



2024:DHC:5529-DB



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

+ **LPA 659/2024 & C.M.No.41240/2024**

GAURVI SHARMA & ANR.

.....Appellants

Through: Mr.Manish Aggarwal with Mr.Varun
Kumar, Ms.Barnali Paul and
Ms.Akansha Choudhary, Advocates.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr.Santosh Kumar Tripathi, SC
(Civil), GNCTD with Mr.Rishabh
Srivastava, Advocate for R-2.

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Date of Decision: 23rd July, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. Present appeal has been filed challenging the impugned order dated 03rd July, 2024 passed by the learned Single Judge in W.P. (C) 8760/2024, limited to the extent of findings given by the learned Single Judge in paras 5 and 6 of the impugned order relating to misrepresentation and physical custody of the child.

2. Learned counsel for the Appellants states that the learned Single Judge has erroneously held that the Appellants have misrepresented the facts to obtain favorable orders. He further states that the learned Single Judge has

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erroneously observed that the mother of the child was having sole physical custody of the child only upon oral submission of the counsel for the Respondent No.4 (mother). He states that the Appellant No.2 (father) was taking care of the Appellant No.1 (minor child) from her birth till date and the child was/is in his custody, and thus the father of the child was her natural guardian.

3. He also states that no matrimonial proceedings were pending between the parties on the date the writ petition was filed and the Appellant No.2 was not aware on the date of filing of the petition that the mother was opposed to issuance of the transfer certificate by the school.

4. A perusal of the writ record which has been enclosed along with the present appeal by the Registry, shows that the Appellants in their synopsis filed along with the writ petition had clearly stated that the release/transfer certificate was not being issued by Respondent No.3 (school), as the mother had informed them not to release/issue the same.

5. In view of the aforesaid averment in the writ petition, this Court is of the view that the contention advanced by learned counsel for the appellants is contrary to facts.

6. Further despite the Appellants acknowledging in the writ petition that there was matrimonial discord between the Appellant No.2 (father) and Respondent No.4 (mother), had not impleaded the Respondent No.4(mother). No document/information has been disclosed and/or placed on record by the Appellant No.2 (father) even in the present proceedings to show that the child was being removed and admitted to a school in another State with the consent of the Respondent No.4 (mother).



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7. This Court is of the view that by merely mentioning in the writ petition that “*matrimonial disputes are going on between the Petitioner No.2 and his wife*” would not absolve the Appellant No.2 from his duty to inform the Court about the transfer certificate(s) being sought without the information and/ or consent of Respondent No. 4 (mother).

8. This Court is of the view that in light of the matrimonial disputes between the parties, the fact that the Appellant No.2 did not implead the Respondent No. 4 as a party to the writ petition clearly reflects *mala fides* of the Appellant No.2.

9. Accordingly, the present appeal being bereft of merit is dismissed along with application with the costs of Rs.15,000/- payable by Appellant No.2 to Respondent No.4 within two weeks.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J

JULY 23, 2024
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