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

+ **CM(M) 2701/2024**

ASHISH BATHLA

..... Petitioner

Through: Ms. Meenakshi Jain and Mr. Gautam
Kapur, Advocates.

versus

SHIKHA BATHLA

..... Respondent

Through: Mr. Prateek, Ms. Supriya Manan, Mr.
Luv Manan and Ms. Himani Khullar,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

05.06.2024

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1. The present petition has been filed seeking following relief:-

"a) quash and set aside the impugned order dated 22.05.2024 being illegal and violative of the rights of the Petitioner and the minor child and grant half of the summer vacations of the child to be spent with the Petitioner and his family;

b) grant, in the alternative, weekend stay with the Petitioner and his family from Friday evening to Sunday noon, throughout the period of summer vacations."

2. The petitioner assails the order dated 22.05.2024 passed by the learned Principal Judge, Family Court, South-East District, Saket, New Delhi in GP No.54/2022 titled as '*Ashish Bathla vs. Shikha Bathla*', whereby the learned Family Court dismissed the application of the petitioner filed under Section 12 of the Guardians and Wards Act, 1890 read with Section 151 of the Civil



Procedure Code for grant of half of the summer vacations of the minor child to be spent with the petitioner and his family.

3. The brief facts of the case as borne out from the record are that the petitioner and the respondent got married on 04.02.2014 and out of the said wedlock, one child (Master VB) was born on 26.11.2016. The parties started living separately from each other w.e.f. 30.03.2022 and the custody of the minor son has remained with the respondent/mother. Thereafter the petitioner filed the guardianship petition bearing GP No. 54/2022 under Section 7, 8, 10 and 25 of the Guardians and Wards Act, 1890 for the custody and guardianship of his minor son, Master VB, on 06.08.2022 before the Principal Judge, Family Court, South-East District Saket Courts.

4. On 19.04.2024, the petitioner herein, keeping in view the oncoming summer vacations of the minor child from 22.05.2024 till 01.07.2024, filed an application under Section 12 of Guardians and Wards Act which was dismissed by the learned Trial Court on 22.05.2024. The relevant para of the impugned order reads as under:

“11. Consequent to aforesaid order dated 19/06/2023 of Hon'ble High Court of Delhi; vide aforesaid detailed order dated 31/08/2023 of my Ld. Predecessor, aforesaid visitation rights were granted to petitioner to meet minor Viraj Bathla. Above elicited directions in order dated 31/08/2023 in grant of visitation rights to petitioner for the minor Viraj Bathla per se are self sufficient for the petitioner and his relatives to have fruitful interaction with the minor Viraj Bathla. Order dated 31/08/2023 has not been challenged/impugned before competent forum. No premise is made out for grant of custody of minor Viraj Bathla to petitioner/father for half of summer vacations, 2024, starting from 22/05/2024 to 01/07/2024. Petitioner had every remedy for impugning order dated 31/08/2023, as per law if the petitioner felt the



order for grant of visitation rights to be in any manner deficient in quantity of time granted. Nothing of the sort was done by petitioner. Application of petitioner under Section 12 of the Act is dismissed.”

5. The learned counsel for the petitioner submits that the learned Principal Judge, Family Court lost sight of the fact that in the matters of custody the welfare and well being of the minor child is of paramount consideration. He further submits that the child must have the love and company of both the mother and the father.

6. I have heard the learned counsel for the parties and have perused the relevant records.

7. At this stage apt would it be to refer to the judgment of the Hon’ble Supreme Court in ***Nil Ratan Kundu v. Abhijit Kundu, (2008) 9 SCC 413*** whereby law regarding custody of minor child has been reiterated stating that although a court of law should keep in mind the relevant statutes while considering the custody of the child, however, they are not bound by it and the welfare and well being of the child is of paramount consideration:

“52. In our judgment, the law relating to custody of a child is fairly well settled and it is this: in deciding a difficult and complex question as to the custody of a minor, a court of law should keep in mind the relevant statutes and the rights flowing therefrom. But such cases cannot be decided solely by interpreting legal provisions. It is a human problem and is required to be solved with human touch. A court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and well-being of the child. In selecting a guardian, the court is exercising parens patriae jurisdiction and is expected, nay bound, to give due weight to a child's



ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot be ignored. They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the court must consider such preference as well, though the final decision should rest with the court as to what is conducive to the welfare of the minor.”

8. Similarly, in *Gaurav Nagpal v. Sumedha Nagpal*, (2009) 1 SCC 42, theaforesaid principle has been reaffirmed. The relevant paras read thus:

“50. When the court is confronted with conflicting demands made by the parents, each time it has to justify the demands. The court has not only to look at the issue on legalistic basis, in such matters human angles are relevant for deciding those issues. The court then does not give emphasis on what the parties say, it has to exercise a jurisdiction which is aimed at the welfare of the minor. As observed recently in Mausami Moitra Ganguli case, the court has to give due weightage to the child's ordinary contentment, health, education, intellectual development and favourable surroundings but over and above physical comforts, the moral and ethical values have also to be noted. They are equal if not more important than the others.

51. The word “welfare” used in Section 13 of the Act has to be construed literally and must be taken in its widest sense. The moral and ethical welfare of the child must also weigh with the court as well as its physical well-being. Though the provisions of the special statutes which govern the rights of the parents or guardians may be taken into consideration, there is nothing which can stand in the way of the court exercising its parens patriae jurisdiction arising in such cases.”

9. The legal principle that emerges is that while considering custody of a



minor child, the Court in exercise of its *parens patriae* jurisdiction, must instill a human touch rather than depending solely on legal provisions. Both, the mother and the father, have a prominent role in supporting the growth and development of the child. The purpose of the law relating to the guardianship and custody of a child is to ensure his development, as well as, to safeguard the interest of the child. It is trite that the paramount consideration must be the welfare and well being of the child. It is also vital for the court to examine the minor child and take into account his wishes and comfort also.

10. In the present case, *vide* order dated 03.06.2024, this Court had directed the respondent to bring Master VB to Court on the next date for personal interaction. Accordingly, this Court has separately interacted with the parties, as well as, the child in the chamber.

11. Age of Master VB is about 8 years and this Court has found him to be bright and he has answered all the questions put to him. He has shown sufficient intellect and maturity despite his tender age, therefore, this Court cannot be unmindful of his wishes and preferences and the same needs to be taken into consideration.

12. During interaction, Master VB expressed that he is not averse to meeting his father, rather enjoys his company and also showed inclination to spend more time with him. However, he was not comfortable with the proposal of staying overnight with the father. He said that he has never slept at night without his mother. The apprehension of Master VB regarding staying overnight night with his father could be due to the reason that his permanent custody has been with the mother throughout and he has not been able to spend enough time with his father. But at the same time Master VB showed his keenness to spend more time with his father. He seems to be



comfortable in the company of his father.

13. On a conspectus of above notes facts and circumstances, this Court is of the view that at this stage though it is in the best interest of the holistic development of the child that he spends sufficient amount of time with his father, however, keeping in view the wish of the child and regard being had to the fact that the summer vacations of the child have already begun, it is directed that the visitation rights already granted to the father *vide* order dated 31.08.2023 shall be modified only during his summer vacations i.e., from the date of this order till 01.07.2024 to the extent that the father shall meet the child at India Habitat Centre on Second & Third Sunday, and on Fourth & Fifth Sunday at Select City Mall, from 2:00 PM till 7:00 PM. After 01.07.2024, the parties shall revert back to the original visitation schedule as directed in the order dated 31.08.2023. The other conditions mentioned in the order dated 31.08.2023 shall also remain intact.

14. The petition stands disposed of in the above terms.

15. Order be uploaded on the website of this Court.

16. Order *dasti* under signatures of the Court Master.

VIKAS MAHAJAN
(VACATION JUDGE)

JUNE 5, 2024
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