

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

% *Date of Decision : September 01, 2016*

+ **MAT.APP.(F.C.) 82/2016 & CM 23339/2016**

ADITYA MAHAJAN Appellant

Represented by: Mr.S.K.Mittal, Advocate with
Mr.Khushbir Singh, Advocate

versus

SHACHI MAHAJAN Respondent

Represented by: Respondent in person

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. Vide impugned order dated May 28, 2016 the learned Principal Judge Family Courts Karkardooma has granted the appellant visitation rights to meet his minor son Ayyan on the first Monday of each month from 4:00 PM to 5:00 PM. This is pending adjudication of appellant's claim to be appointed as the guardian of the son. In paragraph 5 of the impugned order the learned Judge has noted that during his interaction with the child he found the child completely hesitant to be with his father. The appellant is aggrieved. He says that the visitation right is illusory.

2. Many separations between spouses are full of complications. Instant case is of the kind. The appellant and his mother on the one side and respondent on the other side have got involved in multifarious litigations. It is rather unfortunate. They are unnecessarily wasting their time, energy and money.

3. The status report filed by the SHO of PS Anand Vihar in CrI.M.C.No.418/2013 would evince the abyss to which the relations of the parties have fallen. The status report records that on October 16, 2011 at 6:58 AM a PCR call was received regarding a quarrel at D-113, Anand Vihar. It appears to be a building owned by respondent's mother-in-law. But it was respondent's matrimonial home. The police personnel found the respondent on the street. She was howling. She complained that her mother-in-law had bolted the house from inside and was not allowing her entry. She gave the mobile number of the appellant to the police personnel who, on contacting the appellant learnt that he was in Haridwar and would return that evening. The same morning at 8:15 AM another PCR call was received concerning a quarrel at the house. At 12:30 PM another PCR call was received regarding respondent being thrown out of her matrimonial house. At night at 9:05 PM and 9:30 PM, 2 PCR calls were received. The police reached the house. Issue of respondent being allowed entry into the house was being discussed. With the intervention of the police the respondent was allowed to enter her matrimonial house. The status report shows that the appellant took away the minor son and the respondent had to approach the Mahila Court under the Protection of Women from Domestic Violence Act, 2005. She got a protection order in her favour as also custody of her minor son.

4. Obviously a fear has crept in the mind of the respondent that if she allows interim custody of her son to the appellant the appellant may remove the child from Delhi.

5. The one-off incident, assuming it is true, should not deprive the appellant the right to meet his child and at the same time the child to meet his father. It is trite that it is always in the interest of a child to bond with

both parents notwithstanding the parents being estranged.

6. Sharing residence with her mother-in-law, with the relations being so strained; the respondent having a protection order in her favour under the Protection of Women from Domestic Violence Act, 2005 would obviously mean that the young child would always be in a trauma. The possibility of the mother brainwashing the minor child and poisoning his mind against the father looms large in the realm of the horizon.

7. Family Courts were created with infrastructure having associations of counsellors. All Family Courts at Delhi have two counsellors attached to the Court. The counsellors are trained at breaking the ice.

8. The learned Judge Family Court ought not to have rushed through the matter in a casual manner. One interaction with the child was not enough. If a child is hesitant to be with a parent, it is duty of the Presiding Judge of the Family Court to have the child counselled with the help of the counsellors attached to the Court. Every effort has to be made to counsel both parents to spare the child the agony of their separation. The parents have to be counselled to keep the child out of the litigation. Both spouses should be encouraged to, in turn encourage the child to meet the other spouse.

9. Of course, this process of breaking the ice would be slow and cumbersome. But it has to be followed. Meaning thereby, if a Judge of a Family Court finds a child hesitant to meet either parent, it should not be the ground to deny proper access to the spouse in question.

10. Meeting a child for an hour every month and that too in the Court premises is not sufficient. In such a situation the application seeking interim custody for a few hours each week should be deferred and situation monitored for a period of few months. This period should be utilized for the

counsellors to break the ice.

11. Disposing of the appeal setting aside the impugned order dated May 28, 2016 we restore the application filed by the appellant under Section 12 of the Guardians and Wards Act directing the Principal Judge Family Court Karkardooma to refer the parents to the counsellors attached to the Court. The mandate of the counsellors would be to counsel both parents and try to reach a compromise whereunder either on a Saturday or on a Sunday the appellant can spend five to six hours with his son. He should be able to take the son for an outing. This will facilitate bonding.

12. Till a resolution takes place, as an interim measure we direct that the appellant be granted access to the child on fortnightly basis. The meeting would be initially either in the counsellors' room attached to the Family Court Complex or in the children room. If the counsellors find the child comfortable with the father he would be permitted to take the child out for two hours. If the situation improves the ultimate endeavour would be for the child to spend six to eight hours every week with his father.

13. The application filed by the appellant under Section 12 of the Guardians and Wards Act is directed to be taken up afresh by the learned Principal Judge Family Court Karkardooma on September 09, 2016.

14. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

SEPTEMBER 01, 2016

mamta