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

Judgment reserved on : 30th May,2022

% Judgment pronounced on : 03rd June, 2022

+ **CM(M) 47/2022 & CM APPL.2627/2022 (stay)**

ADITI BAKHT

..... Petitioner

Through: Ms. Arundhati Katju with
Ms. Bhabna Das and Ms. Shristi Bor
Thakur, Advocates with petitioner in
person.

versus

ABHISHEK AHUJA

..... Respondent

Through: Ms. Geeta Luthra, Sr. Advocate with
Ms. Asmita Narula and Ms. Apoorva
Maheshwari, Advocates with
respondent in person.

+ **CM(M) 211/2022 & CM APPL.11824/2022 (stay)**

ADITI BAKHT

..... Petitioner

Through: Ms. Arundhati Katju with
Ms. Bhabna Das and Ms. Shristi Bor
Thakur, Advocates with petitioner in
person.

versus

ABHISHEK AHUJA

..... Respondent

Through: Ms. Geeta Luthra, Sr. Advocate with
Ms. Asmita Narula and Ms. Apoorva
Maheshwari, Advocates with
respondent in person.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J.

1. CM (M) 47/2022 has been filed challenging the impugned order dated 22.12.2021 passed by learned Judge, Family Court, South-East District, Saket in Guardianship Petition no.8/2021 titled as “Abhishek Ahuja v. Aditi Bakht” insofar as restrain the petitioner from removing her minor child, namely, Anaaya Ahuja from Delhi. A further prayer has been made that order dated 21.08.2021 also be quashed insofar as it restrains the petitioner from removing the minor child Anaaya Ahuja from Delhi. The petitioner has also prayed for transfer of the proceedings in Guardianship Petition no.8/2021 titled as “Abhishek Ahuja v. Aditi Bakht” and all pending applications therein pending before Sh.Sanjeev Kumar Singh, learned Judge, Family court, South-East District, Saket to any other court. A prayer has also been made for the release of Canadian passport bearing no.GA340868 held by the petitioner and Canadian passport bearing no. AM039545 held by the Petitioner’s minor daughter Anaaya Ahuja.

2. While this petition was pending, the learned Judge, Family Court decided the Guardianship Petition No.8/2021 titled as “Abhishek Ahuja v. Aditi Bakht” vide order dated 04.03.2022 and granted the following rights/access to the respondent father with the minor child:

(i) The applicant/petitioner shall have visitation rights with the minor child on every Wednesday and Friday at his parents' home from 3.00 p.m. to 6.00 p.m.

(ii) The applicant/petitioner shall also be entitled to overnight stay of minor child Anaaya at his parents' home on every 2nd and 4th Sunday. On every 2nd and 4th Saturday, the applicant shall take custody of the minor child Anaaya

from the respondent/mother at 10.00 a.m. in the morning and shall handover custody of the minor child to non-applicant/ respondent on every 2nd and 4th Sunday at 6.00 p.m. respectively.

(iii) During long holidays, vacations extending more than two weeks, the minor child shall remain to be in the custody of the applicant/petitioner and his parents for three days and the petitioner shall also be entitled to travel outside Delhi along with the minor child likewise the respondent shall also be entitled to travel outside Delhi alongwith the minor child on such holidays/vacations when the minor child shall remain in the custody of the respondent.

(iv) During summer vacations, the minor child shall remain to be in the custody of the applicant/petitioner and his parents for a period of 15 days as per the convenience of the child and the petitioner will also be entitled to travel outside Delhi alongwith minor child. Here it is also ordered that during summer vacations when the minor child shall remain in the custody of the respondent, she will also be entitled to travel outside Delhi along with the minor child.

(v) On festivals, the petitioner shall be at liberty to get the minor daughter from 1.00 p.m. to 6.00 p.m.

(vi) On minor daughter's birthday, the petitioner shall be at liberty to get the minor daughter from 2.30 p.m. to 6.30 p.m. On petitioner's birthday, petitioner's family's birthday, the petitioner shall be at liberty to get the minor daughter for four hours as per the convenience of the child.

(vii) The petitioner and his family members shall also be at liberty to drop, accompany and pick the child to and from her school on Thursday.

(viii) The petitioner shall also be permitted to attend all the meetings/occasions/celebrations at the minor daughter's school including but not limited to parent-teacher meeting. The respondent shall share all the communications from the minor daughter's school including but not limited to the curriculum, school schedule etc.

(ix) The petitioner shall also be entitled to have interaction through video call with the minor child for atleast 30 minutes everyday as per convenience of the child.

3. The petitioner mother aggrieved of this filed CM(M) No.211/2022 challenging the impugned order predominantly on the ground that the impugned order dated 04.03.2022 focused solely on the rights of the father and his family ignoring the comforts of the minor child. It has been stated that the minor child has lived alone with the mother since she was 18 months old and is heavily dependent on her mother and has never been separated from her. The child has slept in the same bed as her mother since she was a few weeks old and still wakes up frequently at night looking to her mother for comfort. The petitioner has stated that separating the minor child from the mother for overnight visitation or vacation is sudden, drastic and would have a negative impact on the psyche and comfort of the minor child.

4. Learned counsel for the petitioner has submitted even if the court considers increasing the father's visitation for the summer vacation, the overnight visitation ought not to be granted keeping in mind that the minor daughter is still short of three years. It has further been stated that visitation rights may be granted keeping in view the weekly schedule of the summer classes and respondent father may attend classes with the child to ensure stability for the child.

5. The plea of the petitioner is that the Family Court vide impugned order 21.08.2021 had restrained the petitioner from removing the minor child from Delhi till the next date of hearing and this was not extended beyond 28.10.2021 and therefore stood lapsed. The grievance of the petitioner is that learned Judge Family court vide order dated 22.12.2021 would not have restored it without passing a fresh order imposing any travel restriction on the petitioner. The petitioner has narrated several incidents regarding the apprehension of bias which is not being narrated in detail herein.

6. Ms.Geeta Luthra, learned senior counsel assisted by Ms.Asmita Narula, advocate for the respondent husband has submitted that that the learned Judge, Family court has after taking into account the entire facts and circumstances and law on the point has granted visitation right vide a well-reasoned order after due application of judicial mind and there is no cause of interference in the same in absence of any perversity/illegality in the same. It has been submitted that the father has been the primary care giver and has co-parented the daughter since her birth being a hands-on father and has been actively involved in every minute of the daughter's life-changing diapers, feeding, playing, reading books, bathing, etc. It has been submitted that the father can be granted overnight visitation (2nd and 4th weekends and vacations) in terms of the Visitation Order as he can evidently take care of the daughter's routine and also put her to sleep.

7. I have heard learned counsel for both the parties and perused the record.

8. In the present case, the grievances of the petitioner mother is that the learned Judge, Family court has shared his personal mobile number with the

parties during the proceedings and the respondent father had met the judge unilaterally in his chamber. This has created an apprehension in the mind of the petitioner mother. This court also considers that it was not advisable for the learned judge, Family Court to have shared his personal mobile number with the parties. It is a settled proposition that justice must not only be done but must also appear to have been done. The conduct of the judge while conducting the judicial proceedings should be above board.

9. The petitioner had sought the transfer of the case from the learned judge, Family court to any other court. It is pertinent to mention here that divorce petition between the parties bearing SMA No.07/2022 is pending before the learned Principal Judge, Family court, South-East District, Saket. It is also pertinent to mention here that Guardianship Petition no.8/2021 has finally been decided which is also under challenge before this Court in the present proceedings. This court is conscious of the fact that the transfer of a case from one court to another is a pretty serious matter as it may cast indirectly doubt on the integrity or competency of the judge from whom the matter is transferred. The order of transfer should not be done on mere presumptions and possible apprehensions. Recently, this court in ***Kinri Dhir vs. Veer Singh*** 2022 SCC OnLine Del 1096 dealt with the question of bias and inter alia held as under:

“D.2 ROLE OF THE FAMILY JUDGE

33. It must at the outset be acknowledged that as family jurisprudence has progressed over time, the Family Judge is no longer viewed as one who is to act in the capacity of a mere “fault finder”. Family disputes are no longer liable to be viewed as purely adversarial. Our Courts have over time and as society has evolved over the ages throwing up new challenges along the way, unequivocally recognised the multi-faceted role that a Family

Judge is called upon to perform today including that of facilitator, counsellor, mediator, taking a pro-active role in exploring and striving to find common ground, kindle the hope of rapprochement and guide parties towards finding closure to disputes. Marital disputes thus require to be resolved with the Family Judge adopting a more immersive resolution process. The Family Judge is thus today obliged to don a more collaborative robe and not approach the lis as just another legal dispute that arrives before a court for resolution. This unique function which the Family Judge discharges is required to be approached with empathy bearing in mind that the problem placed before it is not merely another legal conflict but one that deals with the complete breakdown of a family impacting not just the immediate parties to the dispute but various others who are seared by the pall of discord that follows. It thus places the Family Judge under the added responsibility of approaching parties and the issues that arise for determination with compassion, guiding parties through the entire process in the hope that a just solution would avoid an irretrievable breakdown of the family itself.

D.3 THE MANTLE OF THE JUDGE/ADJUDICATOR

34. More fundamental than the aforesaid introduction is the necessity to reiterate the traditional role that a Judge is obliged to discharge. Parties approach courts based on the immense trust and faith expressed and envisioned in the system itself. The Judge representing the face of the court system must thus appear to be just, even handed, independent and neutral. Neutrality is one of the fundamental attributes of the justice system. This requires the Judge to consider and weigh each utterance, every word forming part of the decision ensuring that it embodies and conveys a sense of fairness and neutrality having informed the decision-making process. The decision of the Court represents the voice of the court itself charged with discharging the divine function of rendering judgment. The observations forming part of the judgment must not therefore give the impression of being based on personal assumptions, biases or preconceived notions. Similarly, the observations as contained in the decision must not have the potential to sully the person or character of a litigant. The language of the judgment must necessarily be tempered by restraint and

moderation. A judgment of a court of law cannot become a blistering diatribe against a party or its cause.”

(emphasis supplied)

10. It has to be kept in mind that mere adverse orders are not sufficient to invoke the power of transfer. The allegation of bias needs to be evaluated on the premises of reasonable apprehension of bias. It is a settled proposition that ‘mere apprehension of bias’ and not ‘actual bias’ may be sufficient to exercise the power of transfer. This court would restrain itself from making any comment on the merits of the case. This court has also no doubt over the integrity, neutrality and Judicial Independence of the learned Judge, Family Court.

11. However, unfortunately on account of the conduct of the judge for sharing his personal mobile number with both the parties and admittedly having met one of the party in the chamber has unnecessarily given a cause of reasonable apprehension of bias. The judges have to remind themselves time and again that each and every conduct is observed and noted by the litigants and therefore, knowingly or unknowingly they may not act in any manner which gives rise to even slightest of doubt in the minds of the litigants and lawyers.

12. Thus, I consider that the orders dated 21.08.2021, 22.12.2021 and 04.03.2022 are liable to be set aside in the interest of justice and for the purpose of restoring faith of both the parties in the system of administration of justice. Thus, both the petitions are disposed of with the following directions:

- i. Orders dated 21.08.2021, 22.12.2021 and 04.03.2022 are set aside.

ii. The Guardianship Petition no.8/2021 is restored to its original number.

iii. The Principal judge, Family Court, South-East, Saket shall keep the matter with himself/herself and decide the same in accordance with law without being influenced by the earlier orders passed by the learned Judge, Family court, South-East District, Saket and any expression or observation made by this court.

iv. It is agreed between the parties that till the Guardianship Petition no.8/2021 is finally decided by learned Principal Judge, Family Court, the father respondent shall have the visitation rights on every Wednesday and Friday from 3:00 p.m to 6:00 p.m. with the same arrangement of picking up and dropping.

v. In addition to that as agreed between the parties, there shall be eight hours visitation from 10 a.m. to 6 p.m. on the following dates:

04.06.2022 (Saturday)

12.06.2022 (Sunday)

18.06.2022 (Saturday)

25.06.2022 (Saturday)

26.06.2022 (Sunday)

02.07.2022 (Saturday)

09.07.2022 (Saturday)

vi. The father shall have also visitation right on the birthday of the child i.e. 15.06.2022, which incidentally falls on Wednesday for four hours from 2 p.m. to 6 p.m.

vii. The petitioner mother may travel during the month of June, 2022 along with the child. However, the petitioner mother shall share the itinerary with the respondent father. If due to such travel any

visitation with the father is missed, it shall be compensated in the following terms:

(a) One visitation for three hours shall be compensated on 07.07.2022 (Thursday) from 3 p.m. to 6 p.m. (respondent's father's birthday- Paternal Grandfather's Birthday) and other three visitations shall be compensated on 28.06.2022 (Tuesday) from 10 a.m. to 6 p.m.

13. The permission to travel to the petitioner mother within country is only an interim arrangement and this issue shall also be decided finally by Principal Judge, Family Court along with guardianship petition.

14. The issue of release of the passport of the petitioner mother and daughter shall also finally be decided by the Principal Judge, Family Court at the time of final adjudication of the guardianship petition.

15. The principal judge, Family Court is requested to decide the said guardianship petition as expeditiously as possible preferably within four weeks. Learned Principal Judge, Family Court may also take assistance of the Child Counselor and interact with the child before deciding the visitation rights.

16. Accordingly, both the petitions along with all the pending applications stand disposed of.

17. Dasti.

DINESH KUMAR SHARMA, J

JUNE 03, 2022/rb