



2023:DHC:9264



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 21.12.2023***+ **CM(M) 2133/2023 & CM APPLs. 66942-45/2023****SARA CARRIERE DUBEY**

..... Petitioner

Through: Ms.Priya Hingorani, Sr. Adv.  
with Mr.Himanshu Yadav,  
Mr.Naseem Ahmed,  
Ms.Vasudhra, N.Advs.

versus

**ASHISH DUBEY**

..... Respondent

Through: Nemo

**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed by the petitioner challenging the order dated 16.12.2023 passed by the learned Judge-02, Family Courts, South District, Saket Courts, New Delhi (hereinafter referred to as the 'Family Court') in Guardianship Petition, being GP No.20/2018, titled *Ashish Dubey v. Sara Carrier Dubey*, on an application filed by the respondent herein seeking a change in the visitation schedule of both the children on the occasion of the birthday of their daughter falling on 18.12.2023, and on their visit to India from United Kingdom, where they are studying, during the Christmas vacation.

2. The learned Family Court by its impugned order, made an *interim* arrangement for the birthday of the daughter, which does not



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need further attention of this Court as the said period has already been passed and as the said arrangement was made by the learned Family Court with the consent of the parties.

3. The learned Family Court by the Impugned Order has further, without disturbing the existing visitation fixed by the order dated 04.05.2023, granted visitation rights to the respondent over the children from 23.12.2023 at around 11.00 AM till 26.12.2023 by 6.00 PM.

4. The learned senior counsel for the petitioner submits that the learned Family Court has failed to appreciate that the order dated 17.09.2022 passed by the learned Family Court, has been challenged by both the parties to this present petition in form of their separate petitions under Article 227 of the Constitution of India being CM(M) 1354/2022, titled *Sara Carriere Debey v. Ashish Dubey*, and CM(M) 1475/2022, titled *Ashish Dubey v. Sara Carriere Debey*, and these petitions are pending adjudication before this Court and listed on 15.03.2024.

5. By the order dated 17.09.2022, the following *interim* arrangement was directed:

*“(i) The mother shall hand over the custody of children to the father on the first Saturday of each month at her residence at 11:00 am. Both the children will stay overnight in the house of petitioner. The father shall return the custody of the children to the mother at the reception of Siri Fort Sports Complex, August Kranti Marg, Khel Gaon, New Delhi - 110049 at 4:00 pm next day i.e. first Sunday of the month,  
(ii) The visitation rights of the father on second and third Saturdays and Sundays of the*



*month will remain the same as per directions dated 21.1.2020 passed by Hon'ble High Court in Crl. Writ Petition No. 1757 of 2019. Both the parties will be bound by the same.*

*(iii) However, father shall not have any visitation rights on fourth Saturday and Sunday of the month. This visitation right has been withdrawn so that the mother can spend full two days with the children and help them in completing their homework etc. Needless to say that when the children are with father, he shall also ensure that children complete their homework and participate in all extra curricular activities."*

6. She submits that by a subsequent order dated 04.05.2023, the learned Family Court has permitted the children to go to the United Kingdom for their studies, and passed the following directions:

*"10. Now coming to the prayer with regard to the relocation of the respondent / mother in the vicinity day boarding schools of the children in UK, the same also cannot be allowed. However, since the children would be studying in UK, the visitation expenses of the mother in a year shall be borne by the petitioner / father.*

*This, all the three applications are disposed off with the following directions:*

*(i) The children shall go to UK for further studies - son Master Nathan Kartikey Dubey to Loughborough Grammar School, UK in September, 2023 and daughter Ms. Ananya Dubey to Badminton School UK in September, 2023.*

*(ii) The respondent shall fully cooperate in the admission process in applying for Visa, in filling up the school forms / documents etc.*

*(iii) The entire expenses of education of both the children including their boarding, loading etc to be borne by the petitioner / father.*

*(iv) The petitioner father to bear the expenses*



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*of visit of the respondent to UK once in a year to meet children. That shall include the Return Flight Ticket from Delhi to UK and £1500 (Pounds) towards boarding and lodging during the stay in UK.*

*(v) During school vacations, the children shall come to India and shall stay with the respondent / mother. The father shall have visitation rights as per the arrangement made by the court vide previous orders.*

*(vi) The petitioner shall bear the expenses of Return Flight Tickets of children during vacations."*

7. The said order was challenged by the petitioner before this Court in the form of an appeal, being MAT.APP(FC) 148/2023, titled ***Sara Carriere Dubey v. Ashish Dubey***. The same was, however, dismissed by the Division Bench of this Court vide judgment dated 01.08.2023. The said judgment has been challenged by the petitioner before the Supreme Court in the form of a Special Leave Petition, being SLP(C) 18153/2023, wherein by an order dated 25.08.2023, the Supreme Court has observed that at that juncture, there was no reason to interfere with the Impugned Orders dated 01.08.2023 of this Court and 04.05.2023 of the learned Family Court. The said petition is, however, listed before the Supreme Court for further consideration.

8. The learned senior counsel for the petitioner submits that in view of the pendency of the above petitions before this Court and the Supreme Court, there was no occasion for the learned Family Court to have modified the visitation rights on an application filed by the respondent.

9. She submits that, in any case, there was a concealment of these



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facts by the respondent in his application before the learned Family Court, and this itself was a ground sufficient to dismiss the said application.

10. She further submits that the learned Family Court has not interacted with the children nor has obtained their views on the application, before proceeding to pass the Impugned Order. She submits that the children normally spend their Christmas with the petitioner and with their friends. In support, she places reliance on certain photographs of the celebration of Christmas for the previous years.

11. She further submits that, in any case, there was no occasion for the learned Family Court to review its earlier orders on the *interim* visitation of the children.

12. She submits that the relief so granted is beyond the prayer made by the respondent.

13. She submits that the children are to be in India till 01.01.2024 (Daughter) and 09.01.2024 (Son). She submits that on interaction with the children, the learned Family Court could have found some other convenient dates for the respondent to have visitation rights over the children.

14. I have considered the submissions made by the learned senior counsel for the petitioner, however, find no merit in the same.

15. While it is true that the challenge to the order dated 17.09.2022 is pending before this Court, and the challenge to the order dated 04.05.2023, as affirmed by this Court in its order dated 01.08.2023, is pending before the Supreme Court, the respondent had moved an



application only for an *interim* visitation over the children as the children are visiting India on their Christmas break from the United Kingdom.

16. The learned Family Court while taking into account the overall circumstances, has made an *interim* arrangement on the visitation of the children, which grants equal rights to both the parties, that is, the petitioner and the respondent, on one hand, and the children, on the other. The children on their break are entitled to enjoy equal love and affection of their parents. It is to be kept in mind that in such matters, it is not the mathematic exactitude that is to be endeavoured or achieved.

17. It appears that the primary and underlying grievance of the petitioner is that the children will get to spend the Christmas with the respondent rather than the petitioner. This itself is not a sufficient ground to interfere with the interim arrangement made by the learned Family Court.

18. As far as how the children will like to enjoy the festivities of Christmas, I have no reason to doubt that the respondent will not keep such wishes of the children in mind.

19. No fault can also be found in the learned Family Court not interacting with the children before making the impugned arrangement of visitation. It is not shown that the children are alienated from the respondent or do not feel comfortable in his presence. In fact, during the course of hearing, the learned senior counsel for the petitioner stated that the respondent has been visiting the children even in UK, though she states that this is because he has the means do so, which



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the petitioner does not.

20. In any case, the arrangement made by the learned Family Court is not found to be so unreasonable so as to warrant any interference from this Court. This Court is not acting as an Appellate Court, which would substitute its own discretion to that exercised by the learned Family Court.

21. In view of the above, I find no merit in the present petition. The same is accordingly dismissed. All pending applications are also disposed of.

22. There shall be no order as to costs.

23. *Dasti.*

**NAVIN CHAWLA, J**

**DECEMBER 21, 2023/Arya/AS**

*Click here to check corrigendum, if any*