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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: January 20, 2010
Date of Order: February 08, 2010

+ CM(M) 1382/2009

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08.02.2010

Sumana Bhasin

...Petitioners

Through: Ms. Malvika Rajkotia with Mr. Ranjay N, Advocates

Versus

Neeraj Bhasin

...Respondent

Through: Ms. Anu Narula, Advocate

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporter or not? Yes.
3. Whether judgment should be reported in Digest? Yes.

JUDGMENT

1. By present petition under Article 227 of the Constitution of India the petitioner has assailed an order dated 18th November 2009 passed by the learned Guardian Judge in Guardianship Petition No.276 of 2008. The learned trial court after noting down the conduct of the petitioner in not honouring and complying with order dated 13th October 2009 granting visitation rights to respondent to meet the children, directed that in case of any resistance put on the part of petitioner in compliance of the order, the SHO of the concerned area shall provide necessary assistance for execution of the order passed by the Court in favour of respondent herein.

2. The contention of the petitioner is that the petitioner was more than willing to comply with the order dated 13th October 2009, however, she had not been able to convince the children to facilitate the visitation as per the orders of the Court and it were children who were resisting the visitation rights. It is submitted that the elder son in this case was 15 years old and he refused to go to father (respondent herein). The younger child was also unwilling to go to the father and changed his mind and did not like to meet his father.

3. Since the present petition does not assail the order dated 13th October 2009 passed by learned Guardianship Court, after interviewing the children and after considering all aspects of welfare of children, this Court cannot go into the issue of visitation rights and the only issue before the Court is whether granting of police help by the trial court was justified or not.

4. The elder child in this case was born on 2nd February 1994 and the younger child was born on 14th October 2002. The younger son even on this date is hardly around seven years old. Respondent herein has placed on record the SMSs and E-mails exchanged between father and elder son and some of SMSs and e-mails between the petitioner and respondent and some of the drawings and scribbling made by younger son and photographs which ex facie show that the both the children had no ill-will towards the father and it was the mother (the petitioner herein) who was making efforts to see that the father should not meet the children and she wanted to create hindrance and that is why after noting down entire conduct of the petitioner, the learned Guardianship Court was compelled to pass an order that let the order be executed with the help of local police.

5. If the petitioner was aggrieved by the order of learned Guardianship Court granting visitation rights, the petitioner was at liberty to approach the Court against the visitation rights. Both the children are living with the petitioner. She being the mother was in a position to influence the children and prevail upon the wishes of the children. It is not in the welfare of children that when the parties are estranged, the party with whom the children are staying, should create ill-will against other party and poison the minds of children against other party. It is for this reason that jurisdiction is given to the Guardianship Court to consider the wishes of children and thereafter pass an appropriate order for the welfare of the children and to allow visitation rights or custody keeping in mind the rights of the parties as well as welfare of children. If the orders so passed by the Guardianship Court are frustrated by one of the parties by its conduct or by disobeying the order or by influencing the children or manipulating with the children, then such orders passed by the Guardianship Court would be merely paper orders

/paper decrees and the wishes of the person having custody shall always overrule the Court orders. The very existence of the Guardianship Court shall become meaningless. Since the welfare of children is uppermost in the mind of Guardianship Court and the children are also required to be saved from one sided influence or an estranged parent, it is necessary that orders passed by the Guardianship Court are implemented in true spirits. If the one of the parties insists on non implementation of the order, there are only two ways, either the order should be got implemented with the help of enforcement agency or the erring party should be hauled up for contempt of Court and should be sent to jail. In the case in hand, since the petitioner was mother and since the children were living with her, the trial court was right in getting the order enforced through coercive measures instead of sending the case for contempt so that she may land up in jail. I, therefore, find no infirmity in the order of the trial court.

6. However, since the petitioner before this Court had shown unwillingness to comply with the order dated 13th December, 2009, the order of the Court below dated 18th November 2009 shall remain suspended so long as the petitioner respects the order of the trial court and obeys it. It would be for the benefit of children that the petitioner obeys the order. However, in case the petitioner still does not obey the order, the elder child who is around 15 years of age shall not be compelled to go with the father but the younger child who is admittedly 7 years of age shall be handed over to the respondent in accordance with the order relating to visitation rights, taking help of local police.

7. The petition stands disposed of with above directions.

February 08, 2010
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SHIV NARAYAN DHINGRA J.