



2024:DHC:5017-DB



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 14.05.2024

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Judgment pronounced on: 09.07.2024

+ **MAT.APP.(F.C.) 368/2023 & CM APPL. 64421/2023, CM APPL. 17214/2024**

AMIT SHARMA

..... Appellant

Through: Appellant in person.

versus

SUGANDHA SHARMA

..... Respondent

Through: Mr Tariq Ahmed, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE AMIT BANSAL

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

AMIT BANSAL, J.:

1. The present appeal has been filed by the appellant impugning the order dated 9th November, 2023, passed by the learned Judge Family Court-02 South West, Dwarka, New Delhi (hereinafter referred to as 'Family Court') and seeking the following reliefs:

"a. Pass necessary orders/directions to set aside the Impugned Order dated 09.11.2023 passed by Sh. Anil Kumar. Judge, Family Court, South West District Dwarka in Guardianship 312 Petition bearing GP No. 89 of 2022 titled as "Amit Sharma Vs Sugandha Sharma".

b. Grant interim custody in GP No. 89 of 2022 to the Appellant till the pendency of the case/ Grant an interim custody on every day for minimum 6 hours to the appellant to make bond and welfare of Master Shrestha with family, in the interest of justice.

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c. *Pass such other or further orders as this Hon'ble Court may deem fit and proper in facts and circumstances of the case."*

2. Briefly stated, the facts of the case are set out hereinafter:

2.1 The parties got married on 11th July, 2013 as per Hindu rites and ceremonies at Arya Samaj Mandir, Dwarka, New Delhi. From the said wedlock, a male child, Master Shrestha Sharma was born on 21st January, 2016.

2.2 Before marrying the appellant, the respondent had an earlier marriage, which was dissolved under Section 13B of the Hindu Marriage Act, 1955. The respondent has been taking care of the upkeep of a female child born out of her previous marriage.

2.3 Marital disputes arose between the parties and the respondent left the matrimonial house along with both the children on 15th September, 2021.

2.4 The respondent filed a police complaint dated 19th September, 2021 alleging that the appellant attempted to kill her and misbehave with her daughter.

2.5 Subsequently, the respondent filed a petition seeking dissolution of her marriage with the appellant before the Principal Judge, Family Court, South-West District, Dwarka Courts, Delhi ('divorce proceedings'). In the divorce proceedings, the appellant filed an application seeking visitation in respect of his son, Master Shrestha Sharma (hereinafter referred to as 'the child'). *Vide* order dated 10th January, 2022, the appellant was granted virtual visitation rights, twice a week from 6:00 pm to 7:00 pm.

2.6 It is stated by the appellant that the respondent failed to comply with the aforesaid order. Therefore, two contempt applications have been filed by the appellant in the divorce proceedings, which are pending adjudication.





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2.7 Thereafter, the appellant filed a petition under Section 25 of the Guardian and Wards Act, 1980 ('guardianship petition') before the Family Court. Along with the Guardianship petition, the appellant filed an application under Section 12 of the Guardian and Wards Act, 1980 seeking interim/temporary custody of the child. The Family Court *vide* order dated 2nd January, 2023 allowed the appellant to meet the child at Venkateshwar Hospital, where the child had been admitted as he was suffering from Swine Flu. However, as per the appellant, the interaction between the appellant and the child could not take place as the respondent created hindrances.

2.8 The appellant filed another application under Section 12 of the Guardian and Wards Act, 1980 seeking temporary custody of the child. *Vide* order dated 31st January, 2023, the Family Court allowed temporary custody for four hours for the celebration of the birthday of the child's cousin on 8th February, 2023. Further, with the consent of the parties, the appellant was allowed to meet the child on the first and third Saturdays, every month in the Children's Room, Dwarka Court from 3 pm to 4 pm.

2.9 The aforesaid order dated 31st January, 2023 was appealed by the respondent before this Court in MAT. APP. (F.C.) 40/2023. The Coordinate Bench dismissed the said appeal *vide* order dated 9th August, 2023. However, it was observed that the meetings in the Children's Room, Dwarka Court would be held in the presence of a counsellor.

2.10 The appellant's mother (grandmother of the child) filed an application before the Family Court seeking interim custody of the child, which came to be dismissed *vide* order dated 6th September, 2023 holding that the appellant's mother was not a party to the guardianship petition and it would not be in the welfare of the child to send him to the house of the appellant

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where the grandparents are residing.

2.11 Subsequently, the appellant filed an application under Section 12 of the Guardian and Wards Act, 1980 before the Family Court seeking interim custody of the child during 'Dussehra'. *Vide* order dated 18th October, 2023, the Family Court permitted the appellant, the grandparents of the child along with other members of the family to visit the child in the park located in the residential society of the respondent from 11:00 am to 12:00 pm on 24th October, 2023. However, neither the appellant nor the grandparents availed the liberty granted by the Family Court *via* the aforesaid order.

2.12 Another application under Section 12 of the Guardian and Wards Act, 1980 dated 31st October, 2023 was filed by the appellant seeking interim/temporary custody of the minor child to celebrate upcoming festivals namely, Deepawali, Goverdhan and Bhaidooj, among other coming festivals, which came to be dismissed by the Family Court *vide* impugned order dated 9th November, 2023.

3. By way of the impugned order dated 9th November, 2023, the Family Court while dismissing the application of the appellant observed that after interacting with the child, the child was found uncomfortable in the presence of the appellant. Therefore, if interim/temporary custody is granted to the appellant, it would cause mental trauma to the child.

4. Assailing the impugned order passed by the Family Court, the appellant has approached this Court by way of the present appeal.

5. Notice in the present appeal was issued on 13th December, 2023.

6. At the hearing of the appeal on 9th January, 2024, the Court was informed that due to the absence of a counsellor, the appellant is not able to interact with the child in the Children's Room, Dwarka Court. In view

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thereof, this Court issued directions to the concerned Family Judge to ensure the presence of a counsellor on the dates fixed for visitation.

7. On the next date of hearing, 12th February, 2024, the Court was informed that the appellant was able to interact with the child on 20th January, 2024 in the presence of the counsellor. The Court directed that all subsequent meetings will be held in the presence of a counsellor and the counsellor will submit a report of the meetings.

8. On the next date of hearing of the appeal, 29th February, 2024, the report of the Counsellor, Family Court, Dwarka ('Family Court Counsellor') dated 21st February, 2024 was perused by the Court wherein it was stated that the child was apprehensive in the meetings with the father and appeared to communicate that the meetings with the father were forced on him. In view of the above, this Court directed a second opinion be taken from 'Children's First', a reputed children's mental health organisation in the NCR region. The parents along with the child were directed to approach Children's First and Children's First was asked to furnish a report in a sealed envelope.

9. On 20th March, 2024 a fresh application C.M. No. 17214/2024 was moved by the appellant seeking the implementation of visitation rights granted by this Court *vide* order dated 12th February, 2024. Notice in the said application was issued and the District Judge was directed to place on record a report with regard to the averments made in the application.

10. On the next date of hearing i.e., 8th April, 2024, the order passed by this Court notes that despite options given to the appellant, the appellant refused to interact with the child either before the Delhi High Court or at the Delhi High Court Mediation and Conciliation Centre or at the Children's

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Room, Dwarka Court. On the same date, an application i.e., C.M. No. 20624/2024 was also moved on behalf of the respondent wherein it was averred that the appellant had been sending offensive emails and messages to her, her office colleagues and her lawyer. The application was closed while giving a warning to the appellant not to send such communications in the future.

11. At the hearing on 14th May, 2024, Mr Abhishek Sharma, advocate who had been appearing for the appellant sought a discharge in the matter, which was confirmed by the appellant who was physically present in court. Accordingly, Mr Abhishek Sharma was discharged from representing the appellant in the present appeal. The Court noted the stand of the appellant that he does not wish to exercise the visitation rights in the presence of the respondent. However, as an alternative, the appellant stated that the child be allowed to visit his paternal grandparents who reside in the same house as the appellant and during the interaction, the appellant would not remain present. The Court also noted that it has received the interim report dated 10th May, 2024 from Children's First as well as report of the Family Court Counsellor dated 10th May, 2024. After hearing arguments, the judgment was reserved.

12. Broadly, the appellant appearing in person, submits that the respondent has tutored the child in a manner that the child would pretend that he is afraid of his father. This observation was also made by the Coordinate Bench of this Court in MAT. APP. (F.C.) 40/2023 in the order dated 26th July, 2023. The appellant states that he is not able to have a proper meeting with the child in the Children's Room, Dwarka as the respondent is always present in the said meetings and influences the behaviour of the

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child. The appellant has not met the child since the last two and a half years and thus, the child has become apprehensive in meeting the appellant. This situation can only be remedied by giving interim custody of the child to the appellant. He further submits that the respondent is a working lady who works from 8 am to 6 pm on a daily basis and therefore does not have the time to look after the child. On the other hand, the appellant is self-employed and also has his parents (grandparents of the child) who can look after the child.

13. *Per Contra*, the counsel appearing on behalf of the respondent has objected to the maintainability of the present appeal. It is submitted that an appeal of the order passed under Section 12 of the Guardian and Wards Act, 1980 is barred by Section 47 of the Guardian and Wards Act, 1980 and Section 19(1) of the Family Courts, Act, 1984. On merits, it is submitted on behalf of the respondent that the appellant is of a violent and abusive character and hence the child is not comfortable in his presence. The child has witnessed instances of domestic violence carried out by the appellant against the respondent. Therefore, it would not be in the well-being of the child to hand over interim custody of the child to the appellant.

14. We have heard the rival submissions and examined the record of the case. We have also had the benefit of the interim report filed by Children's First, the institute where the child was referred for a psychological evaluation by the Court and the reports filed by the Family Court Counsellor where the interaction took place between the child and the appellant.

15. Even though the respondent has raised a preliminary objection with regard to the maintainability of the appeal, we are not inclined to reject the appeal on the ground of maintainability. In ***Dr Geetanjali Aggarwal v. Dr***





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Manoj Aggarwal, MAT.APP. (F.C.) 126/2019, a Coordinate Bench of this Court has observed that an order dealing with aspects of visitation and/or interim custody of a minor child has serious implications and has, accordingly, referred the matter to a larger bench on the issue of maintainability of an appeal arising from such an order. Accordingly, we proceed to examine the appeal on merits.

16. It is a settled position of law that in matters of custody of a minor child, the Court has to look into the best interest of the child. The best interest of the child has to be determined taking into account all relevant circumstances. It cannot also be disputed that a minor child requires the love and affection of both his parents. Therefore, even if the custody of the child is with one parent, the other parent must have visitation rights so as to ensure that the child maintains contact with the other parent. Joint parenting is the norm. If the court moves away from this norm, it should clearly articulate its reasons. One of the facets of joint parenting is the grant of visitation rights. At times, the courts need inputs from domain experts. The timing, duration and whether oversight of say a child counsellor is required during visitation by a non-custodial parent, is a call that the court has to take bearing in mind the best interest of the child.

17. In the present case, the Family Court *vide* order dated 31st January, 2023, directed that the appellant would be allowed to meet the child on the first and third Saturdays of every month in the Children's Room, Dwarka Courts from 3.00 pm to 4.00 pm. The aforesaid order was unsuccessfully challenged by the respondent before this Court. The Coordinate Bench dismissed the appeal filed by the respondent while directing that the meetings in the Children's Room, Dwarka Courts would be held in the



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presence of a counsellor.

18. The appellant expressed his grievance that the aforesaid meetings could not take place due to the absence of a counsellor on various dates. This grievance was addressed by this Court by directing the concerned Family Judge to ensure that a counsellor is present in all such interactions between the child and the appellant.

19. In the report dated 21st February, 2024 submitted by the Family Court Counsellor it was observed that the child was apprehensive and hence, was not ready to meet the father. The report also noted that despite the intervention of the Family Court Counsellor, the child did not respond to the father and started crying.

20. Taking note of the aforesaid report, this Court sought a second opinion from Children's First. We have examined the interim report dated 10th May, 2024 from Children's First. The report notes that the child in his interaction stated that he did not like to meet his father or visit Court on a regular basis as it makes him feel uncomfortable. The upshot of the report is that the child requires detailed assessment over the next 8 to 12 weeks and during this period, there should be no contact, physical or virtual, between the child and his father.

21. A further report dated 10th May, 2024 from the Family Court Counsellor also notes that the child should be given some time so that he can be counselled to interact with the appellant in a healthy manner. The report also suggests that the appellant was not happy with the approach of the Counsellor and, therefore, sought to threaten her.

22. In light of the aforesaid reports, we do not think it would be in the best interest of the child if interim custody is granted to the appellant at this

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stage. There is a clear finding in the aforesaid reports that the child is uncomfortable in the presence of the appellant and starts crying. Further, taking note of the 'tender age' of the child i.e., 8 years, we are unable to persuade ourselves to grant interim custody of the child to the appellant. Similarly, we cannot accept the suggestion of the appellant that the child be sent to visit the grandparents. These kinds of interactions can be worthwhile and fruitful only if the child is able to overcome his deep apprehensions in meeting the appellant. In our view, perhaps some more time is required for the child to be comfortable in the presence of his father and interact with him. Toward this objective, the twice-a-month meetings, in the presence of the counsellor at Dwarka Courts, as directed by the Family Court and confirmed by the Coordinate Bench, should continue.

23. In view of the above, no grounds for interference are made out with the impugned order passed by the Family Court.

24. The appeal is, accordingly, dismissed.

**AMIT BANSAL
(JUDGE)**

**RAJIV SHAKDHER
(JUDGE)**

JULY 09, 2024
at