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

\# **CNR No. DLHC010362102026**

\+ MAT.APP.(F.C.) 283/2026

ANGAD KHUSHU .....Appellant

Through: Ms. Amrita Sharma, Ms. Easha Chandhok, Advocates with the Appellant in person

versus

SUGANDHA RAZDAN .....Respondent

Through: Mr. Sanjay Khanna, Ms. Pragya Bhushan, Mr. Saurabh Pandey, Mr. Harsh Katheriya, Mr. Giridharan P, Ms. Neha Sharma, Mr. Ankit Choudhary Advocates.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
HON'BLE MS. JUSTICE RENU BHATNAGAR

O R D E R

% 29.10.2026

CM APPL. 52087/2026

1. This is an application on behalf of the Appellant for condonation of delay in filing the appeal.

2. For the reasons stated in the application, the delay of 04 days in filing the appeal is condoned.

3. The application is disposed of.

CM APPL. 52090/2026

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4. This is an application on behalf of the Appellant for condonation of delay in re-filing the appeal.

5. For the reasons stated in the application, the delay of 22 days in re-filing the appeal is condoned.

6. The application is disposed of.

MAT.APP.(F.C.) 283/2026 & CM APPL. 52086/2026, CM APPL. 70937/2026, CM APPL. 52089/2026

7. The present Appeal has been preferred by the Appellant/Father under Section 19 of the Family Courts Act, 1984, assailing the Order dated 06.06.2026 passed by the learned Judge, Family Court-01, South-West District, Dwarka Courts, New Delhi (*hereinafter referred to as* the "Family Court"), in G.P. No. 129/2025, whereby the learned Family Court, while considering the Appellant's applications under Section 12 of the Guardians and Wards Act, 1890 (*hereinafter referred to as* the "GW Act"), and Section 151 of the Code of Civil Procedure, 1908 (*hereinafter referred to as* the "CPC"), declined to grant the Appellant physical visitation with the minor child. The learned Family Court also directed the Respondent/Mother to facilitate the video calls between the minor child and the Appellant, as granted by the order dated 10.04.2026.

8. Along with the appeal, two applications have been filed by the Appellant: (i) CM APPL. 52086/2026, seeking physical visitation with the minor child for four hours every Saturday or Sunday during the pendency of the appeal; and (ii) CM APPL. 70937/2026, seeking physical visitation with the minor child on his birthday, i.e., 25.11.2026, and on the occasions of Dussehra and Diwali.

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9. Bereft of unnecessary details, the facts of the present case are as follows:

(i) The marriage of the Appellant and the Respondent was solemnised on 24.02.2018, according to Hindu rites and customs.

(ii) Out of the wedlock, a child (son) was born to the couple on 25.11.2021. The child is presently about five years of age.

(iii) Subsequently, matrimonial disputes arose between the Appellant and the Respondent. An FIR bearing No. 407/2025 was registered on 23.09.2025 at the instance of the Respondent under Sections 498A, 323, 504 and 506 of the Indian Penal Code, 1860 (*hereinafter referred to as* "IPC") and Sections 3 and 4 of the Dowry Prohibition Act, 1961, against the Appellant and his family members.

(iv) The Appellant instituted a guardianship petition bearing G.P. No. 129/2025 before the learned Family Court. On 07.04.2026, the Appellant moved an application seeking parenting time with the minor child. By an order dated 10.04.2026, the learned Family Court permitted the Appellant to interact with the minor child through video calls.

(v) On 08.02.2026, another FIR bearing No. 61/2026 was registered at the instance of the Respondent against the Appellant and his family members under Sections 465, 467, 468 and 471 of the IPC, read with Section 12 of the

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Passport Act, 1967. Aggrieved by this, the Appellant challenged the said FIR before the High Court of Judicature at Allahabad by filing Criminal Misc. Writ Petition No. 5277/2026, in which interim protection from arrest was granted on 28.03.2026.

(vi) Thereafter, on 11.05.2026, the Appellant filed a further application before the learned Family Court seeking effective video-calling arrangements, in-person visitation with the minor child every weekend, continuous parenting time for seven days, and overnight access on alternate weekends. On 02.06.2026, the Appellant filed another application seeking physical visitation with the minor child, including permission to spend weekends with him and to take him on short trips or for overnight stays.

(vii) Both the applications have been disposed of by the common order dated 06.06.2025, which has been impugned in the present appeal. The relevant portion of the Impugned Order is reproduced as under:-

> *"It is orally submitted by Counsel for petitioner that respondent is not complying with the interim order passed by this court on 10.04.2026 as on one pretext or the other, respondent is avoiding the same. The petitioner is orally seeking directions against the respondent for strict compliance of the said order. It is submitted in an U/S 12 Of The Guardianship And Wards Act by the petitioner that during the summer vacations, he wants to take the minor child for two days vacation out of Delhi and respondent may*

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accompany the child if she wants and in the said application U/S 12 Of The Guardianship And Wards Act petitioner is also seeking extended visitation for seven days at least in children's room. It is orally submitted by Counsel for petitioner that petitioner has not met the child physically since June 2025 as respondent is avoiding the same.

On the other hand, respondent orally submits that she is against physical meeting of the petitioner with the child as the said application has been moved by petitioner only to pressurize her to withdraw her pending cases filed against him. It is orally submitted by Counsel for respondent that an NBW has already been issued against petitioner and his parents in the State case filed Under Section 498A IPC. It is orally submitted by Counsel for respondent that respondent has been subjected to mental and physical cruelty by petitioner and he is even misbehaving with the child during the video calls and his misconduct has already been put on record along with a reply filed by the respondent.

Both Counsels for the parties have vehemently argued against each other for their parties whereby various allegations are leveled. After going through the available record on prima facie basis and hearing the arguments of the parties, this court is of the opinion that when the petitioner himself is not complying with the order of the concerned court in respect of his appearance therein in the State case, it is established that he is not entitled for physical meeting with the minor child at this stage as the adversities between the parties are likely to affect the child as he is of tender age. So far as the video calls are concerned, the respondent is directed to facilitate the same and

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comply with the order dated 10.04.2026. With this, the present application stands disposed off."

10. The primary grievance of the Appellant is that the request of the Appellant for physical visitation with his child could not have been declined merely on the ground of his non-appearance in separate criminal proceedings, without an adequate assessment of the welfare and best interests of the minor child. He also submits that he has not had physical access to his minor child since June 2025.

11. A perusal of the Impugned Order discloses that the only reason to deny physical interaction of the Appellant/Father with the minor child was that the father has not complied with certain court orders, that too, not of the Family Court. Moreover, this Court has been informed by the learned Counsel for the Appellant that, in any event, the non-bailable warrants have already been discharged against the Appellant by the concerned court.

12. While adjudicating a petition under the GW Act, the Court acts as a *parens patriae.* A child is entitled to love and affection of both the parents, and a child cannot be denied access to one parent just because a parent has not complied with certain court directions. The welfare of a minor child is the paramount consideration in proceedings relating to custody and visitation. The child's interests cannot be subordinated to the acrimony between the parents, nor can visitation be treated merely as a matter of competing claims between them.

13. The principles enunciated by the Apex Court in Rosy Jacob v. Jacob A. Chakramakkal, **(1973) 1 SCC 840** underscore that Orders concerning the custody of minor children are temporary in nature and

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remain subject to variation in the best interests and welfare of the child, even if passed on consent decree. Such orders cannot be regarded as immutable or allowed to operate as a fetter upon the Court's continuing duty to secure the child's welfare, which remains the paramount consideration. The circumstances, needs and interests of a growing child are liable to evolve with the passage of time, and a custody arrangement that may have been appropriate at one stage may cease to serve the child's best interests at a later stage. The relevant portion is reproduced herein below:

> *"16. At the bar reference was made to a number of decided cases on 'the question of the right of, father to No appointed or declared as guardian and to be granted custody of his minor children under S. 25 read with S. 19 of the Guardians and Wards Act. Those decisions were mostly decided on their own peculiar facts. We have therefore not considered it necessary to deal with them. To the extent however they go against the view we have taken of S. 25 of the Guardians and Wards Act, they must be held to be wrongly decided.*
>
> *18.The appellant's argument based on estoppel and on the orders made by the court under theIndian Divorce Act with respect to the custody of the children did not appeal to us. All orders relating to the custody of the minor wards from their very nature must be considered to be temporary orders made in the existing circumstances. With the changed conditions and Circumstances, including the passage of time, the Court is entitled to vary such orders if such variation is considered to be in the interest of the welfare of the wards. It is unnecessary to refer to some of the decided cases relating to estoppel*

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based, on consent decrees. cited at the bar. ***Orders relating to custody of wards even when based on consent are liable to be varied by the Court, if the welfare of the wards demands variation****."*

(Emphasis Supplied)

14. The Apex Court in Yashita Sahu v. State of Rajasthan, **(2020) 3 SCC 67,** has observed as under:

*"**22.** A child, especially a child of tender years requires the love, affection, company, protection of both parents. This is not only the requirement of the child but is his/her basic human right. Just because the parents are at war with each other, does not mean that the child should be denied the care, affection, love or protection of any one of the two parents. A child is not an inanimate object which can be tossed from one parent to the other. Every separation, every reunion may have a traumatic and psychosomatic impact on the child. Therefore, it is to be ensured that the court weighs each and every circumstance very carefully before deciding how and in what manner the custody of the child should be shared between both the parents. Even if the custody is given to one parent, the other parent must have sufficient visitation rights to ensure that the child keeps in touch with the other parent and does not lose social, physical and psychological contact with any one of the two parents. It is only in extreme circumstances that one parent should be denied contact with the child. Reasons must be assigned if one parent is to be denied any visitation rights or contact with the child. Courts dealing with the custody matters must while deciding issues of custody clearly define the nature, manner and specifics of the visitation*

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rights.

23. *The concept of visitation rights is not fully developed in India. Most courts while granting custody to one spouse do not pass any orders granting visitation rights to the other spouse. As observed earlier, a child has a human right to have the love and affection of both the parents and courts must pass orders ensuring that the child is not totally deprived of the love, affection and company of one of her/his parents.*

24. *Normally, if the parents are living in the same town or area, the spouse who has not been granted custody is given visitation rights over weekends only. In case the spouses are living at a distance from each other, it may not be feasible or in the interest of the child to create impediments in the education of the child by frequent breaks and, in such cases the visitation rights must be given over long weekends, breaks and holidays. In cases like the present one, where the parents are in two different continents, effort should be made to give maximum visitation rights to the parent who is denied custody.*

25. *In addition to "visitation rights", "contact rights" are also important for development of the child specially in cases where both parents live in different States or countries. The concept of contact rights in the modern age would be contact by telephone, e-mail or in fact, we feel the best system of contact, if available between the parties should be video calling. With the increasing availability of internet, video calling is now very common and courts dealing with the issue of custody of children must ensure that the parent who is denied custody of the child should*

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be able to talk to her/his child as often as possible. Unless there are special circumstances to take a different view, the parent who is denied custody of the child should have the right to talk to his/her child for 5-10 minutes every day. This will help in maintaining and improving the bond between the child and the parent who is denied custody. If that bond is maintained, the child will have no difficulty in moving from one home to another during vacations or holidays. The purpose of this is, if we cannot provide one happy home with two parents to the child then let the child have the benefit of two happy homes with one parent each."

15. The criminal proceedings against the Appellant must be dealt with independently and separately before the competent criminal court. The visitation dispute between parents, on the other hand, requires an independent determination based upon the child's welfare, the nature of the relationship between the child and each parent and any safety concerns. A blanket denial of physical contact would not adequately address the child's interest in maintaining a meaningful relationship with both parents.

16. Accordingly, the appeal is allowed, the impugned order dated 06.06.2026 is set aside, and the matter is remanded back to the learned Family Court for fresh consideration on the Appellant's application for physical visitation, in accordance with law.

17. Needless to state, the learned Family Court shall afford both parties a reasonable opportunity of hearing and consider the material relevant to the child's welfare at the earliest practicable date.

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18. Application(s), if any, pending, shall stand closed.

SUBRAMONIUM PRASAD, J

RENU BHATNAGAR, J

OCTOBER 29, 2026
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