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

*Date of Decision: December 19, 2023*

+ MAT.APP.(F.C.) 205/2022, CM APPL.54709/2022

KAMAL KUMAR

..... Appellant

Through: Mr.Ravi Gupta and Mr.B.B.Gupta,  
Sr.Advocates with Mr.Ankur  
Mahindro and Mr.Rajesh Bansal,  
Advocates.

versus

DEVIKA GURJAR CHAUDHARY

..... Respondent

Through: Ms.Malvika Rajkotia and Ms.Aashna  
Talwar, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA**

## **ORDER**

**ANOOP KUMAR MENDIRATTA, J.**

**CM APPL. No.54710/2022**

1. An appeal has been preferred on behalf of the appellant under Section 19 of the Family Courts Act, 1984 challenging the order dated December 09, 2022 passed by the learned Judge, Family Courts, South District, Saket Courts, New Delhi in G.P. No.46/2019.

2. In brief, the marriage between the appellant and the respondent was solemnized on November 21, 2008 as per Hindu rites and ceremonies in Chhatarpur, New Delhi. Two children (Master D and Ms.M) were born out of the wedlock, who are presently aged about 9 years and 7 years, respectively. As per the case of appellant/father, children were taken away



by the respondent/mother with her on June 07, 2019. Consequently, a petition under Section 25 of the Guardians & Wards Act, 1890 (hereinafter, referred to as the 'Act') for restoration and permanent custody of the children was filed on behalf of the appellant along with an application under Section 12 of the Act. Vide impugned order dated December 09, 2022, following applications pending before the learned Judge, Family Court were considered:

*“i. Application under Section 151 CPC seeking interim custody/visitation of the children which was filed along with the main Petition by the Appellant herein in August, 2019:*

*ii. Application under Section 151 CPC seeking modification/revocation of Order dated 09.06.2022 filed on behalf of the Appellant herein in July, 2022;*

*iii. Application seeking payment of School Fee filed by the Respondent herein on 17.08.2022:*

*iv. Application under Order 14 Rule 5 read-with Section 151 CPC seeking amendment/modification of the issues wrongly framed vide procedural order dated 09.06.2022; and*

*v. Application seeking interim custody of the children for attending the marriage and related ceremonies of their paternal uncle.”*

3. So far as the application seeking interim custody of the children during pendency of the Guardianship Petition is concerned, the same was deferred to be decided after evidence is led by the parties. It was observed in the impugned order that the learned Predecessor Family Court Judge vide order dated June 09, 2022 had interaction with both the children in the Chamber and children appeared to be attached with the mother. In view of above, the Learned Judge, Family Court did not find any reason for granting interim custody of the children to the father as it would not be in the interest of the



children.

4. Pending consideration of appeal, CM APPL. No.54710/2022 seeking interim custody/visitation rights has been pressed on behalf of the appellant.

Mr.Ravi Gupta, learned Senior Advocate for the appellant submits that the children were in joint custody, prior to being taken by the respondent on 07.06.2019. Further, the appellant has been denied of any meaningful access to the minor children who appear to have been tutored, being under the influence of the respondent. Though pressing for interim custody, it is prayed that at least meaningful visitation rights/access be provided to the appellant. It is further contended on behalf of the appellant that keeping in mind the best interest of the minor children, they be provided an independent counselling through Clinical Child Psychologist.

5. On the other hand, learned counsel for the respondent apart from disputing the contentions raised on behalf of the appellant, at the outset has taken a preliminary objection regarding maintenance of appeal against an order passed under Section 12 of the Guardians and Wards Act, 1890, in view of divergent views expressed by the Co-ordinate Benches of this Court in *Colonel Ramesh Pal Singh v. Sughandhi Aggarwal*, MAT. APP.(F.C.) No.211/2017 decided on October 01, 2019 and *Dr.Geetanjali Aggarwal v. Dr.Manoj Aggarwal*, MAT. APP.(F.C.) No.126/2019 decided on October 22, 2021. Presently, the issue regarding maintainability of appeal against an order passed under Section 12 of the Act is pending consideration before a Larger Bench.

Apart from above, learned counsel for the respondent has also raised issue regarding payment of maintenance, in response to which learned Senior Counsel appearing on behalf of the appellant has clarified that appellant has



been bearing expenses towards school fees of the children to the tune of Rs.1.5 lacs approximately, besides payment of maintenance @ Rs.50,000/- per month.

Attention of this Court has also been drawn by learned counsel for the respondent to the Mediation Report dated July 17, 2023 submitted on behalf of the Counsellor and Mediator, pursuant to directions of this Court, wherein it has been observed that *“it is desirable to have virtual meetings not longer than half an hour once every two weeks and taking an account after three months, some alteration to this arrangement may be made.”* It is also submitted by counsel for the respondent that children are already being provided with Counselling sessions by respondent and request for appointment of Clinical Psychologist as requested by appellant is vehemently opposed.

6. Be that as it may, both the learned counsel for the appellant as well as the respondent, pending consideration of appeal, agree that the welfare of the children is of utmost importance and submit that this Court may suitably consider the application for visitation as pressed on behalf of the appellant.

7. While exercising *‘parens patriae’* jurisdiction, the welfare of the child is of paramount consideration and the matter cannot be strictly governed by the legal rights of a particular party. It has been observed that whensoever the parents are embroiled in matrimonial litigation, in cases relating to custody of minor children, generally the children develop an affinity with the parent in whose custody they remain and at times, lose the bonding as well as emotional attachment with the other parent. The same may be due to tutoring, influence or other factors.

8. It cannot be ignored that joint parenting is an important aspect in the



budding stages of a minor child and the effort of the Court has to make the child comfortable with both the parents to ensure holistic and healthy development of the child and strike a balance between the conflicting stand taken by the warring spouses.

9. In the aforesaid context, it has been noticed that the assessment/counselling sessions by the Child Counsellors/Child Psychologist play an important role as the children at times are adamant to meet the other parent who does not have custody/access to meet the children. A counselling session/evaluation by Child Psychologist prior to exercise of visitation rights, can play an important role to make the visitation meaningful and also remove apprehensions/doubts, if any, in the mind of the child.

10. We are informed that presently Counsellors are deputed in the Family Courts at Delhi for assisting the parties involved in matrimonial disputes but specifically 'Clinical Child Psychologist' may not be available in each Family Court Complex, who would be better equipped to undertake the counselling sessions/assessment of children. The parties appear to be handicapped for want of assistance through Clinical Child Psychologists, who can play a major role for making visitation rights more meaningful and effective. The directions in some cases for assessment/appointment of independent Clinical Child Psychologist for purpose of counselling/evaluation, puts an additional burden on the parties, who at times are unable to afford the charges and the difficulty also remains to agree on neutral names by both the parties.

11. In view of above, we deem it appropriate to direct the Registrar General of this Court for taking necessary steps for deputing at least one Clinical Child Psychologist in each Family Court Complex, who would be in



a better position to provide the counselling sessions to the minor children as and when required or as directed in the respective cases. The report submitted by the Clinical Child Psychologist on evaluation/counselling can be shared with the concerned Family Court in a sealed cover, which would enable the Court to form an appropriate opinion for custody/visitation rights in custody cases.

12. Reverting back to the facts of the present case, we are of the considered view that as an interim arrangement, appellant be granted visitation rights to meet the children in Delhi High Court Mediation and Conciliation Centre on every working Saturday from 2:00 PM to 4:00 PM in the first instance, in the presence of the Counsellor till the next date of hearing. Prior to the meeting, the Counsellor at Delhi High Court Mediation and Conciliation Centre shall individually or jointly have sessions with both the children to allay their apprehensions, if any, and try to make the visitation rights more meaningful. Report of the Counsellor in respect of various meetings shall also be submitted to this Court before the next date of hearing in a sealed cover.

Needless to observe that the present directions are issued as an interim measure and the parties shall be at liberty to seek further modification, if required.

13. Re-notify on February 15, 2024.

**ANOOP KUMAR MENDIRATTA, J.**

**V. KAMESWAR RAO, J.**

**DECEMBER 19, 2023/v/sd**