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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 11th February, 2025

+ CONT.CAS(C) 206/2025 & CM APPL. 8054/2025

ANITA

.....Petitioner

Through: Ms. Archana Gaur, Advocate.

versus

JATINDER KUMAR

.....Respondent

Through: Ms. Sampanaa Pani, Advocate with
respondent in person.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Learned counsel for respondent appears on advance notice.
2. Respondent Jatinder Kumar is also present in person.
3. Petitioner had filed a petition under Section 7, 12 and 25 of Guardian & Wards Act, 1890 seeking custody of her minor daughter and *vide* order dated 18.04.2024, her such petition was allowed and she was granted permanent custody of her such daughter. Respondent was also, simultaneously, directed to handover her custody to the petitioner within a period of eight weeks. Para 17, 18, 19 and 20 of such order read as under:-

“17. Another factor which is to be considered for the custody of the child is that the minor is the female child who needs constant guidance and affection of her mother especially when she enters in her teens. Further, it shall be in the best interest of the child if she grows up in the company of her real sister instead of her cousins.



18. In view of the above discussion, the petitioner is granted permanent custody of the female child namely Ridhima. The respondent shall hand over the custody of the child to the petitioner within a period of eight weeks from today. Keeping in view the interest of the child, both parties shall co-operate with each other in complying with the directions of the Court.

19. However, this case is not oblivious of the efforts made by the respondent in upbringing the child as are revealed from the interaction with the child and it shall not be in the welfare of the child to totally uproot the child from her familiar surroundings where she is residing since her birth and she has been in exclusive care & custody of her father/respondent after dispute between the parties. It shall be in the welfare of the child if the the respondent is granted overnight custody of the child baby Ridhima during weekends and holidays/vacations. The respondent is at liberty to take the custody of the child baby Ridhima from the house of petitioner in the morning of every Saturday at 11:00 AM and hand over the custody of the child back to the petitioner at her premises in the evening of every Sunday. After giving due regard to the wishes of the child and home assignments of the child during vacations the petitioner shall make the child available for her interim custody to the respondent for a sufficient period. Parties shall maintain a congenial atmosphere while co-ordinating for the visitation and at the time of handing over and taking the custody of child. Petitioner shall not imbibe any negativity in the mind of the child against her father due to her disputes with the respondent and the respondent shall continue to contribute towards the education and maintenance of the minor child.

20. The present petition stands disposed of accordingly. Decree Sheet be prepared accordingly. File be consigned to record room after compliance.”

4. Evidently, feeling aggrieved by the above said order dated 18.04.2024, the respondent i.e. father filed an appeal which was registered as MAT. APP. (F.C.) 324/2024. Such appeal was, eventually, taken up for further consideration on 22.10.2024 by learned Division Bench of this Court and on account of the fact that the appellant himself had submitted before the Court that he did not want to press his above said appeal, the appeal was disposed of.



Simultaneously, the appellant, who was present in the Court, had assured the Court that custody of the child would be handed over to the petitioner/mother on 28.10.2024 before Mediation Centre, Tis Hazari Court, New Delhi.

5. The grievance raised in the present contempt petition is merely to the effect that despite the above said categoric direction and dismissal of the appeal, the custody has yet not been handed over.

6. Learned counsel for respondent submits that there is no intention to disobey the directions of the Court. She submits that since the child was not mentally prepared enough and was not ready to go with her mother, the order could not be implemented.

7. It is also submitted that the petitioner herein has already filed an execution petition which is pending consideration before learned Judge, Family Court, Patiala House Courts, New Delhi. During course of the above said execution proceedings, the parties were also referred to mediation. It is submitted that the next date of hearing before the above said Court and also before Mediator is 28.02.2025.

8. It is pertinent to mention here that the mother is having permanent custody of her younger daughter, who is presently around seven years of age.

9. Learned counsel for respondent submits that till date, the father has no visitation right or any order regarding temporary custody with respect to their such minor daughter. She submits that since as per



order dated 18.04.2024 passed by learned Trial Court, father has been granted overnight custody of her elder daughter during weekends and holidays, a similar arrangement can also be made for the younger daughter so that both the daughters get love and affection of their father.

10. After hearing arguments for some time, learned counsel for the petitioner submits that if some direction is given to learned executing Court to dispose of the execution petition expeditiously, she would not press her contempt petition, at the moment. She, however, seeks liberty to file the contempt petition afresh in case, need so arises.

11. Keeping in mind the fact that the question pertains to custody of a minor child, who is not, as claimed by father, mentally prepared as yet and the fact that parties have already been referred to mediation by learned Trial Court and also in view of the above statement made by learned counsel for petitioner, the present contempt petition is disposed of as not pressed. Liberty, as prayed, is granted.

12. Simultaneously, learned Trial Court is requested to take up the above said execution petition on priority basis and to make best endeavour to dispose it of as expeditiously as possible, preferably, within a period of two months from the date of receipt of this order.

13. It is expected that on the next date of hearing i.e. 28.02.2025, both the parties shall appear in person with their respective counsel not only before Mediation Centre but also before learned Trial Court to ensure that there is no further delay.



14. However, it also needs to be clarified that merely because respondent feels that he should have visitation right for younger daughter, he cannot frustrate the specific orders of the Court. Needless to say, he is always at liberty to file appropriate petition in this regard seeking visitation or temporary custody of his younger daughter while ensuring that the orders, as aforesaid, are duly complied with.

15. Petition stands disposed of in aforesaid terms.

(MANOJ JAIN)
JUDGE

FEBRUARY 11, 2025/st