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

+ **CM(M) 2019/2024**

SNEHA VERMA

..... Petitioner

Through: Mr.Gaurav Seth, Mr.Akshay &
Mr.Pulkit Sikka, Advs.

versus

ANIL TANWAR

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

% **04.03.2024**

CM APPL. 13287/2024(exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

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3. Present petition has been filed under Article 227 of the Constitution of India assailing the order dated 15.12.2023 passed in GP No.07/2021 titled as "*Sneha Verma vs. Anil Tanwar*" by learned Judge Family Court, South District, Saket, Delhi (hereinafter referred as 'Judge Family Court') whereby the application on behalf of the petitioner herein seeking interim custody of the minor child during winter vacation was dismissed.
4. Petitioner filed petition under Section 125 of the Guardianship & Wards Act, 1890 (hereinafter referred as 'the Act') for grant of custody of Master 'S' on 29.01.2021. Vide order dated 20.10.2023, learned Judge Family Court allowed petition to meet the minor child at least once a month.
5. On 25.10.2023, petitioner filed application for providing interim custody of the minor child during the period of winter vacation commencing



from 10.12.2023 to 29.01.2024. Vide impugned order dated 15.12.2023, the said application was dismissed.

6. Learned counsel for the petitioner submits that he is aware that the cause of action which had existed by way of the present application has seized on the date of filing of the petition. But the primary grievance of the petitioner is that the findings recorded by the learned Judge Family Court in the impugned order may affect any subsequent interim application for visitation/overnight visitation/custody.

7. The impugned order is perused and the relevant paragraphs are reproduced as under:

“10. It is well-settled law that while considering the custody/temporary custody of the minor child the paramount consideration for the court is the welfare of the minor child. Here, welfare also includes the mental peace of the child. The child is about 13 years old boy as less than two months are remaining to complete 13 years of age and he is studying in 7th standard. When the child is about 13-14 years old, hormonal changes take place in his body and it takes time to adjust such changes. At this crucial stage of his age he cannot be further burdened with change in his custody, even temporary custody, because it may further add trouble to him. It would not be appropriate, at this stage, to force him to stay with his mother/petitioner even for a single day against his choice as it may have negative impact on his personality.

1. It is always good for a minor child to have love and affection of both the parents. However, in the case in hand the minor child is living separately from the petitioner/ mother for the last about 7-8 years, therefore, it may take some time for the minor child to develop a bond with his mother/petitioner. If the temporary custody of the minor child is given to the petitioner/mother even for a few days it will be difficult for the child to bear the same due to the change of custody. The Hon’ble High Court of Bombay in “Swapnil Bhajandas Kamble v.



Manisha in Crl WP no. 52/2022 decided on 17.06.2022” held/observed in para 13 of the ruling as under :-

“The trauma that the child is likely to experience in the even of change of custody, pending proceeding, shall have to be necessarily borne in mind. I am conscious about tender age and gender of the child, but still, I feel that at this interim stage of the proceeding, it would not be appropriate to interfere in the existing state, especially on the background of prolonged residence of child with father”.

2. *It is also important to mention here that the physical visitations have already been granted to the petitioner/mother to meet the minor child at his school in Dehradun. Admittedly, the child is not comfortable to meet the petitioner/mother, therefore, it would be against to the interest of the minor child to further ask him to stay with the petitioner/mother for a single day much less 50 days as sought by the petitioner.”*

8. Needless to say that the custody/visitation orders are inherently temporary in nature and the parties are at liberty to move an application as and when needed keeping in view the paramount consideration i.e. welfare of the child.

9. Accordingly, in the event that the learned counsel moves a fresh application seeking visitation rights for any forthcoming vacation period, the same shall be decided on the merits of the application by the learned Judge Family Court without being influenced by the observations made by it in the order dated 15.12.2023.

10. With the aforesaid observations, petition stands disposed of.

SHALINDER KAUR, J.

MARCH 04, 2024/ab