2023:DHC:6299

$~5

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

Date of decision:01.09.2023

\+ **CM(M) 588/2023**
RAJESH KUMARI

..... Petitioner

Through: Mr.Vikram Singh Jakhar, Adv.

versus

DHIRAJ & ORS. ..... Respondents

Through: Mr.Vinay Kumar Sharma, Mr.Aaditya Sharma, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CM APPL 45167/2023

1. This is an application filed by the petitioner seeking condonation of 20 days' delay in filing the rejoinder.

2. For the reasons stated in the application, the delay is condoned and the rejoinder is taken on record.

3. The application is disposed of.

CM(M) 588/2023

4. This petition has been filed by the petitioner, who is the mother of the minor child, challenging the order dated 27.08.2022 passed by the learned Principal Judge, Family Court, South-West District (hereinafter referred to as the learned "Family Court"), in GP No. 26/2022 titled ***Rajesh Kumari v. Dhiraj and Others***, denying the custody of the minor

child, who is aged around ten years now, to the petitioner herein.

5. The only reason given by the learned Family Court to deny the custody of the minor child to the petitioner is as under:-

> *"Ld. Counsel for the respondent has opposed the application on the ground that petitioner has lodged several cases against her in-laws. He has drawn the attention of this court towards FIRs No. 511/21 u/S 323/354/509/34 IPC and FIR No. 520/21 u/S 376/377/34 IPC. He has contended that it is not in the welfare and interest of the child that the child should stay with his mother.*
> *Considering the facts and circumstances of this case, I am not inclined to grant custody of the child i.e. minor son to the petitioner/mother."*

6. Admittedly, there are three FIRs which have been registered on the complaints of the petitioner herein against the respondent no. 1 and his family members; and one FIR has been registered on a complaint of the respondent no.2 against the petitioner and her family members, making serious allegations against each other. However, merely because the relationship between the parties has turned acrimonious, resulting in FIRs being registered against each other making serious allegations against each other, it cannot be a ground to deny an attempt at re-establishing a bond between the petitioner and the minor child.

7. The Impugned Order also records that the learned Family Court had interacted with the minor child who had flatly refused to talk to the petitioner or to stay with her. Clearly, the bond

between the petitioner and the minor child has been broken for reasons that I need not deliberate on or state in the order. However, at the same time, this again cannot be a ground to deny even the visitation rights to the petitioner qua the minor son. The learned Family Court could have explored taking the assistance of a Counselor attached to the Court for not only counseling the child, but also ensuring that the bond between the mother, that is the petitioner herein, and the minor child is re-established without prejudicing the disputes that are filed *inter se* between the petitioner and the respondent no.1 and their respective family members. It is to be remembered that in such matters, it is the interest of the child which is paramount and has to be first borne in mind rather than the interest of the warring parents. The interest of the child would generally lie in receiving the love and affection from both the parents, though they may be warring with each other. In the present case, the learned Family Court has proceeded in haste in dismissing the claim of the petitioner for custody of the minor child, without first exploring means and ways to re-establish the bond between them. The learned Family Court is not to act as an adjudicatory forum alone, but is also to act as a facilitator to secure settlement of disputes. The Family Court ought to adopt a different approach from that adopted in ordinary civil proceedings.

8. Accordingly, the Impugned Order dated 27.08.2022 is set aside. The learned Family Court shall direct the methods and modes of establishing a bond between the petitioner and the

minor child, by *inter alia,* to begin with directing visitation rights of the petitioner over the child before the Counselor attached to the Court. The result of such exercise would then culminate into a decision of the learned Family Court to order further unsupervised visitation rights or grant of custody, interim or otherwise, to the petitioner. It is made clear that this Court has not expressed any opinion on the above aspects, but to indicate the general approach to be adopted by the learned Family Court. The learned Family Court, which is in seisin of the main dispute, shall determine the same, keeping in view the developments that take place before the learned Family Court in the course of the proceedings pending before it.

9. I am informed that the Guardianship Petition is now listed before the learned Family on 16.09.2023. The respondent no.1 shall produce the minor child before the learned Family Court on the said date. The learned Family Court shall proceed with the dispute before it, keeping in view the observations made hereinabove.

10. The petition is disposed of in the above terms.

11. *Dasti*.

NAVIN CHAWLA, J

SEPTEMBER 1, 2023*/rv/am*