



2023:DHC:7753



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

Date of decision: 20.10.2023

+ CM(M) 1736/2023 & CM APPL. 55068-69/2023
ZAIBI HUSSAIN

..... Petitioner

Through: Mr.M.Tarique Siddihqui,
Mr.Rakhshan Ahmad, Ms.Jyotsna
Bhardwaj, Advs.

versus

JAMAL TARIQ

..... Respondent

Through: Nemo

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed by the petitioner praying for the following reliefs:

“(i) Call and examine the record and the orders passed by Ld. Family Court-02, South-East, Saket in guardianship petition dated 31.01.2022 u/s 25 of Guardians & Wards Act, 1890 being GP No. 56/2022 titled as Zaibi Hussain v. Jamal Tariq seeking return of custody of her minor son Muhammad Abu Bakr; and satisfy itself as to the regularity of such proceedings and dispose the petition expeditiously. and/or;

(ii) Direct the Ld. Family Court-02, South-East, Saket to expeditiously decide the application dated 31.01.2022 under section 12 of the Guardians & Wards Act, 1890 in GP No. 56/2022 seeking interim custody of her minor son Muhammad Abu Bakr and fix a date for the same. and/or;

(iii) Grant interim custody of minor son Muhammad Abu Bakr to the petitioner/ natural and biological mother.”

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2. The grievance of the petitioner is that the petitioner, along with her Guardianship Petition being G No. 02/2022, titled ***Zaibi Hussain v. Jamal Tariq***, pending before the learned Principal Judge, Family Courts, South East District, Saket Courts, New Delhi (hereinafter referred to as the 'Family Court'), has filed an application under Section 12 of the Guardian and Wards Act, 1890 (hereinafter referred to as the 'GW Act'). The said application was filed by the petitioner on 31.01.2022.

3. The learned counsel for the petitioner submits that by an order dated 10.10.2022, issues in the Guardianship Petition were framed and part arguments on the application under Section 12 of the GW Act were heard. He submits that by the subsequent order dated 29.10.2022, however, due to a direction from this Court, the matter was transferred to the present Presiding Officer hearing the above Guardianship Petition.

4. The learned present Presiding Officer referred the parties to Mediation, however, the parties could not settle their *inter se* dispute as one of the parties refused to settle the disputes.

5. By a subsequent order dated 20.03.2023, and though the same was opposed by the learned counsel for the petitioner contending that there is no dispute on the same, the learned Presiding Officer was pleased to frame an additional preliminary issue on the jurisdiction of the said Court. Part arguments on the same were heard by the learned Presiding Officer on 20.03.2023, and, thereafter, on 12.05.2023, whereafter the Guardianship Petition was directed to be listed for the orders on 03.06.2023.

6. Thereafter, the petition has been listed on 03.06.2023, 22.07.2023, 16.08.2023, and finally on 03.10.2023. In some of the orders it is recorded

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that certain clarifications are required by the learned Presiding Officer.

7. By the order dated 03.10.2023, the Reader of the Court adjourned the matter to 04.01.2024 as the learned Presiding Officer was on a half-day leave.

8. The learned counsel for the petitioner submits that in this entire process, the application filed by the petitioner under Section 12 of the GW Act has not been adjudicated by the learned Family Court.

9. The learned counsel for the petitioner submits that an advance notice of this petition has been duly served on the respondent. In spite of such service, none is appearing for the respondent. For the order that I propose to pass in the present petition, I do not deem it necessary to issue a formal notice of this petition on the respondent.

10. From the perusal of the order sheets, it is apparent that the learned Presiding Officer has heard the submissions on the issue of jurisdiction of the Court on 12.05.2023. Thereafter, the matter has been listed before the learned Presiding Officer on a number of dates for seeking clarifications from the parties. The nature of such clarification required is not stated in such orders. Be that as it may, in my opinion, the matter especially which has an application filed under Section 12 of the GW Act and which is heard at length, cannot be adjourned to a long date like 04.01.2024, only because the learned Presiding Officer was on a half-day leave.

11. Accordingly, the present petition is disposed of with the following directions:

- a) Guardianship Petition will be listed before the learned Family Court on 02.11.2023;
- b) The learned counsel for the petitioner is directed to inform the

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respondent, as also his counsel representing the respondent before the learned Family Court, of the change of the next date of hearing before the learned Family Court in the Guardianship Petition;

- c) The learned Family Court shall seek the clarification as is required from the parties on the said date and then proceed to pronounce its order on the preliminary issue of jurisdiction;
- d) In case the learned Family Court comes to a conclusion that it has the jurisdiction to adjudicate upon the Guardianship Petition, it shall proceed to hear the arguments on an application filed by the petitioner under Section 12 of the GW Act and shall dispose of the same on merits at least for the interim orders, after hearing arguments advanced by the learned counsels for the parties, within a period of one month therefrom.
- e) The learned Family Court shall not grant any unwarranted adjournments to either of the parties.

12. The petition is disposed of in the above terms. There shall be no order as to costs.

NAVIN CHAWLA, J

OCTOBER 20, 2023/Arya/AS

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