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

% *Decision delivered on: 17.05.2024*

+ **MAT.APP.(F.C.) 167/2024 & CM Nos.29718-20/2024**

DEVESH MANASWI DAS

..... Appellant

Through: Mr Prosenjeet Banerjee, Ms Amrita Sharma, Mr Sarthak Bhardwaj and Ms Anshika Sharma, Advs. along with appellant.

versus

APARNASHREE

..... Respondent

Through: Mr Trideep Pais, Sr Adv. with Ms Sanya Kumar, Adv.

+ **MAT.APP.(F.C.) 168/2024 & CM APPL. 29929/2024**

DEVESH MANASWI DAS

..... Appellant

Through: Mr Prosenjeet Banerjee, Ms Amrita Sharma, Mr Sarthak Bhardwaj and Ms Anshika Sharma, Advs. along with appellant.

versus

APARNASHREE

..... Respondent

Through: Mr Trideep Pais, Sr Adv. with Ms Sanya Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE AMIT BANSAL

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

CM No.29718/2024 in MAT.APP.(F.C.) 167/2024

CM No.29929/2024 in MAT.APP.(F.C.) 168/2024

1. Allowed, subject to just exceptions.



MAT.APP.(F.C.) 167/2024 & CM Nos.29719-20/2024
MAT.APP.(F.C.) 168/2024

2. The above-captioned appeals have been preferred by the appellant/father. The appeals are directed against the orders dated 02.12.2023 and 07.05.2024 passed by the learned Judge, Family Court, Patiala House Courts, Delhi.

3. Via order dated 02.12.2023, the Family Court, short of directing overnight custody of the child being handed over to the appellant/father, has issued several directions for custody and interaction of the child with the appellant/father, both physically and virtually.

3.1 For convenience, the directions issued by the Family Court, which are contained in paragraph 29 of the order dated 02.12.2023, are set forth hereafter:

“29. Notwithstanding above, this Court is conscious of the role of the father in the life of the minor and therefore, it directs as under:-

(i) Respondent will have interim custody of the child on every alternative Sunday from 10:00 AM to 06:00PM. Respondent will pick up the child from the residence of the petitioner and will drop him back to her residence. If minor has to attend any extra-curricular activities on the given Sunday, respondent will ensure the same, however, petitioner shall ensure that child is not enrolled in any such extra-curricular activities which happens only Sunday. One stray such event on Sunday is exempted.

(ii) Respondent will have liberty to talk to the child on video/voice call everyday for 10-15 minutes anytime between 08:00 PM to 09:00 PM. Petitioner will ensure that call is attended to by the minor by putting suitable system in place.

(iii) On every Hindu festival i.e. Holi, Dusshera, Diwali, Govardha Puja and Bhaiduj, having holidays in school, the respondent will have interim custody for 4 hours from 12:00 AM [sic..12:00 PM] to 04:00 PM. Respondent will pick up the child from petitioner's residence and drop the child back to her residence.

(iv) During winter and summer vacation, respondent will have interim custody of the minor for half of the vacation from 12 Noon to 07:00 PM every day. If petitioner wishes to travel outstation with child during vacation, she



will plan trip in such a manner that half of the vacation is made available to the respondent as directed above.

(v) During interim custody respondent will be at liberty to bring the minor to his residence at Vasant Kunj keeping in mind the limitation imposed by the Hon'ble High Court in its order dt. 20.10.2023.

(vi) Pursuant to love and affection and cajoling, if minor happens to increase his stay with respondent or wishes to stay with his father overnight, petitioner will not oppose the same, however, such willingness must be conveyed by the child on his own.

(vii) During the interim custody respondent shall be at liberty to take the child to amusement park, mall, sport complex etc. subject to willingness of the child.

(viii) If minor for any reason, except for fear of mother, wishes to shorten the duration of his stay with respondent on any day he happens to be with him pursuant to this order, respondent will respect the wish of the child without questioning the same.

(ix) Respondent if he wishes can take part in the PTM and can know of the progress of the child from school authorities, however, in order to maintain unity of command, he will not give any instruction or direction to the school authorities qua the child. Needless to say school records of the child will have name of the respondent as father.

(x) On the occasion of birthday of the child, parties can have either lunch or dinner together and if none of that is possible for any reason whatsoever, petitioner shall ensure that minor meets his father on the same day for around 2 hours, ensuring convenience of all the three.

(xi) Little deviation in execution of above direction due to any unforeseen exigency must be humanly appreciated by both parties without complaining against each other.

(xii) With mutual consent parties could vary the above schedule.”

4. We heard learned counsel for the parties at some length against the backdrop of the directions issued by the Family Court.

5. Mr Prosenjeet Banerjee, learned counsel, who appears on behalf of the appellant/father, after taking instructions from the appellant/father, who is physically present in Court, submits that insofar as the submission concerning “joint-parenting plan” is concerned, it could be considered after six months by the Family Court, by which time, the appellant/father would have had the opportunity to develop a stronger bond with the child.



5.1 That said, Mr Banerjee seeks a small variation in the directions that have been issued by the Family Court. Insofar as the directions contained in Clause (i) of paragraph 29 are concerned, Mr Banerjee says that one of the following two alternatives will work for the appellant/father, i.e., either the appellant/father is given custody on Saturday and Sunday, twice in a month, between 10:00 AM to 6:00 PM or else, the appellant/father could be given custody of the child on four (4) Sundays in a month.

6. Mr Trideep Pais, learned senior counsel, who appears on behalf of the respondent/mother, on the other hand, says that in addition to what has been directed by the Family Court, as reflected in paragraph 29(i), the appellant/father could have custody of the child on two Saturdays, after 3:30 PM, once the child has finished his classes, up until 08:00 pm. This regime will operate even if the child is not required to attend classes.

6.1 Having heard learned counsel for the parties, we are inclined to grant the appellant/father day-custody of the child for three (3) Sundays, between 10:00 AM to 6:00 PM.

6.2 The condition contained in paragraph 29(i) of the order dated 02.12.2023 shall stand modified to that extent.

7. The other variation that Mr Banerjee seeks is with regard to the direction contained in paragraph 29(iv) of the order dated 02.12.2023.

8. Mr Banerjee says that the timeframe during vacations to interact with the child could be 10:00 AM to 08:00 PM instead of 12:00 pm to 07:00 pm.

9. Mr Pais says that the child could be made available to the appellant/father from 11:00 AM.

10. Having considered the submissions of both sides, we think Mr Banerjee's submission should be accepted. The direction contained in



paragraph 29(iv) of the order dated 02.12.2023 is varied to the extent that the child will be made available to the appellant/father, for interaction during vacation, between 10:00 AM and 08:00 PM. Accordingly, paragraph 29(iv) shall stand modified to the extent indicated above. All other parts of paragraph 29(iv) shall remain unaltered.

11. The appeals are disposed of with the variation in directions (i) and (iv) of paragraph 29 of the impugned order dated 02.12.2023, as indicated above.

12. Furthermore, the appellant/father will have liberty to move the Family Court, *albeit*, after six (6) months for placing on record a “joint-parenting plan” which could include a provision for overnight custody of the child.

13. If an application along with the “joint-parenting plan” is placed before the Family Court, it will pass appropriate orders, after hearing both sides and ascertaining whether the time is ripe to accord overnight custody of the child to the appellant/father.

14. In case it is deemed necessary, the Family Court will be at liberty to take the assistance of a child psychologist before taking a decision one way or the other on the application.

15. The appeals are disposed of as prayed in the aforesaid terms. Consequently, the pending applications shall also stand closed.

16. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

AMIT BANSAL, J

MAY 17, 2024/aj