



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

% Judgment reserved on: 29.10.2024  
Judgment delivered on: 11.12.2024

+ CM(M) 3757/2024 & CM APPL. 58992/2023 & CM APPL.  
9609/2024 & CM APPL. 29049/2024, CM APPL.64055/2024

MANAT LAMBA .....Petitioner

versus

NIKHIL KAPUR .....Respondent

+ CONT.CAS(C) 640/2024 & CM APPL. 61265/2024  
NIKHIL KAPUR .....Petitioner

versus

MANAT LAMBA .....Respondent

### **Memo of Appearance**

For the Petitioner: Mr. Shaunak Kashyap, Ms. Parul Tuli, Ms. Muskan Yadav,  
Mr. Anuj Panwar and Mr. Ahmar Shad, Advocates along  
with petitioner in person in CM(M) 1873/2023  
Mr. Prashant Mendiratta with Mr. Shikhar Sareen, Ms.  
Somyashree and Ms. Neha Jain, Advocates in  
CONT.CAS(C) 640/2024

For the Respondent: Mr. Prashant Mendiratta, Mr. Shikhar Sareen, Ms.  
Somyashree, Advocates along with respondent in person in  
CM(M) 1873/2023  
Mr. Shaunak Kashyap, Ms. Parul Tuli, Ms. Muskan Yadav,  
Mr. Anuj Panwar and Mr. Ahmar Shad, Advocates in  
CONT.CAS(C) 640/2024

**CORAM:**  
**HON'BLE MR. JUSTICE MANOJ JAIN**  
**JUDGMENT**

**MANOJ JAIN, J**

1. Petitioner Manat Lamba is defending a petition filed by her husband



seeking guardianship and custody of their minor child.

2. During the pendency of the aforesaid guardianship petition, her husband filed an application under Section 12 of Guardians and Wards Act, 1890 seeking, *inter alia*, unsupervised visitation rights, interim custody of their minor child.

3. The challenge in the present petition is to the order passed in such application. Additionally, her husband has also filed a petition before this Court seeking initiation of contempt proceedings against her. This order shall decide said application as well.

4. The parties got married on 15.02.2014.

5. They were blessed with a baby girl on 18.01.2019.

6. For the sake of convenience, the petitioner Manat Lamba herein shall be referred to as 'mother' and respondent Nikhil Kapur as 'father'.

7. It was claimed by the father in his aforesaid application moved under Section 12 of Guardians and Wards Act, 1890 that their daughter was very sensitive and at such a tender age, she had to undergo a traumatic separation experience and was deprived of the company of her father and also of her grandparents and other family members. It was averred that the mother was short-tempered and was also in adulterous relationship and such atmosphere was unhealthy for their daughter and thus not in her best interest.

8. It was also contended that despite difference between them, every effort ought to be made to protect well-being of their daughter which was paramount and, therefore, both the parents have to make efforts to ensure that there is no adverse psychological impact on her, in the long run. Contending that since his wife was having a busy schedule, their daughter was forced to stay with staff, instead of spending quality time with her father



and grandparents. Thus, according to respondent, the parental alienation was harmful for the growth and development of their child and depriving of the love and affection of her father was detrimental to her psychological well-being and it was in the aforesaid backdrop that he prayed as under: -

- (a) *Grant visitation rights to the Petitioner/Father of the minor daughter during the Summer Vacations, Dussehra Vacations, Diwali Holidays & Winter Vacations;*
- (b) *Grant interim custody of the minor child to the Petitioner/ Father for Second half of the Summer vacations i.e. period from 15.06.2023 till 15.07.2023, and Dussehra Vacations, Diwali Holidays & Winter Vacations from 01.01.2024 – 15.01.2024.*
- (c) *Direct the Respondent to conduct a video call every day between the Petitioner /Father and the minor child twice a day for 15 minutes each uninterrupted.*
- (d) *Allow the Petitioner /Father to meet the minor daughter every day i.e. from Monday to Thursday for three hours unsupervised during school days at the house of the Petitioner;*
- (e) *Grant unsupervised visitation rights/interim custody rights to the Petitioner/Father qua the minor daughter every week i.e. from Friday afternoon till Sunday late evening once in 7 days, the minor daughter be allowed to stay with the Petitioner/Father during school days;*
- (f) *Grant permission to the Petitioner / Father to participate in the school proceedings such as school activities, filling up school forms, meeting school authorities, interviews etc.;*
- (g) *Grant permission to the Petitioner/Father to drop the minor daughter to school every morning.*
- (h) *Grant interim custody of the minor daughter to the*



*Petitioner/ Father during the first half of all holidays, birthdays and other family functions apart from summer vacations;*

*(i) Direct the Respondent not to change the School of the minor daughter, Anahira Kapur, without the prior written consent of the Petitioner/Father;*

*(j) Direct the Respondent not to remove the minor daughter, Anahira Kapur, from the jurisdiction of this Hon'ble Court without the prior written consent of the Petitioner/Father;*

*(k) Direct the Respondent not to take the minor daughter, Anahira Kapur, out of the country without the prior written consent of the Petitioner/ Father;*

*(l) Direct the Respondent to submit the passport of the minor daughter, Anahira Kapur, before this Hon'ble Court;*

*(m) Pass such other and further order(s) as deem fit and proper in view of the facts and circumstances of the present case.*

9. Such application was resisted by the mother (petitioner herein).

10. There were averments and counter-averments by the parties.

11. Learned Family Court disposed of the aforesaid application, while giving following directions: -

*i. Unsupervised overnight visitations as prayed by the petitioner is declined, however, petitioner is, entitled for sufficient visitation rights so that Anahira does not lose physical, psychological, emotional and social contact with the father. Hence, petitioner is allowed to visit the respondent's home to meet his daughter Anahira every day between 06.00 p.m. to 08.00 p.m. Besides, petitioner may also contact Anahira telephonically or through video call at appropriate time and for reasonable duration which would be facilitated by the respondent. All such visitations and calls will conform to the comfort and convenience of the child.*

*ii. Respondent is restrained from taking Anahira out of N.C.T. of*



*Delhi and out of India without prior permission of this Court.*

iii. *Petitioner is allowed to accompany the child with the respondent to pay visit to pediatrician, School, PTMs and to have access to her medical reports and school documents.*

iv. *Petitioner is allowed to spend time with Anahira on the occasion of Dussehra (on 24.10.2023) and Diwali (on 12.11.2023) from 02:00 PM. to 06:00 P.M. He will pick the minor daughter from the house of respondent and drop her back on the same day. During festivals, petitioner may join the festivities at the respondent's home to spend time together with Anahira. Respondent will extend her sincere cooperation in this regard.*

12. The prime and foremost grievance and the concern raised by the petitioner is *qua* highly disproportionate frequency of the visitation rights.

13. It is submitted by her that the learned Trial Court has directed for 'visitation on daily basis' which is excessively high and not conducive for the child. It is contended that such visitation needs to be brought down, preferably, to once a week, as said order is hampering her daily-routine and her study-schedule. The anger-issue of her father has also been cited as other reason.

14. The other grievance is that she has been restrained from taking her daughter out of NCT of Delhi and out of India, without permission of the Court.

15. It is argued that such condition has put unwarranted embargo on free movement of mother and the child, both. It is submitted that her father is well-aware that she suffers from nasal condition called adenoids and inflamed tonsils and is, therefore, required to be taken to Chandigarh and Goa and at times, programme is finalized at the last moment and since there is a direction that she cannot be taken out of NCT of Delhi without permission of the Court, such condition also needs to be relaxed, suitably.



16. Learned counsel for the petitioner does concur that in such type of matters, the welfare of the child is paramount consideration but the word “welfare” has to be construed in a pragmatic manner. It has been contended that because of the excessive visitation on daily basis, obviously, the child is bound to get tired and exhausted and at such tender age, she would not be able to cope up with the tight schedule of school and may also have to sacrifice extra-classes and tuition, besides enjoying her personal life as a child. It would also interfere with her dinner-time and sleep-cycle. It is, thus, contended that such excessive visitation would, eventually, become a hurdle in her healthy upbringing and may adversely affect her physical as well as mental health.

17. It is also submitted that the contempt petition filed by the father is erroneous and completely misplaced and, therefore, the same should also be dismissed, outrightly.

18. According to Sh. Shaunak Kashyap, learned counsel for the petitioner, the father has levelled false and baseless allegations of adultery in a blatant manner to prejudice the mind of the Court. He submits that the subsequent police complaints filed against the father are also important aspects, which need to be factored in while considering the present petition.

19. All such contentions have been refuted by the father/respondent.

20. According to him, the present petition filed by the mother is totally misconceived and she is using their daughter as a tool to arm-twist and coerce the father to make him concede to her whimsical demands. It is submitted that the impugned order has been passed after appreciating all the



facts and circumstances of the case and, therefore, there is no reason to interfere with the same. It is contended that the respondent has always been a loving, caring and dutiful father and in past, almost all the visitations proved to be very fruitful and joyous, not only to the father but also to their daughter and it is rather the mother who is in violation of the impugned order.

21. It is also highlighted that this Court had also awarded visitation to the respondent but even those orders were not complied with and on numerous occasions, the scheduled visitations could not take place which would clearly indicate that the petitioner is in flagrant and wilful disregard of the orders dated 10.11.2023 and 11.12.2023 passed by this Court as well and, therefore, it is a fit case where the petitioner should be held guilty for such wilful and deliberate disobedience of the orders.

22. According to father, their minor daughter always enjoyed his company thoroughly and of other family members whenever she met them and various pictures and videos would also demonstrate the same and, therefore, there is an attempt on the part of the petitioner to alienate her from respondent and his other family members. According to the respondent, the child, it seems, is not cooperating on account of tutoring and, therefore, this Court should exercise its jurisdiction of *parens patriae* and in order to uphold the principle of paramount welfare of the child, should dismiss her petition with heavy cost.



23. It has also been claimed that the petitioner-mother has treated the respondent with cruelty, by indulging into an adulterous relationship which fact cannot be brushed aside.

24. It is claimed that the petitioner and the respondent are residing in the same vicinity within a radius of one kilometre and, therefore, such visitation can always be adhered to, without upsetting the routine of their daughter and there is nothing which may indicate that such daily visitation would adversely impact her growth or development. It is argued that the bond between father and daughter is a sacrosanct one and endeavour should be rather made to ensure that same is not broken due to matrimonial discord between the parents and, therefore, the present petition is nothing but an abuse of law. It is also claimed that there is nothing to indicate that the respondent is suffering from any anger issue which can traumatize their daughter.

25. During course of the arguments also, learned counsel for the respondent referred to various photographs and videos and contended that not only the child remained always happy with her father but one such video would also indicate that it is rather the mother who is trying to dissuade her daughter from visiting her father. Reliance has also been placed upon ***Vivek Singh vs. Romani Singh***: (2017) 3 SCC 231, ***Purvi Mukesh Gada vs. Mukesh Popatlal Gada & Anr***: (2017) 8 SCC 819, ***Soumitra Kumar Nahar vs. Parul Nahar***: (2020) 7 SCC 599, ***Smt Shilpi Thapar vs. Shri Manan Thapar*** in CM(M) No. 1425/2013 and ***V. Anusha vs. B. Krishnan***: (2022) SCC Mad 4609. Sh. Prashant Mendiratta, learned counsel for the father, while praying that the present petition filed by the petitioner be dismissed,





has also prayed that in the best interest of the child, the custody be rather immediately transferred to her father as the petitioner has wilfully disobeyed the orders with impunity and, therefore, she is no longer entitled to have the custody of their daughter.

26. This Court has given anxious consideration to the rival contentions.

27. In matter of any such nature, there would be, generally speaking, allegations and counter allegations which can be appropriately appreciated only after comprehensive trial, and not on the basis of mere bald averments.

28. It also needs to be highlighted right here that when this matter was taken up by this Court, the father was given unsupervised visitation right for certain duration over the child and such arrangement had been chalked out, without prejudice to the rights and contentions of the parties.

29. Simultaneously, the parties were also referred to the Delhi High Court Mediation and Conciliation Centre for exploring the possibility of arriving at an amicable settlement.

30. Fact remains that the parties could not settle their *inter se* disputes.

31. It is also important to mention here that the mother also filed an application under Section 151 of Code of Civil Procedure seeking modification of the interim visitation arrangement directed by this Court *vide* order dated 11.12.2023. The father also prayed for expeditious hearing as according to him, visitation had not happened after 18.01.2024, even



once.

32. On 16.07.2024, this Court directed the mother to bring her child to Delhi High Court Mediation & Conciliation Centre on 01.08.2024 at 02.00 PM so that at such centre, her father could meet her and after such meeting was over, the matter was to be taken up by this Court.

33. On 01.08.2024, this Court interacted with parties when it was informed by the mother that her daughter was very scared and was not even ready to come out of the car and, therefore, she could not bring her inside the Mediation Centre.

34. After having extensive discussion with both of them in the chamber, the mother was asked to bring her daughter to the above said Centre again on 08.08.2024 at 02:00 p.m. The Mediation Centre was also requested to arrange for Child Counsellor/Child Psychiatrist and it was left to the wisdom of such Child Counsellor/Child Psychiatrist to assess whether that day, the unsupervised meeting could take place between the daughter and her father.

35. The meeting did not happen, even on 08.08.2024.

36. As per report received in a closed envelope, the Child Psychologist/Counselor was informed by the petitioner's lawyers that the child was crying and refusing to come upstairs to the mediation centre. The child was in a car, parked outside the centre, and due to the child's distress, the Counselor conducted the session inside the car when the child remained in lap of her mother. She also reported that initially, the child was visibly



upset, crying, and continued to refuse to come upstairs but when engaged with the child in a gentle manner, over the time, the child began to relax and engage in conversation. *On normal conversation she was comfortable, however, when the discussion shifted towards her father, she showed some kind of distress and started to cry when the idea of going upstairs was brought up.* The counsellor did also observe that the father has shown some videos in which the child was seen happily interacting with all family members and the difference between the child's reactions during the session and the videos indicated that *further observation was necessary* to assess the child's true emotional state and comfort level.

37. I may also mention that when matter was taken up by this Court on 02.09.2024, the mother was suggested whether visitation could be ordered to take place at her residence from 6 P.M. to 8 P.M. twice a week so that further steps could be taken to ensure co-parenting in a desired manner. The response from the mother was though in affirmative but Mr. Mendiratta, learned counsel for the respondent submitted that it would not be possible to go to the house of the petitioner, in view of the fact that the father apprehended his arrest, due to some false complaints lodged against him.

38. Finding no possibility of any amicable solution, the final arguments were heard and while reserving the matter for judgment, in order to facilitate visitation on account of coming festival of Diwali, with the consent of both the sides and without prejudice to their respective rights and contentions, the father along with his brother, parents and other family members were permitted to meet the child at *Select City Mall* on 30.10.2024 from 12.00 noon to 03.00 PM in the presence of petitioner/mother.

39. All these aspects are important for disposal of present *lis*.



40. As noticed already, it needs to be seen herein whether the impugned order is onerous from the angle of mother and the child. Yes, it also needs to be assessed whether there is any wilful disobedience of any order, necessitating initiation of any contempt proceedings.

41. There is no denying the fact that grant of visitation on daily basis is, on the face of it, excessive in nature.

42. The child in question is a school-going child and permitting visitation everyday between 6 pm to 8 pm is not going to serve any real purpose of strengthening a bond between a father and daughter. Any such child has multiple schedules and at times, evening time is best suited for such schedules. This can be for studies; for coaching or tuition; for pursuing any hobby or extracurricular activities; for mingling with friends; for playing and for herself as well.

43. It really does not matter whether both the parents are residing in close vicinity.

44. The Court has to keep the welfare of the child in mind. This is pivotal.

45. Everything else has to revolve around the same.

46. This Court has seen the precedents cited at the Bar.

47. Though facts of any such two cases would never be similar but the common thread and the binding principle remains the same i.e. welfare of the child is supreme and paramount.

48. In *Vivek Singh v. Romani Singh (supra)*, Hon'ble Supreme Court has emphasized that in cases of such nature, where a child feels tormented because of the strained relations between her parents and ideally needs the company of both of them, it becomes, at times, a difficult choice for the Court to decide as to whom the custody should be given. No doubt,



paramount consideration is the welfare of the child. However, at times, the prevailing circumstances are so puzzling that it becomes difficult to weigh the conflicting parameters and decide on which side the balance tilts. Referring to *Gaurav Nagpal v. Sumedha Nagpal (2009) 1 SCC 42*, it observed that even with respect to law and jurisdiction relating to custody in England and America, welfare of the minor child was the first and paramount consideration and in order to determine child custody, the jurisdiction exercised by the Court rests on its own inherent equality powers where the Court acts as “*parens patriae*”. It also observed that the word “welfare” has to be construed literally and must be taken in its widest sense. The moral and ethical welfare of the child must also weigh with the Court as well as its physical well-being. Though the provisions of the special statutes which govern the rights of the parents or guardians may be taken into consideration, there is nothing which can stand in the way of the Court exercising its *parens patriae* jurisdiction arising in such cases. It was also observed as under:-

*“.....The child is often left to grapple with the breakdown of an adult institution. While the parents aim to ensure that the child is least affected by the outcome, the inevitability of the uncertainty that follows regarding the child's growth lingers on till the new routine sinks in. The effect of separation of spouses, on children, psychologically, emotionally and even to some extent physically, spans from negligible to serious, which could be insignificant to noticeably critical. It could also have effects that are more immediate and transitory to long lasting thereby having a significantly negative repercussion in the advancement of the child. While these effects do*



*not apply to every child of a separated or divorced couple, nor has any child experienced all these effects, the deleterious risks of maladjustment remains the objective of the parents to evade and the court's intent to circumvent. This right of the child is also based on individual dignity.”*

49. In *Soumitra Kumar Nahar v. Parul Nahar* (supra), it is held that the rights of the child need to be respected as he/she is entitled to the love of both the parents. Even if there is a breakdown of marriage, it does not signify the end of parental responsibility. It is the child who suffers the most in a matrimonial dispute. It is also observed therein by Hon'ble Supreme Court that it is well settled by the catena of judgments that while deciding the matters of custody of the child, primary and paramount consideration is always the welfare of the child. If the welfare of the child so demands, then technical objections cannot come in the way. However, while deciding the welfare of the child, it is not the view of one spouse alone which has to be taken into consideration. The Courts should decide the issue of custody on a paramount consideration which is in the best interest of the Child who is the victim in the custody battle.

50. This Court, at the moment, does not want to go any deeper with respect to the correctness or falsity of the allegations and counter-allegations. As noted, these can be substantiated or refuted during the course of the trial only.

51. Undoubtedly, when the petition was pending consideration before this Court, this Court had directed unsupervised visitation right for certain duration to the father but, as already noticed, when the child was directed to



be brought here to enable a meeting between her and her father, she did not even come out of the vehicle and it was only with the assistance of the Child Counselor of the Mediation Centre that she eventually opened up. Even the Child Counselor noticed that the child reacted differently when the discussion shifted towards her father.

52. This is not the time to find reason, why?

53. This is also not the time to assume that it is because of any tutoring.

54. At this initial juncture, one has to be alive to the psychology of the child and act practical.

55. It also needs no reiteration that the petition under Article 227 has been filed by the mother, and not by the father.

56. Keeping in mind the overall facts of the case and the tender age of the child in question, the visitation on daily-basis seems to be cumbersome, draining and overstretching and, therefore, the order regarding visitation needs to be modified from one on daily basis to twice a week i.e. every Tuesday and Sunday, while not altering the place. The duration of visitation would be from 06.00 pm to 08.00 pm on Tuesdays and 02.00 pm to 06.00 pm on Sundays. This would give the child much-needed time to pursue her other routine activities and other schedule.

57. Needless to emphasize, besides the above, both the parents also need to show enough of maturity and should work in tandem to ensure that the child feels equally jubilant and secured with her father as well.

58. Parental alienation should not be permitted to happen under any circumstance.

59. This Court, at this stage, would not make any comment as to what could have been the reason for the child to feel so apprehensive and scared



about her father with whom she, earlier, was very comfortable.

60. At times, it is difficult to fathom a child psychology.

61. However, keeping in mind the report which this Court received from the Mediation Centre, it is ordered that both the parents along with their daughter would visit a Child Counselor, once every month. They would be at liberty to decide upon a mutually acceptable Child Counselor in this regard but till the time, such decision is taken by them and brought to the knowledge of the learned Trial Court, they would ensure that they along with their daughter come to Delhi High Court Mediation and Conciliation Centre for having such meeting with the Child Counselor/Child Psychologist attached with the above Centre.

62. Of course, such meeting would be over and above the abovesaid visitation of twice a week.

63. Let such meeting with Counselor start with the first week of every month of year 2025.

64. Learned Trial Court has restrained the mother from taking her daughter out of NCT of Delhi and out of India without prior permission of the Court. There is no requirement of modifying the above said order in context of visit abroad and, therefore, mother shall not take her daughter out of country without prior permission of the learned Trial Court.

65. However, for any short visit, not stretching beyond two days and not overlapping with any Tuesday or Sunday, the mother would not be required to seek any prior permission. However, for any programme of outstation for three days and beyond, mother would be required to seek permission of the learned Trial Court and wherever any such permission is granted by the learned Trial Court, it shall be ensured that overlapping visitation days are





duly compensated within next fifteen days of return.

66. As far as the aspect related to initiation of contempt is concerned, of course, as per the details mentioned in the contempt petition, various scheduled visitations did not take place at all.

67. It also cannot be disregarded that the present mental state of the child looks very fragile and feeble as she is, somehow, scared in even meeting her father.

68. This Court, therefore, keeping in view the peculiar facts of the case and also appreciating the present reaction of the child, as observed by the Child Counselor, does not deem it fit and necessary to take any action in the contempt petition. As noticed, the mother has already moved an application in the main petition seeking modification of the orders passed by this Court.

69. It is, though, quite evident from the pleadings and contentions that both the petitioner and the respondent share a deep love and affection for their minor daughter. Both parents, in their respective roles, do express a genuine concern for her welfare and seek to maintain a bond with her, recognizing the importance of her emotional, psychological, and social well-being. However, somehow, at times, it did not translate into reality.

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.



71. This Court has also gone through the various video files but, at this threshold of the case and considering the reaction of the child and her present state of mind, it does not look appropriate to go ahead with the contempt petition. This Court is also compelled to observe that the personal discord has to be kept aside and instead of making videos every now and then, the endeavour should rather be to make earnest and committed effort to comply with the order, which, in turn, would be beneficial for overall growth of her own daughter.

72. Nonetheless, it's better to move forward and to find solution, instead of finding faults.

73. Needless to stress, the mother has to make whole-hearted effort to ensure that their daughter gets equal love and affection from her father as well. She has to make her daughter understand about the innumerable advantages of co-parenting. She has to rise above the occasion and has to ensure that, now onwards, there is no violation or non-compliance of the visitation meetings. Since no visitation has taken place after 18.01.2024, it becomes all the more important for the mother to ensure obedience of the order of the Court.

74. Suffice it to say that any further instance of wilful disobedience on her part might be considered, in unforgiving manner. If it comes to fore at any later point of time that mother is rather attempting to dissuade her daughter to meet her father in order to frustrate visitation, the learned Trial Court would be at full liberty to even consider switching the custody.

75. To sum up, the visitation shall happen at the same place but twice a week (every Tuesday and Sunday). As noted, the duration of visitation would be from 06.00 pm to 08.00 pm on Tuesdays and from 02.00 pm to



06.00 pm on Sundays. Besides the above, there would be a visit to a Child Counselor by all three of them (both the parents and their daughter) in first week of every month. For any outstation domestic visit, the mother would be required to seek permission of the learned Trial Court if the programme is for three or more consecutive days and wherever any such permission is granted by the learned Trial Court, it shall also be ensured that overlapping visitation days, if any, are duly compensated within fifteen days of return.

76. Rest of the conditions and directions contained in impugned order shall remain unaltered.

77. Both the petitions disposed of in aforesaid terms.

**(MANOJ JAIN)**  
**JUDGE**

**DECEMBER 11, 2024**  
**st**