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

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Date of Decision: 12.02.2024

+ **MAT.APP.(F.C.) 292/2023 & CM APPL. 50580/2023**

DEBARATI BHUNIA CHAKRABORTY Appellant

Through: Mr Siddharth Aggarwal, Sr Adv with, Ms Chitrangda Rastravara, Mr Aishwary Mishra, Ms Anjali Saxena, Mr Vishwajeet Singh and Mr Dhananjai Shekhawat, Advs.

versus

SUMAN SANKAR BHUNIA Respondent

Through: Mr Prasenjeet Banerjee with Mr Sarthak Bhardwaj and Ms Anshika Sharma, Advs.

+ **MAT.APP.(F.C.) 359/2023 & CM APPL.63350-63351/2023**

SUMAN SANKAR BHUNIA Appellant

Through: Mr Prasenjeet Banerjee with Mr Sarthak Bhardwaj and Ms Anshika Sharma, Advs.

versus

DEBARATI BHUNIA CHAKRABORTY Respondent

Through: Mr Siddharth Aggarwal, Sr Adv with, Ms Chitrangda Rastravara, Mr Aishwary Mishra, Ms Anjali Saxena, Mr Vishwajeet Singh and Mr Dhananjai Shekhawat, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE AMIT BANSAL

[Physical Hearing/Hybrid Hearing (as per request)]



RAJIV SHAKDHER, J. [ORAL]

CM Appl.50580/2023*[Application filed on behalf of the wife for condonation of delay of 38 days in filing the appeal]*

1. This is an application filed on behalf of the wife for condonation of delay in filing the appeal.
- 1.1 According to the wife, there is a delay of 38 days.
2. Mr Prasenjeet Banerjee, learned counsel, who appears on behalf of the husband, says that he would have no objection if the prayer made in the application is allowed.
3. It is ordered accordingly.
4. The delay is condoned.
5. The application is disposed of in the aforesaid terms.

MAT.APP.(F.C.) 292/2023

MAT.APP.(F.C.) 359/2023 & CM APPL.63350-63351/2023

6. These are the two cross-appeals filed by the couple, who are before us.
7. MAT. APP.(F.C.) 292/2023 has been moved by wife while MAT.APP.(F.C.) 359/2023 has been instituted by the husband.
- 7.1 In brief, the wife is aggrieved by the order dated 17.07.2023, whereby, her application for relocating the children born from the wedlock was dismissed.
8. The husband's grievance emanates from the rejection of his plea by the learned Judge, Family Court for amending the pending guardianship petition preferred under Section 7 of the Guardians and Wards Act, 1890 to bring within its ambit the issue of guardianship concerning the second child.
9. What is not in dispute is that the wife is presently located in the



United Kingdom as she has taken up employment with the University of Hull.

10. The husband, we are told, is located in Barasaat, West Bengal.

11. The couple, from their marriage have two children; one of whom is a minor girl, aged approximately 5 years, and the other is a male child, who is aged, approximately, 10 years. The children, we are told, are presently residing with their maternal grandparents in Bengaluru.

12. In the course of the hearing, we were informed by the counsel for the parties that the guardianship petition filed by the husband for securing the custody of son is pending adjudication.

12.1 We are told that the said petition is at the stage of final arguments.

12.2 It is learnt that the matter is listed before the concerned Family Court on 24.02.2024.

13. Mr Siddharth Aggarwal, learned senior counsel, who appears on behalf of wife, on instructions, informs us that the Family Court has closed the right of the wife to lead evidence or cross-examine the husband.

13.1 This submission is affirmed by Mr Banerjee, on instructions of the husband, who is present in the court.

14. Having heard the counsel for the parties, with their consent, the aforesaid appeals are disposed of with the following directions:

(i) The concerned Family Court will permit the husband to proceed with the amendment of the guardianship petition so that he is in a position to assert his right to have the girl child in his care as well. If such an application is made by the husband the wife will not oppose the amendment.

(ii) The concerned Family Court will permit the husband to file an



additional affidavit of evidence; copy of the original affidavit of evidence and the additional affidavit of evidence of the witnesses will be served on the counsel for the wife.

(iii) The concerned Family Court will permit the wife to tender affidavit of evidence of her witnesses(es) and also allow for their cross-examination.

(iv) Likewise, the Family Court will permit the wife to cross-examine the witnesses, whose affidavits are tendered by the husband.

(v) Without fail, the husband will ensure that the amendment application is filed within five (5) days from today along with an amended petition. The wife will file a reply to the amended petition within five (5) days of service being affected.

(vi) The additional affidavits (of evidence) will be filed within ten (10) days of pleadings being completed.

(vii) The Family Court shall commence as soon as possible the process of recording evidence, though not later than four (4) weeks from today.

(viii) The concerned Family Court will hear arguments immediately after evidence is recorded, an endeavour will be made to render a decision in the guardianship petition on or before 15.05.2024.

(ix) Once a decision is rendered in the guardianship petition, the wife would have liberty thereafter to move an application for seeking relocation of the children. If and when such an application is moved, it will be decided as per law, by the Family Court. The Family Court is requested to dispose of the application within two (2) weeks, after the same being filed.



(x) Since the wife is located in the United Kingdom, she may be permitted to have the evidence recorded through video-conferencing, as per the extant video-conferencing [VC] rules.

(xi) In case the husband moves an application for being given an opportunity to interact with the children via VC, the same will be considered by the Family Court.

15 Needless to state, since we have not expressed any opinion on merits of the appeals, both the guardianship petition as well as application for relocation of the children will be decided uninfluenced by the observations made in the order.

16. Consequently, pending applications shall stand closed.

17. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

AMIT BANSAL, J

FEBRUARY 12, 2024/pmc

Click here to check corrigendum, if any