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

+ CONT.CAS(C) 1949/2024 CM APPL. 24530/2025

+ CONT.CAS(C) 1679/2024 CM APPL. 24533/2025

SH KSHITIZ SAXENA

.....Petitioner

Through: Mr. Neeraj Kumar Garg, Adv.

versus

MS. DEEPALI SAXENA

.....Respondent

Through: Mr. Faisal Zafar, Adv. Mr. Sumair
Ali, Adv. Mr. Asim, Adv. With
Respondent in person.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

25.04.2025

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1. Counsel for the petitioner seeks to press for contempt of *inter alia* three orders dated 22nd October 2024, 31st October 2023 and 06th June 2024. The three orders are extracted as under:



श्री श्री
NEERAJ GAUR
जुद्धा परिवार न्यायाधीश
दिल्ली उच्च न्यायालय
दिल्ली

GP No.29/23

Kshitez Saxena Vs. Deepali Saxena

22.10.2024

File taken up today on an application moved by the petitioner seeking visitation rights to meet the child on Diwali.

Present : Applicant/Petitioner with Ld. counsel, Mr. Neeraj Kumar Garg.
Non-applicant/Respondent in person alongwith the child.

This intervening application has been moved by the petitioner for having a special visitation rights with the child on the occasion of Diwali. Respondent states that she has tried to convince the child to meet her father but the child is totally against it. Noticing that the child has been brought today by the respondent, the petitioner has been given an opportunity to meet the child in the visitation room. Immediately after giving the opportunity, the respondent returned in the court room alongwith the child who is crying profusely.

Respondent states that her father to whom the child was deeply attached died in September itself and that is all the more a reason that the child does not want to meet the petitioner. Respondent states that still she will continue to convince the child and she will bring the child to Metro Walk on 27.10.2024 at 02:30 PM where the petitioner can come and meet the child if the child is comfortable.

The parties the parties are directed to maintain peace and harmony during the meeting. However, seeing the mental state of the child as displayed in the court today, petitioner is advised not to force himself on the child to an extent that the child develops any abhorrence. The application stands disposed off.

Copy of this order be given dasti.

(NEERAJ GAUR)
JUDGE, Family Court North
Delhi
22.10.2024

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Judge Family Court
गर्भित रोज वीरि
North Rohini Court
Rohini
Delhi

GP No.29/2023
Kashita Saxena Vs. Deepali Saxena

31.10.2023

Present: Petitioner with Ld. counsel, Sh. Neeraj Kumar Garg.

Sh. Faizal Jaffer, Ld. Counsel for respondent.

After the case had been adjourned on last date of hearing for 02.02.2024, the file was again taken up on a prepossession application moved by the petitioner for deciding his earlier application dt. 07.10.2023. Notice of the said application was sent to the respondent for today.

The sum and substance of the application dt. 07.10.2023 is to give more frequency to the visitation of the child by the petitioner. The parties have been heard at length. With the intervention of Ld. counsels, it has been agreed that the existing visitation meetings through VC should take place more frequently.

Ld. counsel for the respondent submits that the respondent has never interrupted the VC meetings as she is not averse to the same provided the child should willingly remain in the VC. It has been agreed that the VC visitation will be arranged once in a week with flexible duration. The timings will be agreed between before and between the parties. The timings of the meetings so held will be as per the comfort of the child. This shall not preclude the parties for having more meetings if the child is so willing.

Request is being made by the petitioner to have a special visitation physically on the occasion of Diwali. Since the parties are at least not non-cooperative, I am leaving it to the parties to arrive at an understanding for such a meeting subject to the comfort and willing of the child.

The application dt. 07.10.2023 is disposed off accordingly.

Case is already fixed for purpose fixed on 02.02.2024.

Copy of order be given dasti.



(NEERAJ GAUR)
JUDGE
Judge Family Court North
Rohini Court
Rohini, Delhi

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सुप्रीम कोर्ट दिल्ली
High Court of Delhi
दिल्ली
दिल्ली

GP No.29/2023

Kshitiz Saxena Vs. Deepali Saxena & Anr.

06.06.2024

File has been taken up on an application moved by the petitioner.

Present : Petitioner/Applicant in person.

The non-applicant/respondent has been duly served through her father. Petitioner has also filed an affidavit of service of the application on the respondent.

The respondent has not appeared since morning and it is already 12:30 PM now. I shall proceed to decide the **application dt.30.05.2024 ex-parte.**

The main case was lastly listed on 30.05.2024 and has now been fixed for PE on 05.11.2024. After the adjournment of the case on 30.05.2024, the petitioner moved the present application seeking physical visitation with the daughter.

Ld. counsel for the petitioner submits that presently, the petitioner is only pressing for a physical meeting with the child on the occasion of her birthday on 26.06.2024 for about 2 hours. I am finding the prayer to be quite reasonable and it would be pleasant for the child if she meets her father on her birthday.

At this stage, petitioner states that if there is any pre-scheduled plan of the child on her birthday then the petitioner is flexible to meet the child before or after her birthday so that her schedule does not get disturbed.

In the given facts and circumstances, the petitioner is **permitted** to meet the child for about 2 hours during day time of 26.06.2024. In case there is any prior schedule for her birthday, the respondent shall intimate in

Contd..../P2

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advance to the petitioner and she will further intimate another time/date which should not be more than 2 days prior or posterior to 26.06.2024.

Copy of this order be given dasti to the petitioner for service of the same on the respondent and the application be put up for further consideration on 24.08.2024.

It is clarified to the respondent through this order that in case no-one will turn up on 24.08.2024, the application will be decided ex-parte.




(NEERAJ GAUR)
Judge, Family Court, North
Rohini/Delhi/06.06.2024

JUDGE
NORTH DISTRICT
FAMILY COURT
Rohini, Delhi

2. Broadly, the issue concerns the resistance to visitation of the minor daughter, who is now 12 years of age, in favour of the petitioner/father. The parties have separated and no divorce proceedings are pending. The aforesaid orders have been passed in ***Guardian Petition No. 29/2023***.
3. The respondent, *Ms. Deepali Saxena*, and the minor, *Ms. Samaira Saxena*, are both present in Court.
4. Upon interaction with the minor daughter, she has categorically stated that she does not want to meet the father and in fact gets emotionally distressed the moment the same is suggested.
5. On this account and in the spirit of this Court's *parens patriae* jurisdiction, the Court was persuaded to peruse the various order-sheets of the Family Court in this regard, filed by the counsel for the respondent.
6. Even in the orders of which compliance is sought by the petitioner, there are repeated references to the extreme reluctance of the child in meeting the father, both, physically or through VC:

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- (i) In order dated 22nd October 2024 as extracted above, it is noted that with regard to the special visitation rights on the occasion of Diwali, the Judge, Family Court notes that the child was brought and the petitioner was given an opportunity to meet the child in the visitation room and immediately thereafter, the respondent returned in the Court Room with the child who was crying profusely. Even then, the respondent stated that she will try and convince the child and bring the child to *Metro Walk* at 2:30 P.M., when the petitioner can come and meet the child, if the child is comfortable. The Judge further records that seeing the mental state of the child, as displayed in the Court, the petitioner was advised not to force himself on the child to an extent that the child develops abhorrence towards him.
- (ii) In the order dated 31st October 2023, in relation to an application that more frequent visitations should be given to the petitioner, the parties were heard at length. The directions were then made for VC visitation, once a week, with flexible duration. The Judge, Family Court recorded, that it was being left to the parties to arrive at an understanding for such a meeting, subject to the comfort and willingness of the child.
- (iii) In the order dated 06th June 2024, in an application seeking physical visitation, the petitioner pressed for physical meeting of the child on the occasion of her birthday for about two hours. The same was allowed.

7. The Court also notes various other orders in which observations regarding the extreme reluctance of the minor daughter are recorded as

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under:

- (i) In the order dated 30th January 2023 where it was stated by the ASJ, Rohini Courts in CA No.10/2023 (which was an appeal against the order of the Mahila Court where order was passed that the female child was not inclined to contact the father and the Trial Court had in fact restrained the father from contacting the female child either at school or at any place) the ASJ thought it fit to hear the views of the then 9½ year old child. On the same day, the interaction occurred in the Chambers where it is recorded that after speaking with the child the child was not comfortable for a physical meeting with her father and, therefore, VC meetings would be arranged.
- (ii) On 24th August 2024 in **GP No.29/2023**, the Judge, Family Court had recorded that the child had shown absolute unwillingness to any physical meetings with the father as she was reluctant, even for contact through VC, stating that the father had been rude and threatening towards her. That the Court was then of the view that the child meeting the father would result in nothing but forcing her to go against her wishes and would impact her adversely, and therefore, meetings through VC were to be continued.
- (iii) On 09th December 2022, it was recorded by the MM, Mahila Court, that after examination it was observed that the child was not inclined to see or contact the father and the petitioner was directed not to make any contact with the child, either at her school or any other place.

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- (iv) On 19th July 2023 while disposing of an application, the Revisionist Court had modified the order allowing VC access, it was noted that the Court had examined the minor child and she did not show any interest in meeting her father. The Court noted that even though the child was aged 10 years and may not be capable to decide complex relationships, the only factor to be looked at, was the welfare of the child. Visitation was, therefore, allowed once a month on a specified time.
- (v) On 08th August 2023 in **GP No.29/2023**, the Court attempted an interaction with the child and a Memorandum of Interaction has been placed on record. The Memorandum of Interaction reads as under:

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08.08.2023

GP No. 29/2023
Kshitij Saxena Vs. Deepa i Saxena & Anr.

Memorandum of the interaction conducted by the court with the child namely Baby Samaira aged around 10 years.

The child came to my chamber along with her mother/respondent. I have sent the mother of the child outside and I have interacted with the child alone in my chamber. The child has replied the queries made by me in a cool and composed manner.

During interaction, the child told that her date of birth is 26.06.2013 and presently she is studying in 5th Standard in Mount Columbus School, Sector-47, Gurugram, Haryana. She told that presently she is residing in Gurugram with her mother and Masi who is unmarried. The child goes to school in a car with her Masi. The child told that she lived with her both parents when she was in 4th standard and thereafter the parents are living separately. She told that she has met her father through video conferencing on some occasions but she has not met him physically after separation of the parents. During further interaction, the child told that she was never comfortable while meeting with his father. She explained that her past memories are still fresh as her father used to punish her for minor deviations from the directions/schedule prescribed by him for her. She told that her father is of quarrelsome nature.

During further interaction, the child told that she is not interested in meeting with her father. She further explained that it is not that she does not want to meet the father at all, but she needs few months so that she can become mentally prepared and comfortable for meeting with the father.

(SANJAY JINDAL)
Office of the Principal Judge, Judge Family Courts,
Family Court, District Rohini Courts
Delhi 08.08.2023(pk)

- (vi) On 16th August 2023, the Judge, Family Court recorded that since the child was consistently expressing a lack of interest in meeting the father, the Court was of the view that more frequent visitation with the father may affect the child adversely, and therefore, directions were given for physical visitation for one day. The request for enhancement of visitation/physical meetings, made by the petitioner, stood

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declined.

(vii) On 05th November 2024, the Family Court noted that the respondent had appeared with the child and the Court interacted with the child and was of the opinion that the physical meetings with the child could be counter-productive, and therefore, decided to continue the VC meetings.

8. Most specifically, counsel for the respondent had pointed out to the Court that the order dated 05th November 2024 that had been suppressed by the petitioner.

9. After a perusal of this order, the Court inquired from the petitioner as to the reasons for this suppression.

10. Counsel for the petitioner responded that this order was not relevant.

11. In order to assess this, the said order is extracted as under:

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दिल्ली
अधीनस्थ न्यायालय
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अधीनस्थ न्यायालय
अधीनस्थ न्यायालय

GP No.29/23

In: KSHITIZ SAXENA Vs. DEEPALI SAXENA

05.11.2024

Present : Petitioner with Ld. counsel, Ms. Vibhuti Jain.

Mr. Faisal Zafar, Ld. Counsel for respondent.

Matter is fixed for PE; however, counsel for petitioner submits that an application dt. 30.05.2024 is pending. Record has revealed that the issues were framed on 02.02.2024 and matter was posted for PE on 30.05.2024. On that day, no PW was present and matter was adjourned for PE on 05.11.2024. After the adjournment, the petitioner filed an application seeking meaningful visitation with the child through VC and some other relief. Notice of this application was issued to the respondent returnable on 06.06.2024 on which date, the respondent did not turn up despite service. An ad-interim relief was prayed to the extent of meeting the child on the occasion of her birthday which was allowed. The application was then posted for 24.08.2024 on which date, the respondent appeared with the child and I interacted with the child. I was of the opinion that the physical meetings with the child could be counterproductive hence, the meetings through VC were decided to be continued.

Arguments heard on the application and put for the orders during the course of the day.

ORDER

1. Vide the application under disposal, the petitioner has sought uninterrupted and meaningful VC with the child; for directing the respondent to be more cooperative for scheduling the VC meetings; allow the petitioner to access the school record of the child and to participate in the PTMs; allow the petitioner to physically meet the

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श्रीमान जज
जस्टिस जे.एन.एल.
माहिला एवं बाल अधिकार संरक्षण
अदालत, दिल्ली
माहिला एवं बाल अधिकार
संरक्षण अदालत

child on her birthday on 26.06.2024, initiate physical meetings with the child at least twice a month or alternatively order a psychological evaluation of the child. As per the record, the petitioner has been granted physical visitation with the child once in a month by the J.d. Mahila Court in the DV matter vide order dt.19.07.2023. The petitioner, vide his previous application requested for enhancement of the visitation rights for twice a month. The said request was declined by J.d. Predecessor Judge vide his order dt. 16.08.2023. The petitioner moved another application dt.07.10.2023 seeking enhance visitation with the child which was heard on 31.10.2023. It was mutually agreed that the VC visitations will be arranged once in a week with flexible timings and durations based on the comfort of the child. Thereafter, the petitioner moved the present application under disposal. On 24.08.2024, the child was brought to the court by the respondent and I had interacted with her. The child showed absolute unwillingness of physical meetings with the petitioner. The court realises that the child should get the love and affection of both the parents. However, the child who is unwilling to meet one of the parents should not be and cannot be forced to meet the said parent. The welfare of the child is paramount and I am of the view that further pushing the child to meet her father would adversely affect her development and may be detrimental to her mental state. During the course of the arguments, counsel for respondent submitted that the petitioner has concealed the fact that he has already approached the Hon'ble Delhi High Court for contempt action against the respondent for non-compliance of the order of physical meetings passed in the DV matter and such action has not gone down well not only with the respondent but also with the child.

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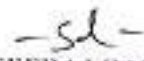
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NEERAJ GAUR
Judge, Family Court, North
Rohini/Delhi
05.11.2024

2. After evaluating the entire facts and circumstances, I am of the view that the case is still not made for enhanced visitation of the petitioner with the child. So far as the VC visitations are concerned, petitioner submits that the duration of the VC meetings has gone down because the child barely participates in the VC meetings and cuts the call. Counsel for respondent submits that the child is totally unwilling to talk to the petitioner although she has been repeatedly counseled by the respondent. The respondent is again directed to convince the child to have longer interaction with the petitioner during the VC meetings.
3. Regarding the psychological evaluation is concerned, I.d. counsel for petitioner argued that the child has been brain-washed by the respondent and the child needs the psychological evaluation to ensure her mental and emotional well being. I am not finding any impediment in such evaluation of the child. The respondent is accordingly **directed** to get a psychological evaluation of the child by a professional expert within 4 weeks. The report be filed on next date of hearing.
4. With the above directions and observations, the **application stands disposed off.**
5. Matter is now fixed for PI: on **10.02.2025.**
6. Copy of this order be given dasti.


(NEERAJ GAUR)
Judge, Family Court, North
Rohini/Delhi/05.11.2024

12. Counsel for the respondent points out that the issue is still pending in ***Guardianship Petition No. 29/2023***, in relation to the assessment of the psychological evaluation, directed by the Court.

13. The Court is astonished as to how the petitioner sought to present these contempt petitions by selectively choosing to place on record certain

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orders and not the others.

14. The order dated 05th November 2024, which the petitioner states, is not relevant, as can be seen from a bare perusal of the order, relates to very cogent and categorical observations by the Family Court, recording synoptically, about the applications which had been moved by the petitioner earlier, regarding visitation.

15. The Court then went on to state that the child showed absolute unwillingness of physical meetings with the petitioner and rightly recorded that “...*The welfare of the child is paramount and I am of the view that further pushing the child to meet her father would adversely affect her development and may be detrimental to her mental state...*”.

16. The Court finds the conduct of the petitioner itself an affront to the majesty of the Court, by not only selectively relying on some orders, but also, suppressing other orders which would have brought before the Court a full conspectus of overall facts and circumstances.

17. As noticed from the traversal above, the Family Court in the guardianship petition is totally cognizant of the matter and has taken pains over many dates to interact with the child and sensitively deal with the matter.

18. After the traversal of all the orders as extracted above, counsel for the petitioner still wishes to submit that order of 05th November 2024 and other orders are not relevant. The said insistence by the counsel for the petitioner is itself specious and is an attempt to somehow force petitioner on a child who is completely not in a mental state, currently, to meet the father.

19. In the opinion of this Court, the Judge, Family Court, have sensitively dealt with the matter and are still seized of the matter, where these aspects

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are being considered, as regards the issue of visitation.

20. Counsel for the respondent has also taken up an issue of maintainability of this petition, considering the nature of the orders which have been passed, determination of which, is still subsisting before the Family Court.

21. Considering these facts and circumstances, this Court is not inclined to allow the petitioner to ride roughshod in this manner and he ought to have shown some restraint so that the guardianship petition can be suitably decided; but the multiple applications filed by the petitioner seem to suggest otherwise.

22. Counsel for the petitioner states that all he is seeking is access to the child.

23. Needless to state, the above narration makes it extremely difficult for this Court to go to accede to his wish, as noted above. Considering the sensitivity of the situation, it would be better that the Family Court continues with its process.

24. Counsel for the petitioner also wishes to draw attention to the counsellor's report which forms part of the DV record, and is therefore, not confidential, as asserted by both the counsels.

25. In the first session, the counsellor had tried to make the child comfortable and counsel the child after which she got a bit comfortable and after an hour, she became normal.

26. Certain observations had been noted by the counsellor of attempts for communication to be established.

27. It is stated in the counsellor's report from the session on 2nd September 2023, as follows:

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“...respondent tried hard to communicate with the child but she didn’t even look at him once. In the entire two-hour session child was crying and was not even ready to talk with the respondent. She was completely glued with her mother. Today, also respondent tried to express his love towards the child through gift but she didn’t appreciate his love and affection.”

28. Only parts of the counselling report have been recorded in view of the privacy of parties. Much water has flowed since, as is noted by the orders stated above.

29. The contempt petition is, therefore, disposed of, with directions to the Family Court to continue its proceeding, taking into account the overall facts and circumstances, including the desire for the petitioner to meet the child, as well as the mental state of the child, as also the evaluation of the child which had already been directed by the Court.

30. Liberty is given to the petitioner to pursue appropriate remedies subsequently, after these aspects of visitation, to grant the visitation or not, have fully fructified before the Family Court.

31. Order be uploaded on the website of this Court.

ANISH DAYAL, J

APRIL 25, 2025/MK/kp