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

Date of decision: 28.04.2025

+ MAT.APP.(F.C.) 124/2025

GARIMA JAIN

.....Appellant

Through: Ms. Juhi Arora, Adv.

versus

ROHIT JAIN

.....Respondent

Through: Mr. Sushant Singhal, Mr. Manibhadra
Jain and Ms. Vanshika Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE RENU BHATNAGAR

RENU BHATNAGAR, J. (ORAL)

CM APPL. 18646/2025(Exemption)

1. Allowed, subject to all just exceptions.

CM APPL. 18647/2025

2. For the reasons stated in the application, the same is allowed and the delay of 27 days in filing the appeal is condoned.

3. The application stands disposed of.

MAT.APP.(F.C.) 124/2025 AND CM APPL. 18645/2025

4. This appeal has been filed under Section 19 of the Family Courts Act, 1984, read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as, 'CPC'), challenging the Order dated 18.01.2025 passed by the learned Principal Judge, Family Court, New Delhi, Patiala House Courts, New Delhi (hereinafter referred to as, 'learned Family



Court’) in an application filed by the respondent under Section 12 of the Guardianship and Wards Act, 1890 (hereinafter referred to as, ‘Guardianship Act’) in Guardianship Petition bearing GP No. 53/2018 titled **Rohit Jain v. Garima Jain**, whereby the learned Family Court had disposed of the said application by observing as under:

“15. The child is already displaying the behavioural issues during visitation and in the school. The issue pertaining to the admission of the child in boarding school is already pending before Hon’ble High Court. In these facts and circumstances and hostile behaviour of child towards his father, I do not deem it expedient in the interest of the child to grant interim custody to petitioner/father at this stage. However, the petitioner shall continue to have visitation rights to meet the child in terms of order dated 04.02.2023. The father is also at liberty to visit of the school and meet the school authorities to check the overall performance of the child during Parent Teacher Meetings or otherwise as per the Rules of school. The petitioner shall pay an amount of Rs.500/- per visitation to the respondent.

16. It shall be highly appreciated if the respondent co-operates and helps the child to come out of negativity against his father for his overall natural development. It has been seen that she has not been regularly producing the child as per schedule for visitation. She is directed to strictly comply with the court order, failing which the court may have to consider about transferring the interim custody of the child to the father/petitioner.”

5. Briefly stated, the marriage between the appellant and the respondent was solemnized on 13.11.2013 at Ghaziabad, Uttar Pradesh according to the Hindu rites and ceremonies, and a male child was born from their wedlock on 18.08.2015. Due to certain differences, the parties started residing



separately since 02.06.2017. At present, the child is in the care and custody of the appellant-mother. There are series of litigations pending between the parties, including the abovementioned guardianship petition filed by the respondent seeking the custody of the child, and on an application filed under Section 12 of the Guardianship Act, the Impugned Order was passed.

6. The learned counsel for the appellant submits that the Impugned Order is liable to be set aside as the learned Family Court failed to consider the bad conduct of the respondent towards the appellant and decided the application without allowing the parties to lead evidence and without considering the facts mentioned in the reply filed by the petitioner against the application filed in the Guardianship Petition. She further submits that the respondent-father has not cared enough to meet the minor-child since the date of their separation and has filed the guardianship petition with the sole purpose to harass the appellant. She also submits that he is not paying for the transportation charges, maintenance etc.

7. She further submits that there are series of incidents which reflect that the minor child is scared to meet the respondent. One such incident dated 18.03.2023, as referred by the appellant, was when the respondent tried to record the video of the appellant and the minor child in Court premises.

8. On the other hand, the learned counsel for the respondent, who appears on advance notice, vehemently argues that the appellant is ruining the future of the minor child as he is being deprived of the proper education and was not even being sent to the school by the appellant. He submits that the same has been recorded by this Court in other proceedings. To further strengthen his arguments, he has also produced the marksheet of the minor child from his school to show that the child's academic performance is also



going down and it is the appellant who even harasses the school authorities. He further submits that all the allegations levelled against the respondent are false and frivolous.

9. We have considered the submissions made by the learned counsel for the parties.

10. It is observed that the child was in the sole care and custody of the appellant-mother since June 2017 when he was of a tender age of around 2 years. A child of tender years cannot become so hostile towards his father so as to show his unwillingness to meet his own father.

11. As the respondent is the biological father of the minor child, it is in the welfare of the child that he should have the love and affection of both of his parents for his psychological, social and mental development. Furthermore, as the appellant and the respondent are on inimical terms, the possibility of the appellant alienating the child from his father cannot be ruled out as she is the custodial parent.

12. Be that as it may, it is expected that a custodial parent should make every endeavour to develop a congenial atmosphere for a child to interact with his father without bringing any sour instances to his knowledge.

13. The arrangements made in the Impugned Order passed in the application filed under Section 12 of the Guardianship Act are of interim nature being made till the final disposal of the guardianship petition so as to develop a bonding relationship between the minor child and his father. A child cannot be allowed to develop a distorted personality by bringing him into the ongoing custody tussle between his parents as the same is certainly detrimental to the welfare of the child.

14. Being the father, the respondent has all the rights to meet his son and



to participate in his educational progress and to know further about his educational status from the concerned school through the Parent Teacher Meeting or otherwise. Rather, both the parents are expected to give their best in nurturing the child so as to develop his overall personality. In fact, from the progress report of the child from the school produced by the learned counsel for the respondent, it is evident that it is the appellant who even goes to the extent of harassing the teachers of the child and make accusations against them, when they have no connection or concern about the sour matrimonial relationship between the parties.

15. In view of the abovementioned observations and the facts of the present case, we find that the learned Family Court, after considering all the facts and submissions and also the behavioural issues of the child, instead of interim custody, has granted only the unsupervised visitation rights of the child by allowing the respondent to meet the child twice a month in the Children Room, Patiala House Courts, while also allowing the respondent to visit the school to check the overall performance of the minor during the Parent Teacher Meetings or otherwise, in accordance with the rules of the school. The same is absolutely necessary for developing a bond between a child and his father and also for the father to contribute, in a positive way, to the development and well-being of the child.

16. Insofar as the plea of the appellant regarding the non-payment of maintenance or transportation allowance by the respondent is concerned, as stated by her before us, she has already filed the execution petition before the learned Family Court and the learned Family Court shall decide the same in accordance with the law.

17. Accordingly, finding no merit, the appeal is hereby dismissed.



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Pending application also stands disposed of.

18. However, the observations made in this Order shall not affect the merits of the case.

NAVIN CHAWLA, J

RENU BHATNAGAR, J

APRIL 28, 2025

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Click here to check corrigendum, if any