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

+ **CONT.CAS(C) 1355/2023**

PARUL JAIN

..... Petitioner

Through: Mr. Ramakant Sharma with Mr. Ravi
Avasthi and Mr. Prateek Avasthi,
Advocates with petitioner in person.
(M): 9717545354
Email: ramakant_adv@yahoo.co.in

versus

PANKAJ JAIN

..... Respondent

Through: Mr. Prashant Mendiratta with
Mr. Sanchit Saini, Ms. Somyashree,
Ms. Aditi Chaudhary, Advocates with
respondent in person.
(M): 9582860718
Email: pmlawchambers@gmail.com

+ **CONT.CAS(C) 1511/2023 & CM APPL. 7548/2024**

COURT ON ITS OWN MOTION

..... Petitioner

Through: Mr. Ramakant Sharma with Mr. Ravi
Avasthi and Mr. Prateek Avasthi,
Advocates with petitioner in person.
(M): 9717545354
Email: ramakant_adv@yahoo.co.in

versus

PANKAJ JAIN

..... Respondent

Through: Mr. Prashant Mendiratta with
Mr. Sanchit Saini, Ms. Somyashree,



Ms. Aditi Chaudhary, Advocates with
respondent in person.

(M): 9582860718

Email: pmlawchambers@gmail.com

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER
26.02.2024

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1. The present petitions alleges violation of the order dated 24th March, 2023 passed in *CM(M) 490/2023*.
2. By order dated 24th March, 2023, this Court had dismissed the application by the respondent-father assailing the order dated 22nd March, 2023 passed by the Family Court in *G.P. No. 54/2018*, whereby the Family Court had allowed the petitioner-mother to change the school of the child from Bal Bharti School, Pitampura, Delhi to Sri Ram School, Aravali, Gurugram and directed the respondent-father to hand over the custody of the child to the petitioner-mother on 23rd March, 2023.
3. This Court upheld the order of the Family Court and directed the respondent-father to hand over the custody of the child to the petitioner-mother on 25th March, 2023. Since the aforesaid orders were not complied with, the present contempt petitions have arisen.
4. Learned counsels appearing for the parties submit that in a petition before the Supreme Court being *Special Leave to Appeal (C) No. 14915/2023*, the Supreme Court by its order dated 15th February, 2024 has directed that the custody of the child shall remain with the father till the final decision in this regard is taken by the Family Court, wherein the petition on that aspect is pending. Further, the Supreme Court has directed in



categorical terms that during the pendency of the proceedings before the Family Court, the question of petitioner-mother's visitation right shall be determined by the Family Court itself. For this purpose, the petitioner-mother has been granted liberty by the Supreme Court to make appropriate prayer. The order dated 15th February, 2024 passed by the Supreme Court in *Special Leave to Appeal (C) No. 14915/2023* reads as under:-

“ *Heard learned counsel for the petitioner and the respondent.*

The dispute out of which the present proceeding arises is over custody of the girl child of the parties. The petitioner and the respondent, being the mother and father of the child have matrimonial disputes and are living separately. The father's application for custody of the child under Sections 7 and 25 of the Guardianship and Wards Act, 1890 registered with the Family Court, Tis Hazari (West), Delhi is still pending. On 5th July, 2023, an order was passed by the Family Court in certain interlocutory proceedings in connection with the aforesaid petition in exercise of jurisdiction under Section 45 of the 1890 Act, directing, inter-alia, handing over custody of the child to the mother by the next day. The father preferred an appeal in the High Court of Delhi against the said order and a Division Bench of the High Court on 10th July, 2023, dismissed the said appeal. In this petition, the aforesaid order of the High Court has been assailed.

We are of the view that the Family Court would be the appropriate forum for taking a final decision on the question of custody in the pending petition made under Sections 7 and 25 of the 1890 Act. This matter has been heard on several occasions by this Court and attempt was made to find a resolution, but no solution could be worked out by and between the parties.

We are apprised that hearing in the main case for custody has reached an advanced stage before the Family Court. We, accordingly, disposed of this petition with a request to the Family Court to conclude hearing of the matter as expeditiously as possible.

Till final decision is taken by the Family Court, the custody of the child shall remain with the father. We are not expressing any opinion on merits in this order lest it influences the Family Court while taking a decision in the proceedings pending before it. We are also refraining from making any comment as to whether the present custody of the child with the father is legal or not. During pendency of the proceeding before the Family Court, the question of respondent's visitation right shall be



determined by the Family Court itself and for this purpose, the respondent shall be at liberty to make appropriate prayer.

Pending application(s), if any, shall stand disposed of.”

5. In view of the aforesaid, it is clear that the previous directions that may have been passed by this Court or the Family Court, get eclipsed by the aforesaid order passed by the Supreme Court.

6. In view of the aforesaid, this Court is of the considered opinion that no orders can be passed by this Court in the present proceedings.

7. Accordingly, the present petitions are disposed of, with liberty to the parties to approach the learned Family Court with prayer in terms of the aforesaid order passed by the Supreme Court

MINI PUSHKARNA, J

FEBRUARY 26, 2024

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