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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 2800/2024 & CM APPL. 35360/2024 & CM APPL. 50633/2024

VIMLENDU KUMAR JHAPetitioner
Through: Petitioner in person
versus

MINAL BHATNAGARRespondent
Through: Ms. Malavika Rajkotia with
Ms. Akriti Tyagi and Ms. Trisha
Gupta, Advocates.

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN

ORDRE
30.05.2025

1. Petitioner herein has filed a petition seeking dissolution of marriage under Section 13(1)(ia) of Hindu Marriage Act, 1955. Such petition is pending adjudication before the learned Judge, Family Court, South District, Saket, New Delhi.
2. Alongwith the abovesaid petition, he also filed an application under Section 26 of Hindu Marriage Act, 1955, *inter alia*, seeking unfettered visitation to be with his daughter.
3. Learned Judge, Family Court considered the abovesaid application, earlier, on 02.05.2024 and granted visitation rights to him permitting him to meet his minor daughter on every first and third Saturday of a month from 11:00 am to 1:00 pm in Children Room, Saket Court Complex, New Delhi.
4. The petitioner took exception to the abovesaid order by filing a



petition under Article 227 of the Constitution of India and also made certain additional prayers, which were, admittedly, not prayed before the learned Trial Court. When such petition i.e. CM(M) 2557/2024 was considered by this Court on 16.05.2024, the petitioner, eventually, sought permission to withdraw the same with liberty to move appropriate application before learned Judge, Family Court afresh, incorporating all such prayers therein.

5. Such permission was granted to him and the abovesaid petition was, accordingly, disposed of by this Court.

6. Pursuant to the abovesaid directions and liberty, the learned Judge, Family Court has considered his application again.

7. The grievance of the petitioner before the learned Judge, Family Court was to the effect that he had been granted visitation only twice a month and had, thus, been deprived of playing a positive role in the education of his daughter. He, therefore, *inter alia*, prayed as under:-

- “a. Pass an order granting unfettered visitation rights in favour of the Petitioner to meet his daughter, Gayatri Bhatnagar Jha for at least three (3) days in a week, including a day in the weekends.*
- b. Pass an order for Baby Gayatri to spend all such time with the Petitioner and his family in the absence of Respondent's availability due to her work commitments;*
- c. Pass an order allowing the Petitioner to communicate with his daughter on telephone/video call at all times;*
- d. Pass an order allowing the parents of the Petitioner to have unfettered access to their only grand-daughter;*
- e. Pass an order allowing the Petitioner to make all decisions on an equal footing with the Respondent relating to the child's education, including the choice of school, regular contact with the school for updates, involvement in curricular, co-curricular as well as extra-curricular activities;*
- f. Pass an order granting the Petitioner 50% of vacation time with his daughter, during her summer and winter holidays;*
- g. Pass an order granting visitation rights to the Petitioner thereby allowing him to visit his daughter on all important festivals and*



occasions.”

8. Learned Judge, Family Court, keeping in mind the tender age of the daughter of the parties, who was just three years old then, was of the view that subjecting her to a frequent change of custody, between the parents, would not be a just decision as it might be very difficult for any such child to adjust with the same and it could, rather, affect her physical and mental health. It observed that since the mother was having exclusive custody of the child and was taking care of all her needs, it may have adverse impact on the child if she is alienated from her mother, even for a short period. It also noticed that since the child was in a play-school only, no big decisions were to be taken with regard to her education and thus reiterating the arrangements which had been made, earlier, on 02.05.2024, it also permitted the petitioner to attend Parents Teacher Meeting (PTM) of his daughter. It also permitted him to share his contact details with the school so that the school authorities can update him, by way of e-mails, about the progress of his daughter in the school. Fact, however, remains that all other prayers were, expressly, denied.

9. Such order dated 03.06.2024 is under challenge.

10. Admittedly, the petition is pending before this Court for quite some time and despite the fact that the matter was even referred for mediation, there was no fruitful outcome.

11. On 02.09.2024, this Court also directed that in the interregnum, it will be appropriate if there is a video call through whatsapp or through any other acceptable mode between the petitioner and her daughter every Wednesday for ten minutes between 5:00 p.m. to 7:00 p.m., as per the convenience of the respondent. It was later modified to be made every Tuesday and



Thursday for 20 minutes between 5.00 PM to 7.00 PM

12. Since the Summer Vacation for the current academic session has already commenced on 24.05.2025 and is ending on 01.07.2025, the Court has heard arguments with respect to the issue whether the petitioner can be granted 50% of such vacation time to spend with his daughter or not.

13. The present order is also limited to above aspect.

14. There is no purpose and objective in revealing the name of child in the present order. Suffice it to say, her date of birth is 22.03.2021 and, therefore, she is more than four years old now.

15. Petitioner strongly relies upon *Guidelines Regarding Child access and Custody* proposed by NGO known as '*Child Rights Foundation*' and contends that these guidelines have been appreciated and approved by various High Courts and these, therefore, has requisite recognition and as per these guidelines, visitation of a child aged 36 months and above needs to be in the following manner:-

“B. VISITATION (CHILDREN 36 MONTHS AND OLDER)

4. *WEEKENDS: The Non-custodial parent shall be entitled to weekend visitation every other weekend or every weekend one night every week. Every other weekend Visitation shall begin Friday at 6:00 p.m. and end at 6:00 p.m. on Sunday. If every weekend visitation is opted then every week overnight visitation shall begin either from every Friday at 6.00 p.m. and end on Saturday 6.00 pm. Or from every Saturday 6.00 p.m. and end on 6.00 p.m on Sunday. It is not the responsibility of the custodial parent to provide food or shelter for the child during the Non-custodial parent parent's visitation.*

5. *WEEKDAY VISITATION: If the parties reside within thirty (30) Kilometers driving distance of each other, the Non-custodial parent shall have visitation two (2) evening per week for 2 two hours between 6.00 p.m. to 8.00 p.m., but shall exercise the weekday visitation in the locale of the child's primary residence or within the radius of 10 ten kilometers. The preceding sentence*



shall not preclude occasional travel beyond the thirty (30) Kilometers for special weekday events. The weekday visitation shall be on the same evening each week and varied only if it conflicts with the holiday or vacation schedule. If the parties cannot agree on the weeknight and if there are no scheduled activities for Wednesday, it shall be Wednesday evening for 2 hours. If there are activities scheduled for Wednesday, the Non-custodial parent shall have first choice of an alternate weekday for weekday visitation

6. HOLIDAYS: *The non-custodial parent shall be entitled to spend at least Three (3) hours on holidays and festival day excluding the time of travel. Only where it is not possible to share during the holidays and festival day due to reasons of distance or otherwise. A party's entitlement to Holiday visitation overrides the other party's right to regularly scheduled weeknight or weekend visitation. If either or both parties celebrate other holidays, such holidays should be written down, divided and alternated. In the absence of an agreement, the court shall allocate religious holidays between the parties.*

i. Visitation shall be from 11:00 a.m. until 2:00 p.m. Or from 4.00pm to 7.00pm on the official holiday.

7. CHILDREN COMPLEX ROOM: *Where access even though either agreed by mutual consent or ordered by the court is not being granted to the non-custodial parent, Children's complex room situated in the premises of the Family Courts or such other place as either mutually agreed or directed by the court such as premises made available and approved by the Hon'ble Family court shall be used for purposes of counseling the child or the parent for a specific period and thereafter access can continue as per schedule set forth."*

16. On the strength of the abovesaid guidelines, he seeks requisite visitation rights during holidays and also overnight visitation. He also seeks to apply the same at later stages, also.

17. The petitioner, who has argued in person, submits that such visitation rights are never at the mercy of the opposite side and as a father, he is entitled to meet his daughter, as frequently as possible, which, even otherwise, is supreme for best welfare of his daughter.



18. He relies upon *Yashita Sahu v. State of Rajasthan*: (2020) 3 SCC 67, *Dr. Rakesh Kapoor v. Mrs. Sapna Kapoor*: 2011 SCC OnLine Del 2930, *Amyra Dwivedi v. Abhinav Dwivedi*: (2021) 4 SCC 698, *Adarsh C.B. v. Aswathy Sidharthan* SLP(C) No. 2437 of 2023, *Ruchi Majoo v. Sanjeev Majoo*: (2011) 6 SCC 479, *Ashish Dubey v. State (Govt. of NCT of Delhi) & Ors.*: 2020 SCC OnLine Del 362, *Aditi Bakht v. Abhishek Ahuja*: 2022 SCC OnLine Del 1720, *Kinri Dhir v. Veer Singh*: 2022 SCC OnLine Del 816 and *Vivek Singh v. Romani Singh*: (2017) 3 SCC 231.

19. Reliance, in particular, has been placed upon *Yashita Sahu v. State of Rajasthan*: (2020) 3 SCC 67 wherein in para 22 & 23, the Hon'ble Supreme Court has observed as under:-

“22. A child, especially a child of tender years requires the love, affection, company, protection of both parents. This is not only the requirement of the child but is his/her basic human right. Just because the parents are at war with each other, does not mean that the child should be denied the care, affection, love or protection of any one of the two parents. A child is not an inanimate object which can be tossed from one parent to the other. Every separation, every reunion may have a traumatic and psychosomatic impact on the child. Therefore, it is to be ensured that the court weighs each and every circumstance very carefully before deciding how and in what manner the custody of the child should be shared between both the parents. Even if the custody is given to one parent, the other parent must have sufficient visitation rights to ensure that the child keeps in touch with the other parent and does not lose social, physical and psychological contact with any one of the two parents. It is only in extreme circumstances that one parent should be denied contact with the child. Reasons must be assigned if one parent is to be denied any visitation rights or contact with the child. Courts dealing with the custody matters must while deciding issues of custody clearly define the nature, manner and specifics of the visitation rights.

23. The concept of visitation rights is not fully developed in India. Most courts while granting custody to one spouse do not pass any orders granting visitation rights to the other spouse. As observed earlier, a child has a human right to have the love and affection of both the parents and courts must pass orders ensuring that the child is not totally deprived of the love, affection and company of one of her/his parents.”



20. The respondent is, however, absolutely, against grant of any unsupervised visitation and against sharing vacation equally.

21. Ms. Malvika Rajkotia, learned counsel for respondent, while echoing concerns expressed by her client, submits that the child is of tender age and at such a tender age, the unsupervised rights need not be granted. She also submits that the interference under Article 227 of the Constitution of India is, even otherwise, very restricted and constricted one and this Court cannot go deeper into the factual arena, merely to disagree with the observations given by the learned Judge, Family Court. She contends that the order in question is merely interim one and can always be modified as per the evidence, eventually, led by the parties and after ascertaining wish of the child. It is also submitted that for a child of such tender age, the exercise of creating familiarity and proximity has to be done with due care and caution and any Court is required to embark on such journey, while keeping in mind the best interest of child. It is, therefore, contended that there is nothing wrong in the impugned order as the learned Judge, Family Court has, in no uncertain terms, observed that the frequent change of custody would not augur well for the child of such tender age. It is also supplemented that the petitioner herein is, somehow, unwarrantedly over-anxious in persisting with unsupervised visitation and does not realize that at such a tender age, there are certain aspects, which can be taken care in the best possible manner by a mother only. It is also submitted that the petitioner is residing in Gurgaon all alone and, therefore, he may not be, even otherwise, in a good position to take care of his daughter, who is, still, a nappy-child.

22. Thus, according to her, the supervised visitation is the only best



solution for another one or two years. However, at the same time, it was proposed that the visitation timings can be suitably increased by an hour and it can take place thrice a month, instead of present arrangement of twice a month. She also has no objection if such supervised visitation takes place at a neutral place like play-area in Gurgaon namely *Tickle Wickle*, which is also conveniently located near the residence of both the parties.

23. There is one more development in the matter which this Court cannot resist commenting upon.

24. The mother of the child, who is absolutely against grant of any unsupervised visitation, has also moved an application, very recently, before the learned Judge, Family Court under Section 151 CPC.

25. As per crux of such application, she has no objection to the divorce being granted on the ground that she has not lived with her husband for two years and that there is no sexual contact between them, after the abovesaid child was born. She is also willing to give up all her claim with respect to the alimony etc. and has, thus, no objection to grant of decree of divorce, as prayed for by her husband.

26. Such application has, though, been filed before the learned Trial Court, it is yet to be taken up for consideration.

27. It is submitted that once divorce is granted, the present petition would, rather, become infructuous as the interim application moved under Section 26 of Hindu Marriage Act, 1955 would cease to exist, once the main petition is disposed of.

28. The petitioner, however, submits that since his wife is against grant of any unsupervised visitation, she has, in a very smart manner, come up with the abovesaid application to frustrate his valuable rights of seeking



unsupervised visitation. He also submits that, even otherwise, since the abovesaid application is yet to be adjudicated by the learned Judge, Family Court, the present petition can still be considered and he can be granted additional visitation, including unsupervised one during ongoing summer break.

29. Admittedly, the emotion factor runs high in such custody battles.

30. This Court in *Shashank Gupta vs. Dimple Gogna: 2024 SCC OnLine Del 5642* has observed as under:-

"11. Indubitably, in any such custody battle pertaining to a young child, the emotions run high and the endeavour of each side is to ensure that child does not go to the other spouse. Little do they realize that any child needs to be groomed by both his parents and would like their love and affection in equal proportion. This is, even otherwise, imperative to ensure the overall development and welfare of the child but since the matrimonial life of the parents herein is in disarray and has taken unpleasant turn and they are not able to live together, only one parent eventually can be given interim custody while the other needs to be compensated, other things being equal, by providing requisite visitation rights, including overnight wherever so necessary, so that the child keeps on getting the requisite love, care and affection from both the parents.

12. In the instant case, the learned Trial Court has, evidently, tried to strike much needed equilibrium by passing a very balanced order.

13. There is no dispute with respect to the fact that as per the settled legal position, between the two natural guardians, the mother is to be, usually, preferred in case of a child below five years of age.

14. Needless to say, each case has to be tested while keeping in mind its peculiar factual matrix and, therefore, any Court, while dealing with any such custody battle, should not generally feel bound by statute or by strict rule of evidence or procedure or even by precedents and the paramount consideration should be the welfare and well-being of the child.



15. *Thus, as a general rule, any such child below the age of 5 years, the custody, including interim one, has to be with the mother, unless there is a serious adverse and exceptional circumstance, disentitling her from having such interim custody or which runs contrary to the universally-accepted principle of welfare of the child.”*

31. Undoubtedly, the child in question is of tender age and, to a very large extent, even the learned Judge, Family Court, is justified in observing that frequent change of custody is not going to do any good to such child.

32. This Court distinctly recalls that in one case *Manat Lamba v. Nikhil Kapur: 2024 SCC OnLine Del 8657*, the learned Trial Court had granted visitation rights to father to meet his daughter on daily basis between 6:00 pm to 8:00 pm. Such order was challenged by the mother. While disposing of the abovesaid petition, this Court observed that visitation on daily basis seems to be cumbersome, draining and overstretching. Para 70 of such judgment is also of some relevance herein and the same is extracted hereunder:-

“70. The custody of the child is with the mother, which is, undeniably, vital for her growth and development. But at the same time, it is also essential to underscore that a father’s role in a child’s life is equally significant, if not more, for her emotional well-being and holistic development. The child should not experience a void in her life due to a lack of bonding from her father. Such a bond is crucial in fostering and inculcating sense of security, self-esteem, and balanced personality development.”

33. The petitioner, as a father, is very much entitled to seek additional visitations, to which even the opposite side has, more or less, no objection.

34. The question is, however, with respect to unsupervised visitation, away from the sight of respondent.

35. Earlier, when the child was taken to *Tickle Wickle*, as per the directions given by this Court, though respondent was permitted to remain in



premises, but not within visible distance.

36. The question is whether such arrangement is good enough and can be said to be an appropriate substitute to unsupervised visitation.

37. And yes, as already noted above, presently, we are concerned with summer break period only.

38. During course of the arguments, the respondent had submitted that for her business exigency, she may have to be in Jaipur, during whole of the June. At the same time, however, she submits that the visitation rights, as already directed by the learned Judge, Family Court, would be duly honoured and, as noted already, she is ready to enhance the visitation hours and its frequency, but not agreeable to unsupervised visitation.

39. There is no law that such unsupervised visitation can only be granted with the consent of opposite side.

40. The Court has to weigh up various important factors and has to adjudicate while considering the age and best interest of any such child. Interaction with child, particularly when she is of tender age, does not give any real insight, at times, but the recent videos can give some indication as to how such child feels when with the other parent.

41. The bond between any father and his daughter is a very pious one.

42. Its importance and significance cannot be undermined and understated in any manner whatsoever. In the words of Ama H.Vanniarachchy, a Sri Lankan writer- "*A father's tears and fears are unseen, his love is unexpressed, but his care and protection remains as a pillar of strength throughout our lives.*"

43. The warring parents, unfortunately, do not know that solution in such type of delicate matters is, generally, with them only and no court has a



magic wand. In adversarial system, it becomes difficult to strike a balance and, therefore, even during arguments, umpteen times, this Court kept on asking for amicable solution from the parties.

44. They both, though, acted in a mature manner with least of allegations and counter-allegations, also broke down during hearing and are, seemingly, anxious, fearful, worried and apprehensive about the outcome.

45. Fact, however, remains that a father is not to beg for his love for his daughter.

46. It's his birth-right and merely because daughter is of tender age would not mean that any such father, automatically, becomes unfit to take due care of her.

47. The petitioner herein has a good profile and is in the field of education and he can very well anticipate the needs of his daughter and thus to deny unsupervised visitation, when the child is already 4+, would not be appropriate, particularly, when the visitations, twice a month, are already happening. There seems to exist a connect between petitioner and his daughter, as would be visible from the videos placed on record. It, therefore, cannot be said she does not like company of her father.

48. However, at the same time, everything needs to be steady and gradual.

49. There is no thumb rule that 50% of the vacation any child has to be with one parent and for the rest, it has to be with the other.

50. A *modern-age child* wants quality time for himself, too. Any such child is entitled to pursue his hobbies in his own style and, therefore, he requires independent time - independent of his parents. Every school-going tiny-tot, anxiously and impatiently, awaits for summer break or winter break. They, generally, have their own plans for enjoying such break in the



best possible manner but, fact remains that when there is custody battle, at times, it spoils such break and the warring parents do not understand the underlying damage, caused on account of frequent swapping of custody.

51. There cannot be, thus, any straightjacket formula in such type of matters and each case has to be considered keeping in mind its peculiar factual matrix. Thus, the demand for 50% of the parenting-time during the ongoing summer break would be little unwarranted, at this juncture.

52. Nonetheless, for the month of June, the petitioner is entitled to have four more additional visitations, over and above the two existing visitations. Duration of such visitation (six in number) shall be of three hours each and these may take place at any mutually acceptable neutral place, which can be any decent public place, play-area or Mall or Museum or any other place of child-interest. The mother may though be present during such six visitations but would not be within the visible distance.

53. In addition to above and to begin with, the petitioner is also granted two unsupervised visitation of *six hours duration each* in the month of June, 2025. During such unsupervised visitation, he would be permitted to pick up his daughter from the residence of his wife at 10:00 am and would drop her back at the residence of his wife at 4:00 pm. Since the residences of the petitioner and respondent are in close proximity, the transportation time is not going to make any substantial difference.

54. The petitioner is a working professional and so is the respondent and, therefore, this Court does not want to put them into any air-tight compartment. They both, being mature and understanding enough, would decide the dates of all such June-visititations, including the unsupervised one. These can be in continuity or spread across the month. Mutually acceptable



dates would ensure that their respective professional schedule also does not get disturbed, unnecessarily.

55. However, in case, they fail to do so and the dates are not mutually decided within three days, the matter, on advance mentioning, be placed before learned Vacation Bench of this Court on 04.06.2025 for limited purpose of fixing up dates for all such eight visitations (including two unsupervised) for June month.

56. List on 15.07.2025 for further consideration.

57. A copy of this order be given *dasti* under the signature of Court Master.

MANOJ JAIN, J

MAY 30, 2025
st/PB