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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 1552/2023**
PRABHAT DESWAL

Through: Mr. Rishi Bhardwaj, Adv. alongwith
petitioner in person.Petitioner

versus

ANKITA KHOKHAR DESWAL

Through: None.Respondent

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN

ORDER
11.08.2025

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CM APPL. 49129/2025

1. By the present application, applicant/petitioner seeks early hearing of the matter.
2. The next date fixed in the matter is 26.11.2025.
3. Since the point involved is very short, such request is allowed and the matter is taken up for hearing today itself.
4. Application stands disposed of.

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5. Petitioner has filed a petition under Section 9 of Hindu Marriage Act, 1955 seeking restitution of conjugal rights.
6. During pendency of the abovesaid petition, he also moved an application under Section 26 of Hindu Marriage Act, 1955 seeking direction

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for his wife to handover the minor child to him on every Saturday of the month from 3:30 pm to 6:30 pm to enable him to meet his minor daughter.

7. Said application has been dismissed by learned Trial Court vide order dated 05.09.2023 while observing that such type of interlocutory application was not maintainable in a petition filed under Section 9 of Hindu Marriage Act, 1955. In this regard, the learned Trial Court has strongly relied on a judgment of the Hon'ble Supreme Court in *Priyanka Vs. Santosh Kumar* passed in *Transfer Petition (Civil) No.964/2021 dated 08. 12.2022* whereby the Hon'ble Supreme Court has observed as under:-

“7. The respondent (husband) should have filed a separate and independent petition under Section 26 of the Hindu Marriage Act, 1955, instead of securing an Order in the proceedings pending under Section 9 of the Act. The Order dated 03-06-2019 giving visitation rights or temporary custody of the child to the respondent (husband) is, thus, patently illegal.”

8. Admittedly, petitioner herein has also filed a Guardianship Petition being G.P. No.7/2022 titled as “Prabhat Deswal v. Ankita Khokhar Deswal” which is pending adjudication before the learned Judge, Family Court, North-West, Rohini Courts, Delhi and the next date therein is 19.11.2025.

9. During course of arguments, it is apprised that a similar application has already been filed before the abovesaid Court which somehow has yet not been decided. It is also apprised that in the abovesaid Guardianship Petition, the wife had also moved an application under Order VII Rule 11 CPC, which has already been dismissed.

10. Heard learned counsel for petitioner.

11. Learned counsel for petitioner, without prejudice to his rights and contentions, does not press the present petition. He, however, submits that the



concerned Court, where his Guardianship Petition is pending adjudication, may be requested to decide the abovesaid application moved under Section 12 of Guardians and Wards Act, 1890 as expeditiously as possible.

12. In view of above, the present petition is disposed of as not pressed.

13. All rights and contentions of parties are left open.

14. Learned Judge, Family Court, North-West, Rohini Courts, Delhi is, however, requested to decide the abovesaid application moved under Section 12 of Guardians and Wards Act, 1890, as expeditiously as possible.

15. A copy of this order be transmitted to abovesaid Court for information and due compliance.

16. The next date fixed i.e. 26.11.2025 stands cancelled.

17. Pending application, if any, also stands disposed of in aforesaid terms.

MANOJ JAIN, J

AUGUST 11, 2025/ck/js