Azadi Ka Amrit Mahotsav

OFFICE OF THE PRINCIPAL DISTRICT & SESSIONS JUDGE: ROHINI COURTS, DELHI

No. 3430-3436 **Genl.I/F. 3(A)/N-W/RC/2024 Delhi, dated** 29/02/2024

Sub: Compliance of Order dated 19.12.2023 passed by Hon'ble High Court of Delhi in MAT Appeal (FC) No. 205/2022 and CM Appl. Nos. 54710/2022, 54709/2022

Copy of letter bearing No. 4652-72/Genl./HCS/2024 dated 21.02.2024, received from O/o Pr. District & Sessions Judge (HQ), Delhi along with a copy of order dated 19.12.2023 passed by Hon'ble High Court of Delhi in MAT Appeal (FC) No. 205/2022 and CM Appl. Nos. 54710/2022, 54709/2022 titled " Kamal Kumar Versus Devika Gurjar Chaudhary " is being forwarded for information and necessary action to :-

1. Sh. Dinesh Bhatt, Ld. Pr. Judge, Family Court (North-West), Rohini Courts.

2. Ms. Raj Rani, Ld. Judge, Family Court (**North-West**), Rohini Courts.

3. Ms. Navita Kumari Bagha, Ld. ASJ-04 (POCSO) (**North-West**), Rohini Courts.

4. Ms. Susheel Bala Dagar, Ld. ASJ-01 (POCSO) (**North-West**), Rohini Courts.

5. Sh. Virender Singh, Ld. ASJ (FTSC) (POCSO) (**North-West**), Rohini Courts.

6. The Dealing Official, Computer Branch, Rohini Courts, Delhi for uploading the same on WEBSITE.

7. The Dealing Official, R & I Branch, Rohini Courts, Delhi for uploading the same on LAYERS.

(VINOD YADAV)
District Judge, Comm. Court-02 (N/W)
Officer In-charge, General Branch
North-West & North District
Rohini Courts Complex, Delhi

Most Urgent/Out at once

OFFICE OF THE PRINCIPAL DISTRICT & SESSIONS JUDGE (HQ): DELHI

No. 4652-72/Genl./HCS/2024 Dated, Delhi the 21 FEB 2024

Sub : Compliance of Order dated 19.12.2023 passed in MAT Appeal (FC) No. 205/2022 and CM Appl. Nos. 54710/2022, 54709/2022.

A copy of the letter no. 1/23/2022-Judl./Suptlaw/484-487 dated 16.02.2024 bearing this office diary no. 488/B dated 17.02.2024 alongwith copy of order dated 19.12.2023 passed by Hon'ble High Court of Delhi in the abovesaid matter is being circulated for information and necessary action : -

1. All the Ld. Principal District & Sessions Judges, Delhi/New Delhi (except Central District) with the request to circulate the same to the concerned Ld. Judges, Family Court, under their kind control for information and necessary action. N/W
2. The Ld. Principal Judge, Family Court, Central District, Tis Hazari Courts, Delhi.
3. The Ld. Judge, Family Court, Central District, Tis Hazari Courts, Delhi.
4. The Ld. Registrar General, Hon'ble High Court of Delhi, New Delhi for information.
5. PS to the Ld. Principal District & Sessions Judge (HQs), Tis Hazari Courts, Delhi for information.
6. The Chairman, Website Committee, Tis Hazari Courts, Delhi with the request to direct the concerned official to upload the same on the Website of Delhi District Courts.
7. The Director (Academics), Delhi Judicial Academy, Dwarka, New Delhi for information as requested vide letter no.DJA/Dir.(Acd)/2019/4306 dated 06.08.2019.
8. Dealing Assistant, R&I Branch for uploading the same on LAYERS.
9. Dealing Assistant for uploading the same on Centralized Website through LAYERS.

Barkha Gupta

(BARKHA GUPTA)
Officer-in Charge, Genl. Branch, (C)
District Judge, (Comm. Court)
Tis Hazari Courts, Delhi

Encls. As above

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22 FEB 2024
Rohini Courts, Delhi

21/2/24

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
(DEPARTMENT OF LAW, JUSTICE & LEGISLATIVE AFFAIRS)
8th LEVEL, C-WING, DELHI SECRETARIAT, I.P. ESTATE, NEW DELHI

F.No. 1/23/2022-Judl./Suptlaw/ 484-487 Dated: 16/02/2024

To,

The Secretary (H&FW),
Department of Health & Family Welfare,
Govt. of NCT of Delhi,
9th Level, A-Wing,
Delhi Sectt., New Delhi.

Sub: Compliance of order dated 19.12.2023 passed in MAT Appeal (FC) No. 205/2022 and CM Appl. Nos. 54710/2022, 54709/2022

Sir,

Please find enclosed herewith a copy of letter No.929/G-1/Gaz.IA/DHC/2024 dated 8/02/2024 on the above subject received from O/o Registrar General, High Court of Delhi wherein, it is informed "*that Hon'ble the Acting Chief Justice and Hon'ble Judges of this Court have resolved that in compliance of order dated 19.12.2023 passed in MAT Appeal (FC) No. 205/2022 and CM Appl. Nos. 54710/2022, 54709/2022 (copy enclosed), a request be made to the Government of NCT of Delhi for deputing at least one Clinical Child Psychologist in each Family Court Complex of Delhi from the Delhi Government hospitals/institutions for the purpose of providing counseling sessions to the minor children as and when required or as directed in the respective cases.*"

Since the above subject matter pertains to the Health & Family Welfare Dept. Therefore, you are requested to do the needful in the matter.

Yours faithfully,

Puneet Nagpal 16/2/24

Encl: As above

(Puneet Nagpal)
Addl. Secretary (Law)

Copy to: -

1. The Registrar General, High Court of Delhi, New Delhi.
2. The Principal District & Sessions Judge (HQ), Tis Hazari Court Complex, Delhi.
3. The Principal Judge, Family Courts (HQ), Dwarka Courts Complex, Dwarka, Delhi.

HIGH COURT OF DELHI : NEW DELHI

No. 929 ..../G-1/Gaz.IA/DHC/2024 Dated : 8/02/2024

From:

The Registrar General,
High Court of Delhi,
New Delhi-110003.

PB of Pr. Secy. (L.J.&L.A.)
12 FEB 2024
Diary No 45/24/3105

To,

The Principal Secretary (Law, Justice & L.A),
Govt. of N.C.T of Delhi,
8th Level, C-Wing, Delhi Secretariat,
I.P. Estate, New Delhi.

Sub : Compliance of order dated 19.12.2023 passed in MAT Appeal (FC) No. 205/2022 and CM Appl. Nos. 54710/2022, 54709/2022.

Sir,

I am directed to inform you that Hon'ble the Acting Chief Justice and Hon'ble Judges of this Court have resolved that in compliance of order dated 19.12.2023 passed in MAT Appeal (FC) No. 205/2022 and CM Appl. Nos. 54710/2022, 54709/2022 (copy enclosed), a request be made to the Government of NCT of Delhi for deputing at least one Clinical Child Psychologist in each Family Court Complex of Delhi from the Delhi Government hospitals/institutions for the purpose of providing counseling sessions to the minor children as and when required or as directed in the respective cases.

Accordingly, you are requested to do the needful in the matter.

Yours sincerely,

(Dileep Namrani)
Assistant Registrar (Gaz-IA)
For Registrar General

No._____/G-1/Gaz.IA/DHC/2024 Dated:_____February, 2024

Copy forwarded for information and necessary action:-
1) The Principal District & Sessions Judge (HQ), Central, Tis Hazari Court Complex, Delhi.
2) The Principal Judge, Family Courts (HQ), Dwarka Courts Complex, Dwarka, Delhi.

sd/-
Assistant Registrar (Gaz-IA)
For Registrar General

IN THE HON'BLE HIGH COURT OF DELHI AT NEW DELHI

MAT APPEAL (F.C.) _____ OF 2022

IN THE MATTER OF:

KAMAL KUMAR ... APPELLANT

VERSUS

DEVIKA GURJAR CHAUDHARY ... RESPONDENT

MEMO OF PARTIES

KAMAL KUMAR
Son of Mr. Ashok Kumar,
Permanent Resident of 13,
Ashoka Avenue, DLF Farms,
Chattarpur, New Delhi – 110074

Temporarily residing at:
10, Cesar Avenue, DLF Farms,
Chattarpur Farms,
South Delhi – 110030 ... APPELLANT

Versus

DEVIKA GURJAR CHAUDHARY
Wife of Mr. Kamal Kumar,
Resident of 39, Gadaipur,
CDR Farms,
Govind Sadan Gurudwara Road,
New Delhi – 110074 ... RESPONDENT

COUNSEL FOR THE APPELLANT

(ANKUR MAHINDRO & ANKUSH SATIJA)
Advocates
(D-699/2002 & D-3380/19)
Kred-Jure
Advocates & Legal Consultants
W-41, Greater Kailash-II,
New Delhi – 110 048.
Email ID: ankur.mahindro@kred-jure.in
Mobile No. +91-9891051888

New Delhi
Date: 15.12.2022

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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

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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.

sd

ANOOP KUMAR MENDIRATTA, J.

sd

V. KAMESWAR RAO, J.

DECEMBER 19, 2023/dd

True Copy