further consideration which weighed with the learned Family Court was the alleged mis-declaration of the petitioner of his correct Date of Birth. The learned Family Court has observed that the recorded Date of Birth of the petitioner is 10th June, whereas, in his

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application, he had claimed that his birthday fell on 10th December. The learned Family Court, by the Impugned Order, has held that this was a concealment of the facts from the court by the petitioner, disentitling the petitioner to the relief prayed for.

11. I find that the learned Family Court has, in making the above observations, however, not considered the E-mails and the Whatsapp messages, etc. addressed by the respondent to the petitioner, which show that in the year 2009, 2010, and even as late as 2019, the respondent had sent her birthday wishes to the petitioner on 10th December. This lends *prima facie* credence to the submission of the petitioner that though his recorded date of birth is 10th June, he celebrates his birthday on 10th December of every year.

12. The learned Family Court has not considered the above evidence and has proceeded to make adverse remarks against the conduct of the petitioner and denied him the relief in his application. The Impugned Order cannot, therefore, be sustained.

13. In the Order dated 17.10.2022, referred by the learned counsel for the respondent in the course of hearing, the learned Family Court has, in fact, again taken note of the Impugned Order and refused relief to the petitioner. Therefore, it cannot be said that the present petition has been rendered infructuous by passage of time. In fact, the petitioner continues to suffer an adverse effect of the adverse remarks made against his conduct in the proceedings, which were made by the learned Family Court *ex parte* and without considering the material on record.

14. As far as the Order dated 26.11.2021 passed by the learned

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Metropolitan Magistrate is concerned, as the said order is not in challenge before this Court and the conduct of the petitioner is not sufficient to disentitle the petitioner to a relief which he otherwise is entitled to in the present petition, the same is not found relevant for the purposes of the present petition. Suffice it to say, any observation made in the present order shall not be read as a reflection on the validity or otherwise of the order dated 26.11.2021 passed by the learned Metropolitan Magistrate.

CONCLUSION AND DIRECTION

15. In view of the above, the Impugned Order dated 09.12.2021 is set aside.

16. As much water has flown after the passing of the Impugned Order, the learned Family Court shall decide any pending or future application(s), if any, moved by the petitioner, remaining uninfluenced by any observation made by the learned Family Court in the Impugned Order.

17. The petition is allowed in the above terms. The pending applications also stand disposed of, leaving it open to the parties to avail of their remedies for the relief claimed in accordance with law.

18. There shall be no order as to costs.

NAVIN CHAWLA, J

DECEMBER 6, 2023/ns/ss

Click here to check corrigendum, if any

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