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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ MAT.APP.(F.C.) 313/2024 and CM APPL. 56064/2024, CM
APPL. 64842/2024
GAURAV BATRAAppellant

Through: Ms. Shreya Singhal, Ms.
Mhasilenvo Kreditsu with
appellant in person.

versus

DISHA GUPTARespondent
Through: Mr. Rajat Aneja and Ms. Alka
Dwivedi, Advocates with
respondent in person

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE RENU BHATNAGAR

ORDER
09.04.2025

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1. This appeal has been filed challenging the Order dated 05.08.2024 passed by the learned Principal Judge, Family Court, South East District, Saket, New Delhi in Guardianship Petition No. 87/2022, disposing of the application under Section 12 of the Guardians and Wards Act, 1890 read with Section 151 of the Court of Civil Procedure, 1908 filed by the appellant seeking interim custody of the minor child from the respondent/ wife or in the alternative for granting custody/visitation rights to the appellant for at least three hours a day from Monday to Friday and full day stay on Saturday and Sunday during the pendency of the petition before the learned Family Court.



2. The impugned order disposed of the said application with the following directions:

“21. On a conspectus of above noted facts and circumstance, in view of law laid in elicited precedents, I am of the considered view that it would be in the best interest of the holistic development of the minor that he spends sufficient amount of time with his father/petitioner but prayer of grant of interim custody of tender aged (below 5 years) minor Master Aaryan from respondent to petitioner is declined. It is hereby directed that during pendency of the main petition the following visitation rights are granted to the petitioner/father.

(i) Respondent is directed to produce the minor Master Aaryan in Children Room in the Family Court Complex, Saket, New Delhi on every first and third Sunday of every month for interaction with petitioner/father for the period from 2.30 pm to 5 pm. Respondent or person of family of respondent escorting minor for visitation shall wait outside the aforesaid Children Room during visitation period.

(ii) Respondent is also directed to facilitate the meeting of the minor Master Aaryan in the period from 3 pm to 6 pm on every Second Saturday of the month at Select City Mall, Saket, New Delhi. Petitioner shall deliver back the custody of child to respondent positively by 6 pm that day at the place the petitioner obtains the custody of child at 3 pm that day. Petitioner shall not take away the minor from said Mall.

Further more, in case due to any exigency, on part of any party to the lis or the minor, there



is any impediment for effective above-said visitation rights, the requisite information shall be given to the other party in advance and in that eventuality such visitation shall take place on the next Sunday or next Saturday, at the same time, as the case may be.”

3. The impugned order itself records that the minor child has been in exclusive custody of the respondent since 28.07.2022 and that there appears to be an influence of the respondent in parental alienation as far as the appellant is concerned.

4. The minor child is only around five years of age. The parties to this appeal are stated to be residing in very close proximity at South Extension part 1. The respondent has presently not produced any material on record stating that the appellant has in any manner misused or abused the limited visitation rights that have been granted to the appellant by the impugned order.

5. On the other hand, the learned Counsel for the respondent vehemently submits that the appellant should not be allowed any further visitation rights as he is not a fit person for the same. In support, he draws our attention to the alleged incident of 25.09.2022, stating that the appellant had in fact, come up with a brick and broke the windshield of the car belonging to the respondent. He also draws our attention to certain other photographs showing the appellant sitting with a child with a beer bottle in his hand, but admits that these instances are also much prior to the date of separation of the parties and in happier times and the child in the photograph is not the son of the parties herein, but son of the sister of the appellant. He draws our



attention to certain other photographs, which he alleges would show that the appellant has not been fair with the respondent and that even the father of the appellant seems to be enjoying with liquor bottle in his hand appearing to be in a party. He again admits that these photographs are also when the parties were staying together and in happier times.

6. In our view, the above photographs would not be sufficient to deny the love and affection of a father to the child (as noted hereinabove only five years old). We have also noted hereinabove that by the impugned order, the limited visitation rights have been granted to the appellant with the child and, at least presently, there is no allegation that the appellant has in any manner abused the same.

7. For the well being of a child, the love and affection of both the parents is equally important, and forceful denial of the love and affection of one of the parents is bound to have psychological effect on the well being of the child. Being *Parens Patriae* of the minor, we would not therefore, allow the same to occur. Presently, the appellant is having some relationship with the child and this needs to only grow further.

8. Therefore, as an interim measure, at the outset to develop the bonding between the appellant father and minor child, we direct that the respondent shall handover the custody of the child on the 1st and 3rd Saturday and Sunday of the month at 10:00 AM to the appellant. The appellant shall pick up the child from the residence of the respondent at that time and return back the custody of the child to the respondent at her residence by 06:00PM on both the days. However, it



is also made clear that the above stated visitation does take place on any unforeseen event, in that eventuality, the same shall be substituted by the ensuing Saturday or Sunday of the month, as the case may be. Presently, we are not inclined to give the overnight custody of the child to the appellant because firstly, further bond needs to be developed between the appellant and the child and the child is to be made comfortable in the company of the appellant and his parents. Further directions in this regard can be passed by the learned Family Court on seeing the result of the interim arrangement made by us in the present order. Both the parties are directed to adhere to this order in its true letter and spirit.

9. Accordingly, the impugned order is set aside and the interim visitation shall stand substituted by this present order.

10. As far as the prayer of the appellant for access to the school record of the child, we give liberty to the appellant to move a proper application in this regard before the learned family Court. Such application, if filed, shall be considered by the learned Family Court in accordance with law after hearing the parties.

11. The appeal along with pending applications is disposed of.

NAVIN CHAWLA, J

RENU BHATNAGAR, J

APRIL 9, 2025

Ab/KZ

Click here to check corrigendum, if any