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

% *Date of decision: 15th September, 2023*

+ **MAT.APP.(F.C.) 190/2023 & CM APPL. 33826/2023**

[REDACTED]

..... Appellant

Through: Mr. Ashok Kumr Chabbra, Mr. Pawan Kumar Mittal & Ms. Sunita Pal, Advocates with appellant in person.

versus

[REDACTED]

..... Respondent

Through: Mr. Aditya Ranjan & Ms. Jyoti Rana, Advocates with respondent in person.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The present Appeal under Section 19 of the Family Courts Act, 1984 (*hereinafter referred to as "the Act, 1984"*) has been filed on behalf of the appellant/father to set aside the Order dated 22.05.2023 passed by the learned Principal Judge, Family Court, South-East, Saket Courts, New Delhi, dismissing the Application under Section 151 of the Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC, 1908"*) filed by the appellant/father seeking that the child be brought to the children's room to meet him.



2. **The facts in brief are that** the parties had got married on 09.12.2004 according to the Hindu customs and rites and one son, [REDACTED] [REDACTED] was adopted by the parties.
3. The disputes arose between the parties and they got separated in 2021, and the custody of the child is exclusively with the respondent/mother since then. The appellant/father thus, filed the Petition under Section 9 of the Guardians and Wards Act, 1890 (*sic*) (*hereinafter referred to as* “the Act, 1890”) seeking custody of the minor son.
4. *Vide* Order dated 16.08.2022, the appellant/father was permitted to pick up the child on every Sunday at 12:00 noon from the house of the respondent/wife and drop back the child at around 02:00 P.M. on the same day.
5. Subsequently, the Application under Section 151 of CPC, 1908 was filed by the appellant/father with the prayer that since the respondent/wife was not complying with the Order dated 16.08.2022, the child may be directed to be brought to the Children’s Room for meeting him.
6. The learned Principal Judge, Family Court, observed in impugned Order dated 22.05.2023 that he had interacted with the child in the Chamber who is aged about 13 years and is studying in Class-VIII. The learned Principal Judge further observed that the child was having sufficient maturity to decide the meeting with the appellant/father and found that there existed no ground to direct the production of the child in the Children’s Room for meeting and accordingly, the Application under Section 151 of CPC, 1908 of the appellant/father was dismissed.
7. Aggrieved by the dismissal Order dated 22.05.2023, the present Appeal has been preferred by the appellant/father.



8. Essentially, the grievance of the appellant/father in his Application under Section 151 of CPC, 1908 was that there was no effective compliance of the Order dated 16.08.2022 granting visitation rights on every Sunday from 12:00 Noon to 02:00 P.M. which is essentially increasing the gap between the appellant/father and his son, which is not in his welfare. Therefore, to facilitate interactions it was requested that the child be produced in the children's Room for effective and meaningful meetings.

9. The respondent, on the other hand, had claimed that she never obstructed the visitation rights, but the son is now aged about 13 years and has extreme reluctance in meeting with the appellant/father. The child is grown up enough to exercise his own discretion and there is no way that she can compel the child to meet the appellant/father. The child himself has refused to interact with the appellant/father and she has no role to play if the child is not willing to go with the appellant/father on every Sunday as directed *vide* Order dated 16.08.2022.

10. **Submissions heard.**

11. The parties were residing together since 2004 and in the year 2011, the aforesaid child was adopted by them and since then, they lived together as a family till the child became 11 years of age. It is only about two years back in 2021 that the parties got separated and since then, the appellant/father has been struggling to get the custody rights of the child. The appellant/father was granted visitation rights *vide* Order dated 16.08.2022 to meet the child on every Sunday from 12:00 Noon to 02:00 P.M. to ensure that the bonding between the appellant/father and the son is not disrupted. However, the Order dated 16.08.2022 has not resulted in any fruitful interactions as is evident from the submissions of the



respondent/wife who has claimed that the child is not willing to meet the appellant/father.

12. The learned Principal Judge, Family Court, apparently had interaction with the son which is evident from the impugned Order dated 22.05.2023 and considering the reluctance of the child, the learned Principal Judge, Family Court, declined to direct the child to be produced in the Children's Room of the Court Complex for visitations.

13. Section 17 of the Act, 1890 provides the factors to be considered by the Court while appointing a Guardian with the ultimate objective of determining the welfare of the child.

14. Section 17(3) of the Act, 1890 further provides that if the minor is old enough to form an intelligent preference, the Court may consider his preference. However, Section 17(3) is couched in directory language and the Court cannot always be dictated by what the child states to be his preference. It is a common knowledge that where acrimony permeates in the relationship between the husband and the wife, the worst victim is the child who is directly or indirectly impacted or affected by the acrimonious relationship and is also tutored against the separated parent. While considering the intelligent preference of such a child, not only the age of the child is material but also the surrounding circumstances of the period of separation and the reasons stated for disinclination to meet the appellant/father also assume relevance.

15. The child is a minor of 13 years of age and had been in the joint custody of the both the parents who were residing together till about 11 years. In these two years, it is apparent that because of the differences between the parents, the child has also been impacted. However, it is not in



the interest and welfare of the child, if he gets deprived of the love and affection as well as guidance of his father solely because of the differences between the parents. This is more so when the parties and the child were together till about two years back. The father is not a stranger but is well known to the child having been together for eleven years. Two years time gap cannot be considered sufficient for total alienation for the child to turn totally averse to even meet the father. The role of mother to help forge and restore the lost/ diminished affection between the father and the child assumes greater significance.

16. As has been stated that though the appellant/father has been going to the house of the respondent/wife to take the custody of the child, as granted *vide* Order dated 16.08.2022 is not getting materialized.

17. In these circumstances, it is a bounden duty to create an atmosphere to foster effective meeting between the appellant/father and the child. It would be in the interest and welfare of the child if the meetings initially are directed to be held in the Court to help restore the cordiality, confidence and affection between the estranged father and the son.

18. Accordingly, we find merit in the present Appeal and the same is allowed and we hereby set aside the impugned Order dated 22.05.2023. We hereby direct that the child be produced to the Children's Room in the Court Complex, Saket Courts, New Delhi on every first and third Saturday from 03:00 P.M. to 05:00 P.M. for interaction with the appellant/father. Further, the meetings be facilitated in the Children's Room in the presence of the Counsellor. In case, the child is unable to come on any Saturday or it is a Court's holiday on the said Saturday, the meeting shall be held on the next working Saturday, or the same may be compensated on any other day,



subject to the convenience of both the parties. It is also directed that the respondent/ mother who is equally responsible to proper emotional development of the child, to make every endeavour to ensure that the child is able to restore his strained relationship with his father. The appellant is at liberty to seek modification of this arrangement by moving appropriate application before learned Principal Judge, Family Court when sufficient rapport and comfort is established inter se him and the minor.

19. Accordingly, the present Appeal is allowed and disposed of in the above terms.

20. The pending application is also disposed of.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 15, 2023

S.Sharma