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

Date of Decision: 1st September, 2021

+ **CM(M) 666/2020 & CM APPLs. 35055/2020, 29023/2021, 29024/2021, 29025/2021**

KANIKA GUPTA MITTAL Petitioner
Through: Mr. Praveen Chauhan, Advocate
versus
ASHWIN MITTAL Respondent
Through: Mr. Sanjeev Sahay, Advocate

**CORAM:
JUSTICE PRATHIBA M. SINGH**

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.

CM APPL. 29025/2021 (for exemption)

2. Exemption allowed, subject to all just exceptions. Application is disposed of.

CM(M) 666/2020 & CM APPLs. 35055/2020 (for stay), 29023/2021 (for modification), 29024/2021 (for directions)

3. The Petitioner has filed the present petition challenging the orders dated 18th December 2020 and 24th December 2020, passed by the Id. Principal Judge, Family Courts, Saket, (*hereinafter*, “*Family Court*”) in *H.M.A. No. 507/2020* titled *Ashwin Mittal vs. Kanika Gupta Mittal*.

4. The impugned order dated 18th December 2020 was passed by the Id. Family Court, on an application for visitation moved by the Respondent/Plaintiff (*hereinafter*, “*father*”) for visiting the six-year-old child of the parties, during the winter vacation of the child’s school. The

father sought an equal division of time with the child for both the parents, during the period of the vacation. It is recorded in the said order dated 18th December 2020, that the Petitioner/Defendant (*hereinafter, "mother"*), with whom the child normally lives, was proposing to take the child out of town from 4th January 2021 to 10th January 2021. The Family Court, accordingly, directed that the father would be entitled to take the child from the house of the mother on 30th December 2020 at 3:00 pm, and spend time with him until 3rd January 2021. On the said date, i.e., 3rd January 2021, the father was directed to drop the child back to the mother's house at around 3:00 pm.

5. The mother, thereafter, filed an application for modification of the said order contending that the child was not inclined to spend time with the father. In the alternative, she sought a direction from the Family Court, to the effect the mother be also permitted to accompany the child to the father's house. The said application was rejected by the Family Court, vide the second impugned order dated 24th December 2020. Hence the present petition has been filed by the mother.

6. When this petition was first listed before the Court, the Court met the parties, and heard ld. Counsels representing them at length. After hearing the parties, notice was issued in this petition. With the consent of the parties, the interim arrangement was modified in the following terms:

"5. After hearing the parties at length, the impugned orders dated 18.12.2020 and 24.12.2020 are modified with the consent of the parties on both sides to the following effect: -

a. The respondent/father will pick up the child from the petitioner/moher's residence at 3:00 pm today [30.12.2020] and drop him back at the

petitioner/mother's residence by 9:00 pm. During this time, the respondent/father will also take the child for his scheduled tennis class from 3:30 pm to 5:30 pm at the Siri Fort Sports Complex.

b. The respondent/father will pick up the child from the residence of the petitioner/mother tomorrow morning [31.12.2020] at 10:00 am. The child will spend two nights with the respondent/father at his residence, being the nights of 31.12.2020 and 01.01.2021. During this time, the respondent/father will take the child to a party which is scheduled tomorrow [31.12.2020] from 11:00 am to 2:00 pm. The petitioner/mother will communicate the details regarding the said party, including the contact details of the host parents, to the respondent/father in the course of the day.

c. On 01.01.2021, the petitioner and the respondent will arrange a meeting during which the petitioner/mother will be able to interact with the child for approximately one hour at a mutually convenient place.

d. The respondent/father will drop the child back to the petitioner/mother's residence by 7:00 pm on 02.01.2021."

7. The parties were also referred to the Delhi High Court Mediation and Conciliation Centre for amicable resolution of their disputes, however the mediation was unsuccessful. Thereafter, vide order dated 1st February, 2021 parties were directed to be present, and on 5th February, 2021 the Court had met the parties, as also the child. Post meeting the parties, some further modification to the interim arrangement was directed by this Court vide order dated 5th February 2021.

8. On 17th February, 2021, after hearing the parties, a detailed interim

arrangement for visitation was directed by this Court in the following manner:

“2. Further to the last order dated 5th February, 2021, the child has spent two long weekends with the father. This Court has met the father, the mother and the child. Though the child has expressed certain small issues, broadly, his stay with the father has been comfortable. Parties have also agreed for further interim arrangement for visitation in the following manner:

i. On the first weekend of every month, the father would pick up the child on Friday at 5:00 p.m. from the residence of the mother in Lajpat Nagar and drop him back on Sunday at his tennis class at Siri Fort. On Saturday, instead of travelling from Shalimar Bagh to Siri Fort, the father would take the son to play in the Tennis Court in DDA Sports Complex, Pitampura, of which he is a member.

ii On the third weekend of every month, the child would be picked up on Monday in the morning at 10:30 a.m. and dropped back at his tennis class at Siri Fort on Tuesday at 3:00 p.m.

iii. During all the days when the child is with the father, the father shall also make sure that the child attends any online classes which he may have, including any other activities which the child is already involved in. He shall also try and get the child’s homework completed, to the extent possible.

iv. Insofar as payment of expenses of Rs.20,000/- is concerned, since this Court is of the opinion that coordination of the joint account is proving to be quite stressful for both parties, the payment shall be made by the father to the mother

on or before the 10th of every month. The mother shall broadly maintain the expense statement and shall produce the same if asked for by the Court.

v. The father states that he has purchased a laptop for the son and that that the son can retain the same with him, irrespective of whether he is staying with his father or mother, in order to ensure that the laptop would be available for the child for online classes, for homework and to do calls with the father.”

9. The said interim arrangement has been continuing between the father, mother and the child since then.

10. Today, apart from the main matter, there are two further applications, being CM APPL. 29023/2021 and CM APPL. 29024/2021, which have been filed by the mother seeking modification of the earlier order.

11. The allegations in CM APPL. 29023/2021, are that first, the child is not being properly made to attend online classes. Secondly, the child's homework is not being properly supervised and the child is not being given nutritious food etc. Thirdly, the child is being permitted to play video games till very early hours in the morning and this, according to the Id. Counsel for the mother, could be counterproductive to the child's education.

12. Insofar as CM APPL. 29024/2021 is concerned, the same has been filed seeking the father's consent for renewal of the passport of the child.

13. Mr. Praveen Chauhan, Id. Counsel for the mother, submits that the averments in CM APPL. 29023/2021 show that the mother is very concerned about the education and progress of the child, as also the unhealthy manner in which the child is being permitted to live in the father's house. Thus, she prays that instead of two weekends every month, the child

be permitted to visit to his father and his family only on one weekend every month.

14. He further submits that the passport of the child has expired and that the Petitioner needs the father's consent for renewing the same. He submits that there is an order passed by the Family Court that the child would not be taken outside India and the Petitioner would abide by the same.

15. Mr. Sahay, Id. Counsel for the father submits that the application which has been filed by the mother, making various allegations is devoid of any merit. In fact the father also has issues against the mother, as she is not complying with the order passed by this Court in letter and spirit and she continuously calls the child while he is with the father. However, he submits that in the present matter, the interim arrangement already made is working well for the father and the mother, and above all, for the child. He submits that the father enjoys an excellent relationship with the child and he ought not to be deprived of the child's company.

16. Insofar as the passport of the child is concerned, Mr. Sahay submits that vide order dated 4th November 2020, the Family Court has directed that the child would not be taken abroad till the next date of hearing.

17. Heard Id. Counsels for the parties and perused record.

18. Insofar as CM APPL. 29023/2021 is concerned, this Court has met and heard both the parties on various occasions, both in-person, as also through the online mode. There may be slight hiccups in the implementation of the interim arrangement by the parties, in terms of the directions issued by this Court, viz., timings etc., however, broadly this Court is of the opinion that the child is comfortable with the father and his family. However, the father is directed to ensure that the child's school work and

the schedule of the child's online classes is not disturbed in any manner.

19. Further, the sleep schedule of the child also ought not to be negatively affected in any manner by allowing the child to remain awake late. The father ought to also be concerned about the wellbeing of the child. Further, both parties shall also maintain a healthy atmosphere between themselves, so that the child is not unnecessarily disturbed during the visitation. Both parties shall also ensure that the child is picked up and dropped back strictly as per the interim arrangement already passed by this Court vide order dated 17th February 2021.

20. Accordingly, subject to compliance of the above directions, the interim arrangement already passed on 17th February, 2021 shall continue. If the parties needs any modification thereof, they may approach the Family Court.

21. Insofar as CM APPL. 29024/2021 is concerned, considering that there is already an injunction from travelling abroad, and the mother agrees to abide by the said injunction, the passport of the child may be permitted to be renewed. Accordingly, in respect of the said application, the consent would be given by the father for the renewal of the passport within 5 working days of him receiving such a request and documents from the mother.

22. Post this, the passport authorities shall accordingly proceed further and renew the child's passport. Once the renewed passport is issued, the father shall also be intimated of the same by the mother, and shall be supplied with a copy of the renewed passport.

23. Both parties shall abide by the orders that have been passed by the Family Court in respect of not taking the child abroad without permission of the said Court.

24. Once the passport is renewed, if there is any apprehension in the mind of the father, appropriate directions may be sought from the Family Court. The Family Court, to now proceed in the matter in accordance with law.

25. The present petition and all applications are disposed of in the above terms.

**PRATHIBA M. SINGH
JUDGE**

SEPTEMBER 1, 2021/mw/Ak/Ms

