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IN THE HIGH COURT OF DELHI AT NEW DELHI

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MAT.APP.(F.C.) 21/2023

DAVENDER

.....Appellant

Through: Mr.Suraj Bhan with Mr.Vijay Singh,
Advs.

versus

PARNEETA @ DOLLY

.....Respondent

Through: Mr.Bhupesh Saini with Mr.Ravinder
S Sharma, Mr.Narender Singh, Ms.Priya Kashyap,
Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

03.12.2024

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1. The present appeal filed under Section 19 of the Family Courts Act, 1984 seeks to assail the order dated 12.10.2022 passed by the learned Family Court, District East, Karkardooma Courts, Delhi in Guardianship Petition no.29/2019.
2. Vide the impugned order, the learned Family Court has dismissed the guardianship petition preferred by the appellant/father seeking custody of the minor child, who is living with the respondent/mother since the time of his birth in August, 2014.
3. In support of the appeal, learned counsel for the appellant submits that since the respondent has already enjoyed the custody of the child for the last 10 years, the appellant should be now granted custody so that the child can also spend some time with the appellant/father.



4. On the other hand, learned counsel for the respondent opposes the appeal by urging that once the appellant due to his transferable job as a Vice Principal, Kendriya Vidyalaya is presently serving at Ishapore, West Bengal, he cannot seek custody of the child who is studying in a school in Delhi. In fact due to his non-availability in the NCR, he has not even been able to avail of the visitation rights granted by the learned Family Court. Furthermore, he contends that the child, who is now about 10 years of age and is residing with his mother since the time of his birth, is extremely attached to her and will face extreme emotional turmoil if his custody is now abruptly handed over to the appellant. He, therefore, prays that the appeal be dismissed.
5. Having considered the submissions of learned counsel for the parties and perused the impugned judgment, we are inclined to agree with the respondent that it would be against the interest of the child to transfer his custody to the appellant, at this stage, when the appellant is serving at Ishapore, West Bengal, a place at a considerable distance from Delhi. Further, we find that though the child has been single handedly brought up by the mother/respondent for the last 10 years, the appellant has been granted liberal visitation rights for meeting the child at least twice a month, which right also he is unable to avail of due to the exigencies of his employment. We are, therefore, of the view that the learned Family Court was justified in rejecting the appellant's prayer for transferring the custody of the minor child to him.
6. We, accordingly, find no merit in the appeal, which is, accordingly, dismissed.



7. It is, however, made clear that, in case, the appellant is transferred to NCR at a later stage, it will be open for him to file a fresh petition for guardianship in accordance with law.

REKHA PALLI, J

SAURABH BANERJEE, J

DECEMBER 3, 2024/sr