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

Date of Decision: 16th January, 2025

+ **W.P.(CRL) 2808/2024 & CRL.M.A. 110/2025**

VISHAL VERMA

.....Petitioner

Through: Mr. Sunil Dutt Dixit and Mr. Sumit Rajpoot along with the Petitioner and paternal grandparents of minor child (M:9312832910)

versus

STATE GOVT. OF NCT OF DELHI & ORS.Respondent

Through: Ms. Divya Upadhyay, Adv. for wife.
Mr. Tarveen Singh Nanda, Adv. for R-3.

Ms. Anu Narula, Adv.

Mr. Ripudaman Bhardwaj, CGSC with
Mr. Tarveen Singh Nanda, Advs. for
R-3 & 4.

SI Yogender, PS Moti Nagar.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE DHARMESH SHARMA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition under Article 226 of the Constitution of India was filed seeking writ in the nature of habeas corpus directing the production of Petitioner's minor son. The matter was first listed on 11th September, 2024. Thereafter, several detailed orders were passed by this Court taking into consideration details of all the pending cases between the Petitioner (father of the child) and Respondent No. 2 (mother of the child). Subsequently, the writ petition was disposed of *vide* a detailed judgement dated 11th December, 2024 in the following terms:



“DIRECTIONS

21. Accordingly, upon considering all the above-mentioned facts, mediation report and conduct of the parties the following directions are passed:

Arrangement with respect to Petitioner-Father’s visitation

I. As an interim arrangement, let the child visit the Petitioner-Father twice a month from Friday evening, after school, till Saturday evening at 05:00 pm. The Petitioner-Father is free to pick up the child from the school on Friday after school and drop him back at Respondent No.2-Mother’s place of residence on Saturday by 05:00 pm. It is informed that the C.M.(Main) petition is stated to be pending and listed before the ld. Single Judge on 19th December 2024. The ld. Single Judge may consider passing an appropriate arrangement for the winter vacation as also the interim arrangement.

II. The Respondent No. 2-Mother has also assured the Court that she would not create any obstruction and would guide the child in a manner so that he can peacefully accompany the Petitioner-Father during his visits. The mother and father shall maintain civility between each other and cooperate in ensuring that the arrangement, that has been put in place, is successful and that the child is not traumatized in any manner.

III. There shall be no photography or videography of the child unnecessarily during his pick or drop inter se the parties.

IV. Petitioner-Father and Respondent No.2-Mother shall ensure that they do not try to, in any manner, brainwash the child against the other during the period when the child is with either of them, as it has become obvious to the Court during interactions that the child tends to repeat what is told to him.

V. The Respondent No.2-Mother and the child shall



not be allowed to leave the country without permission of the Id. Single Judge. The child shall continue to study in Mount Carmel School.

VI. The father shall continue to pay the monthly amount as submitted to the Court.”

3. In terms of the said judgement dated 11th December, 2024, specific arrangement was made for the visitation of the child with the father. In addition, the parties were to appear before the Id. Mediator on 16th December, 2024 to explore mediation. In the meantime, the judgment dated 11th December, 2024 was challenged by the wife/Respondent No. 2 before the Supreme Court and the Supreme Court vide order dated 20th December, 2024 in *SLA Crl. No 18175/2024* issued the following directions:

“1. Heard Ms. Divya Upadhyay, learned counsel appearing for the petitioner (wife). Also heard Ms. Gauri Rajput, learned counsel appearing for the respondent No. 1 (husband).

2. As the 7 year 8 months old son is residing with the mother and the father is provided with visitation rights including two overnight visitations every month, we feel that for the best interest of the child, who must receive love, care and attention from both parents, the arrangement ordered by the High Court on 11.12.2024, needs to be given chance to continue for a while.

3. As the petitioner has suffered a recent bereavement in the family, for the first overnight visitation, the father will pick up his son on 22.12.2024 at 11:00 a.m. from the agreed point in Connaught Place, as designated by the High Court. The father will handover the custody of the son to the mother at the same time at the same place, on the next day. This is only for the first day arrangement as the schools are closed. Thereafter, the twice monthly overnight visitations should happen in



terms of the High Court's order as per the convenience of both sides.

4. List on 27.01.2025. In the meantime, parents will avoid negative displays before the child and should focus on the well being of the son.”

4. Subsequently, the Petitioner filed an application for rectification of the judgement dated 11th December, 2024 for modifying the terms of the said judgement with respect to the visitation schedule of the child, requesting an overnight stay from Friday evening to Saturday evening at 5:00 PM on "every weekend" instead of "every fortnight". The said application was considered and decided on 24th December, 2024 by directing a detailed visitation schedule, bearing in mind the order of the Supreme Court. The directions given in the said order are set out below:

“8. Various reasons are being given on behalf of the Respondent No.2 /wife for the non-compliance of the directions passed by this Court as well as the Supreme Court. One of the reasons as per the Petitioner/father is that when he had gone to pick up the child, he was informed by the wife that the child had locked himself in the car and she and her driver were forced out of the car by the child. As per ld. Counsel for the Petitioner, such a reason was also given, even in the past, by the Respondent No.2/wife for not adhering to the orders passed by this Court.

9. This Court is clear that there cannot be violation of Court orders indefinitely. In fact, the order of the Supreme Court clearly records that the child deserves love, care and attention from both parents. In this case, we have met both the parties, the child and paternal grandparents as well. Clearly the Court is of the opinion that prima facie the Respondent No. 2/wife is creating repeated hurdles in the child meeting or having any relationship with the Petitioner/father or his parents.

10. Earlier vide order dated 5th December, 2024,



it was directed the entire family to go for a weekend vacation and enjoy outing with the child, after which the observation of this Court was that the child's outlook towards the Petitioner/father had considerably improved.

11. *Without further going into the reasons why the child is not being permitted to meet the Petitioner/father and paternal grandparents, this Court is of the opinion that if this situation continues, the child may get completely deprived of the Petitioner/father and his family and they would be completely deprived of the company of the child, which is not healthy for either of them.*

12. *During the course of mediation, the Delhi High Court Mediation and Conciliation Centre had taken the help of Dr. Parnika Sharma, an empanelled Counsellor to counsel the child. It was found that in one of the in-chamber interactions, that the child was quite comfortable with her. She had also submitted a report to this Court.*

13. *Accordingly, it is directed that, since there is an ongoing Christmas break in schools, the Counsellor can be deputed to pick up the child tomorrow, i.e., on 25th December, 2024 from the house of the Respondent No. 2/wife at 3:00 p.m. and drop at the Petitioner/father's place.*

14. *The child shall spend one night at the Petitioner/father's house and the child shall be returned to the wife on 26th December, 2024 at her house at 3:00 p.m. by the support person.*

15. *Similarly, after this visit, the child shall be picked up by the Counsellor from the Respondent No.2/wife's house and be dropped at the Petitioner/father's place for spending one night as per the following schedule:*

- *27th and 28th December, 2024,*
- *3rd and 4th January, 2025 and*
- *17th and 18th January, 2025.*



16. *The Counsellor, Dr. Parnika Sharma, who has already interacted with the child, is appointed as the support person for picking up and dropping the child. She shall be paid a fee of Rs.10,000/- per visit, which shall be borne by the Petitioner. If on any given date, the specific Counsellor will be unavailable, she may depute any other support person/Counsellor of her choice.*
17. *This interim arrangement shall be subject to any other further orders that may be passed.*
18. *Let the support person/Counsellor submit a report giving a summary of the visits, to this Court.*
19. *The matter is stated to be listed before the Mediation Centre for 8th January, 2025. On the last two occasions, it appears that the parties could not have effective mediation for various reasons, which need not be gone into.*
20. *Both the parties shall now appear on 8th January, 2025 before the ld. Mediator. The Counsellor/support person and the Mediation Centre shall send their reports to this Court by the next date of hearing.*
21. *List on 21st January, 2025 for compliance.”*

5. As can be seen from the above order, for the holidays and weekends, a detailed schedule was directed. In order to make the visitation comfortable for the child and to avoid any allegations and counter-allegations, a child counsellor who had earlier interacted with the child was deputed for picking up the child and dropping the child to the father's house. This was also bearing in mind the fact that the mother was not facilitating the visitation and the Court had a reasonable apprehension that obstacles could be created.

CRL.M.A. 110/2025 (for directions) in W.P.(CRL) 2808/2024

6. The present application has been filed by the Petitioner and the grandparents of the minor child seeking urgent directions stating that the



visitation as directed by this Court in the order dated 24th December, 2024 has not been effected, in view of the fact that the child has not been permitted to accompany the Counsellor.

7. The Court has heard the arguments on the application filed by the Petitioner. The prayer in this application is as under:

“a) Keeping in view the well-being of the child as paramount, grant interim custody of the child to Petitioner/father and Paternal grandparents as the welfare, interest and future of the tender child are getting brutally trampled under the upbringing by the Respondent No.2

b) Respondent No.2 should be liable to punished for willfully, intentionally and consistently violating the Order(s) by the Hon’ble Court(s).

c) Pass such order or further order(s) as this Hon’ble court may deem fit and proper in the interest of justice towards the child.”

8. In the present petition, the chronology of events captured above and the various orders, would reveal that despite repeated orders of the family court, of Id. Single Judges of this Court, the Division Bench of this Court as also the Supreme Court, the orders for visitation are not being given effect to. On the last date of hearing i.e., 8th January, 2025, an order was passed to the following effect:

“4. Let Counsellor Dr. Parnika Sharma file a report in a sealed cover stating what transpired during the child visitation when she was to pick up the child from the wife’s home vide directions in the order dated 24th December, 2024. The said report shall be made available only to the Court on the next date of hearing.

5. The wife and the child shall be produced on the next date of hearing.

6. If the wife wishes to file a reply to this application,



she may do so by the next date of hearing.

7. On behalf of the RPO, it is submitted by the ld. Counsel that the passports of the wife and the child have been deposited with the Department, RPO, Delhi. An affidavit shall be filed by the RPO, Delhi in this regard by the next date of hearing.”

9. The present application has been moved because not a single visitation has happened since the order dated 20th December, 2024 passed by the Supreme Court as also pursuant to order dated 24th December, 2024 passed by this Court.

10. The Counsellor has also submitted her report which clearly shows that the Counsellor spent enormous time in counselling the child emotionally and behaviourally for future visits but the same was not possible, during the entire winter vacation. The Counsellor’s report leaves no doubt that the child is being tutored against the father and the recommendations of the Counsellor are as under:

- “i. The child should receive counseling using play therapy to help him process and cope with his emotions.*
- ii. Both parents must consistently model positive perceptions of each other, reducing the child’s hostility and fear.*
- iii. It’s essential for the parents to avoid involving the child in their disputes and work together to create a stable, supportive environment that ensures the child feels loved and safe by both parties.”*

11. The Court had referred the matter to Mediation Centre yesterday after having considered the Counsellor’s report, however, the mediation has also not fructified.

12. Ld. Counsel for the Petitioner has relied upon the decision of the



Madras High Court in *V. Anusha v. B. Krishnan [(2022) SCC Mad 4609]* where under similar facts, the Court had directed interim custody to the mother after recording that the father was making the child develop animosity towards the mother. The observations of the Madras High Court are as under:

“20. A perusal of the above, it is clear that the respondent has just throwing the blame on the children stating that the children themselves are not interested to go and stay with the mother and that he cannot force them and it is beyond his hands and in the Court orders, there is no specific role mentioned directing the respondent to act in the matter of convincing and handing over the children to the applicant. Even, when a high drama took place in the open Court while handing over the custody of the children to the applicant since the children were very much reluctant to go with their mother, the respondent has not taken any initiative either to convince them or atleast to assure them that he also accompanies to them till the residence of the applicant. This would clearly prove the aspect of parental alienation on the part of the father of the children. The inability to advice and persuade the children, further evident the respondent's inability and incapability to maintain and keep the custody of the children any more.

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22. To turn a child against a parent is to turn a child against himself. Parental alienation is inhuman and it is menace to a child, who direly needs two hands to hold both the mother and father till he/she walks throughout the life or at least till he/she attains majority. In fact, hatred is not an emotion that comes naturally to a child against his/her mother/father unless it is taught by the person whom the children believes. A parent indulging in parental alienation, means, he/she is polluting the tender mind of the innocent child by potraying the mother/father as a villian, which would have a



considerable impact on him/her throughout his/her life and he/she develops ill feelings towards the parent and started hating his own father/mother.

23. This Court, on occasions, has witnessed the behaviour of the children in open Court while entrusting the interim custody or visitation rights to one of the parents, not only expressing sheer protest to join the parent but also questioning the parent as, who is he/she? This is only because of parental alienation. But due to the parental alienation, the child is not in a position to express it openly in front of the alienated parent. In reality, the child would react otherwise when he/she happens to see a family living together happily with children and the child may feel much envy and curse his/her fate, which means the child needs love and affection of both the parents. In the present case also, this Court witnessed high drama when the children were being handed over to the applicant/mother. If the children continue to hate their mother due to parental alienation, it will cause mental and physical disorders including psychological pain, anger and depression, which in the opinion of this Court, would certainly cause harm to the welfare of the children.

24. If the respondent is incapable to teach or persuades the children to love their own mother, then there involves a serious parental alienation which is not good for the welfare of the children. Welfare of the child is paramount consideration, but being with the parent who is not ready to teach and persuade his children to love their own mother, cannot be accepted. It is pertinent to note that the applicant and respondent are just separated from being husband and wife, but they will always be the father and mother for their children. The said relationship of father and mother will not be changed despite the parents re-marry with any other.

25. The respondent/father who possesses the custody of the minor children with him, must understand and feel the same pain and suffering undergoing by the



applicant/mother, who all along lost the company of her children. It is not fair on the part of the respondent in not accommodating the children to spend with their mother and allowing the mother to spend with her children despite the orders of this Court granting visitation rights to the applicant/mother.

26. Children have a fundamental right and need for an unearthened and loving relationship with their father and mother and denying the said right of the children, would amount to child abuse. *In the present, the respondent, without justification, has been indulging in such child abuse. **For the parent who didn't get the custody, the loss is irreconcilable.** Only when there is healthy co-parenting, the children will lead a happier childhood instead of becoming an emotionally broken adults who will in turn become not understanding and unsympathetic citizens.*

27. The dominant matter for the consideration of the Court is the welfare of the child. But the welfare of a child is not to be measured only by money and by physical comfort. Welfare is an all-encompassing word. It includes material welfare; both in the sense of adequacy of resources to provide a pleasant home and a comfortable standard of living. While material considerations have their place, they are secondary matters, the primary considerations of matters are the stability and the security, the loving and understanding, care and guidance, the warm and compassionate relationships that are essential for the full development of the child's own character, personality and talents.

28. In this case, prima facie it appears that the respondent poisons the minors' minds against the mother and acted against the welfare of the minors. Tutoring of the children by the respondent to keep them in his custody will result in nurturing hatred towards their mother, which will certainly affect the welfare of the children.

29. In such view of the matter, for the healthy growth of



the minor children, it would be appropriate not to continue their custody with the respondent. If their custody continues with the respondent, certainly, there is very high probability that they will be influenced to such an extent that they will never want to return to their mother, it will cause mental and physical disorders including psychological pain, anger and depression, which would certainly cause harm to the welfare of the child.

30. A parent, in whose custody, the children are staying, it is the prime duty of the said parent, having custody of the children, to teach the children about the importance of the other parent and how to move with the said parent, who is none other than their mother/father and co-operate with the other parent who visits to see the children. Due to indifferences, separation may be between the wife and husband only, but it does not mean that children should also be separated from their own parents.”

13. The postponement of the visitation to the Petitioner -father and to the paternal grandparents would further result in deprivation to the child and to the paternal side of the child from the company of the child.

14. It is also clear that the child continues to be traumatised and alienated after staying alone only with the mother over so many months. There has not been even a single unsupervised visitation with the father and his family after the visitation during Diwali of 2022 when the child visited the father's house.

15. Post Diwali of 2022, it is not in dispute that the child has only spent time only in a supervised manner with the father, either in the Court premises or in the mediation centres, etc.

16. The Court has also enquired about the schooling of the child. The child is studying in Mount Carmel School which is located in Anand Niketan. The father's family stays in Preet Vihar. The father's family is willing to drop and



pick up the child from the school.

17. Accordingly, it is directed that the child shall be handed over to the father and his family from today till 20th January 2025. The *Dadi/Dada* shall be the primary care givers during this period. The family shall ensure that they do not speak anything adverse against the mother. Video recordings and audio recordings shall be avoided.

18. The matter shall be called on 21st January, 2025. The child shall be produced by the Petitioner on the next date before the Court.

19. The father shall be given access in the school of the child in order to enable him to pick up and drop the child. However, the father shall always be accompanied by the *daadi* of the child.

20. During this period, when the Petitioner's family has custody of the child, on a daily basis in the morning and evening the child shall be made to speak to the mother for at least 15 minutes.

21. The Counsellor – Dr. Parnika Sharma shall accompany the child for dropping the child to the Petitioner's residence from the Court directly. The Counsellor's fee shall be Rs.10,000/- to be paid by the Petitioner. The current address of the Petitioner and his parents is hereinunder:

“D-81, First Floor, Preet Vihar, Delhi-110092”

22. List on 21st January, 2025 at 4:00 PM.

**PRATHIBA M. SINGH
JUDGE**

**DHARMESH SHARMA
JUDGE**

JANUARY 16, 2025/dj/bh