



2024:DHC:9017



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

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*Reserved on: 4th November, 2024
Pronounced on: 20th November, 2024*

+ **CM(M) 1523/2023, CM APPL. 48279/2023**

VINEET TANEJA

S/o Late Sh. C.P. Taneja
C/O J- 171, Sarita Vihar,
New Delhi

.....Petitioner

Through: Mr. Prosenjeet Banerjee, Ms. Shreya
Singhal, Mr. Sarthak Bhardwaj and
Ms. Anshika Sharma, Advocates.

Versus

RITU TANEJA

W/o Shri Vineet Taneja
R/o House No 15,
Housing Complex Air Force Bal Bharati School,
Lodhi Road, New Delhi -110003

.....Respondent

Through: In person with Mr. Prashant K. Jha,
Advocate

+ **CM(M) 2100/2024, CM APPL. 18875/2024 & CM APPL. 26720/2024**

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CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA



J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Petition has been filed under Article 227 of the Constitution of India against the impugned Order dated 19.08.2023 whereby the Application filed by the Petitioner under Order 18 Rule 17 read with Section 151 CPC for leading fresh evidence and cross-examination of Respondent-Ritu Taneja, has been dismissed by the learned Judge, Family Court, New Delhi.
2. The second Petition has been filed under Article 227 of the Constitution of India whereby the Application of the Petitioner under Section 151 of CPC for grant of physical access of the minor daughter to her grandmother has been dismissed by the impugned order dated 19.08.2023 passed by the learned Judge, Family Court, New Delhi.
3. ***Briefly stated***, Guardianship Petition G-48/2012, *Vineet Taneja vs. Ritu Taneja* was filed by the Petitioner- Vineet Tanja/father seeking visitation rights in respect of the daughter of the parties. The final Order was made on 05.04.2023 whereby visitation rights were granted to Petitioner-father to meet the minor child on 1st and 3rd Saturday of every month in the Children Room, Family Court, Saket from 3:00 PM to 5:00 PM under observation of the Counsellor, besides on birthday of the child for two hours from 3:00 PM till 5:00 PM, under similar supervision.
4. The Respondent/mother challenged the Final Order in LPA 603/2022 whereby the Division Bench after meeting the child, by Order dated 03.02.2023 directed the Experts/ Counsellors appointed by the Court, to determine the aspect of interim visitation. The Counsellors interacted with



the minor child and submitted their Report recording that child had been shown the pornographic material by the father of the child during the visitation period. The Final Report was submitted by the Counsellors on 25.03.2023.

5. The Order dated 03.02.2023 was challenged by the Petitioner in SLP (Civil) 3667/2023, which was dismissed on 28.03.20023.

6. The Division Bench of this Court set aside the Final judgment dated 05.04.2023 and remanded back the matter to the Family Court and gave liberty to the Petitioner/father to file objections to the Report of the Experts/Counsellors and substantiate his stand in accordance with the law, *which included the right to cross-examine the Respondent-mother.*

7. Consequently, an Application under Order XVIII Rule 17 read with Section 151 CPC was filed by the Petitioner seeking cross-examination of the two Counsellors as witnesses and also further cross-examination of the Respondent–mother. However, the said Application was dismissed by the learned Family Court by Order dated 19.08.2023.

8. The reasoning given by the Family Court to dismiss the Application was the Counsellors were not appointed on the asking of the mother nor were their names proposed by her. Thus, seeking cross-examination of the Counsellors is not tenable and amounts to ignoring the principles of fair trial. The Counsellors were appointed by the Division Bench of this Court on its own, to examine the child in view of the serious nature of the allegations, which means there is no need to cross-examine the Counsellors on their report, as the Petitioner is not impugning the appointment of the Counsellors but the findings returned by them.



9. The petitioner has challenged this Order by asserting that his Application has been dismissed on technical grounds without considering the welfare of the child. According to Petitioner, grave procedural error has been committed by taking away his substantive right to cross-examine the witness, thus compromising the fair adjudication of the Guardianship Petition.

10. It is, therefore, submitted that his Application be allowed and he may be permitted to adduce further evidence and cross-examine the Counsellors in terms of the Order of the Division Bench dated 19.05.2023.

11. ***The Respondent- mother has filed a detailed Reply*** wherein it is asserted that this Petition is nothing but an abuse of the process of law. In the garb of the present petition, the Petitioner in a mala fide manner, is trying to enlarge the scope of the Order dated 19.05.2023 passed by the Division Bench of this Court. An attempt is being made to discredit the Reports of the Counsellor submitted before the Division Bench, who are appointed by this Court.

12. It is further submitted that one of the Counsellor is a *Senior Child and Adolescent Psychiatrist* and the other is *Clinical Psychologist*, who had interacted with the Child and made effort for evaluation of the facts and opinion on the case. The Respondent had challenged their appointment before the Supreme Court but the Apex Court, in view of the Reports of the Counsellor, dismissed the same.

13. The Final Report dated 25.08.2023 was not placed before the Family Court when the impugned Judgement was passed, therefore, the case was remanded back by this Court by setting aside the impugned Judgment dated



05.04.2023 on the limited aspect to consider the merits of the Reports of the Counsellor in accordance with the law.

14. *On merits*, all the averments made in the present petition are denied. It is claimed that she never created any hurdle in meeting of the Petitioner/father with the child nor did she do anything to frustrate the visitation rights. Rather, this Court has taken away the rights of the Petitioner to meet the child solely due to his own misconduct and misbehaviour towards the minor child. The Petitioner has not only harassed and humiliated the minor child and Respondent in the garb of Guardianship Petition, but has deliberately and wilfully put the life and safety of the minor child at risk during the Covid pandemic period. He crossed all his limits by showing obscene photographs to the minor child during the visitation period granted by the Court, while she was alone with him.

15. The Expert Report dated 25.03.2023 is based on material placed and psychological evaluation of the child during interaction by various Courts and on each occasion, it was found that the child was not comfortable with the Petitioner and his request for overnight visitation was denied.

16. It is denied that the Expert Committee had relied upon the testimony of the child and mother, with reference to use of many psychological tools and techniques. It is denied that the report erroneously concluded that the clear articulation of distant event is reflective of a child's reliability as a victim. It is claimed that the report dangerously ignored an established scientific fact that a vivid, clear memory, along with an accurate articulation of distant events by a child is very strong indication of tutoring, extensive rehearsal by rote indulged into by the mother. It is denied that the Reports



overlooked the conduct of mother immediately before and after the incidents.

17. Further, the Division Bench had only granted limited liberty to the Petitioner to file his objections before the Family Court, who shall pass the Final Order considering all the objections and the Family Court has rightly appreciated the Order of the Division Bench and has rightly declined the Application of the Petitioner to lead additional evidence. It is stated that there is no merit in the present petition, which is liable to be dismissed.

18. Petitioner in the Rejoinder has reiterated his contentions raised in the Application. He has filed various photographs to show that the child had happy interaction with him and his mother i.e. the grandmother.

19. *Learned counsel for Petitioner has argued* that Section 6 of the Family Court Act provides for appointment of Counsellor. Section 12 of the Act provides that assistance of Medical/Welfare Expert may be taken for adjudication by the Court.

20. In the present case, the Counsellors have particularly transgressed and usurped the Court's jurisdiction to decide that the visitation rights should not be given to the father. Counsel for the Petitioner has given list of dates wherein he had been granted visitation rights to meet his daughter since January, 2016. The report of the Counsellor was called in respect of the visitation which took place on 17.09.2022 for two hours in the Children Room and the Counsellor has reported that the visitation took place peacefully. The visitation was also granted for the occasion of Choti Holi on 08.03.2013 and Petitioner was granted five hours interim custody of the child on 08.05.2017. Similarly, on various other occasions; visitation of the child has been granted to the Petitioner on 06.05.2019 unsupervised access



was granted by the learned Family Court on alternate weekends and for 50% of the summer vacations.

21. This Court by Order dated 07.02.2022 recorded that the child had happy moments with her father. The same was disputed by the Respondent/mother and on 12.10.2021; the child was referred to Counsellor who had submitted the report dated 07.02.2022 wherein she had mentioned that the child had confided that she is fond of her father and likes to spend time with him. However, in the Report dated 28.10.2022 submitted by the Court Commissioner it is mentioned that the child had complained that she was not keen on coming for visitations *as her father was responsible for death of her Nanu and her father had pushed her back 10 years ago in a Mall when she was three years old*. The child, who is now thirteen years old, has voiced same grievance as that of the mother, in her independent counselling.

22. It is, therefore, argued that the Counsellors, who have given the Report which allegedly contains the allegations of the mother, need to be cross-examined to bring out the truth. The Division Bench while remanding the matter has given liberty to the Petitioner to substantiate his stand, which has been denied by the learned Family Court and thus, the impugned Order, deserves to be set aside.

23. ***Written submissions have also been filed on behalf of the Petitioner, wherein he has made similar contentions.*** Reliance is placed on *Kunhayammed vs. State of Kerala*, (2000) 6 SCC; *Khoday Distelleries vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd.* (2009) 4 SCC 376; *Bal Krishna Das Agarwal vs. Radha Devi*, AIR 1989 All 133 and *Ramesh*



Chandra Aggarwal vs. Regency Hospital Ltd & Ors, AIR 2010 SC 806; K Velusamy vs. N Palansamy, (2011) 11 SCC 275.

24. The **Respondent/mother** has vehemently argued in person that the child was shown objectionable photographs by his own father, which fact has been incorporated in the Report of the Counsellor. The learned Family Court has rightly denied him the right to cross-examine the Counsellors who are Experts appointed by the Court. It is submitted that this Petition is without merit and is liable to be dismissed.

25. **Submissions heard and Record along with the Written Arguments perused.**

26. The first aspect for consideration is as to whether the Counsellors can be called for cross-examination.

27. The Counsellors are professionally trained to make the child comfortable. Record of such interaction may afford valuable inputs to the Court in discharge of its duties. In Perry Kansagra (supra) it has been noted that if during such interaction, issues or aspects concerning the welfare of the child are noticed, there is no reason why the Court be deprived of access to such aspects. The paramount consideration ought to be to see the best interest of the child.

28. The Apex Court further noted that the role of the Counsellor in terms of *Sub Rule (viii) of Rule 8*, is to give report, inter alia, relating to home environment of the parties concerned, their personalities and their relationship with the child and/or children. While deciding the question of guardianship of any child or children, *the intention is clear that the normal principle of confidentiality will not apply in matters concerning custody or guardianship issues and the Court, in the best interest of the child, the Court*



must be equipped with all the material touching upon relevant issues in order to render complete justice. This departure from confidentiality is consistent with the underlined theme of the Act in general and Section 12 in particular. Once there is a clear exception in favour of categories stated therein, principles in any other forms of mediation/conciliation or other modes of Alternative Dispute Resolution regarding confidentiality cannot be imported. The effect of such exception cannot be diluted or nullified.

29. It was further explained that while Section 6 of the Act provides for appointment of Counsellor by the State Government, but where the Counsellor is appointed by the Court/ Committee of the High Court and his/her assistance is sought in connection with matters, appointment of such person may not fall under Section 6 of the Act, But where the paramount consideration is the welfare of the child, there cannot be undue reliance on the technicality. Such report of the Counsellor must be eschewed from consideration.

30. In the present case as well, the Committee of the Counsellors comprising of a Senior Child and Adolescent Psychiatrist and Clinical Psychologist had been appointed by this Court having regard to the severity of the allegations and to file a comprehensive report about interaction of the child with the father, who is now about 13 years old. The Counsellors submitted the Report which was been duly considered by the Division Bench before setting aside the impugned judgment and remanding it back for further evidence.

31. It cannot be overlooked that role of Counsellors are essentially intended to deal with the psychological challenges faced by a person and in



the preset case, a child. As the dictionary meaning of the word *Counsel* itself suggests, it is to *help and guide*.

32. The Apex Court was also noted that the Reports of the Counsellor are intense and should be confidential, though in the Guardianship matters considering the interest of the child, the said Report may be made available to the parents only with the intent to enable them to rebut the report of the Counsellor.

33. However, the Counsellor is not an Expert witness, as has been defined under Section 12 of the Family Court Act which provides that assistance of Medical and Welfare Expert may be taken by the Courts. The Counsellor does not fit into the category of an *Expert* as envisaged under Section 45 of the Indian Evidence Act and as such, the Counsellors cannot be called in the witness box.

34. In this regard, reference is made to the *Guidelines issued by Ministry of Women and Child Development, Government of India, on Essential Interventions and Skills for Working with Child Sexual Abuse*, wherein it has been explained that an *Expert Witness* is a person who is not acquainted with the facts of the case and are not called upon to give their testimony in criminal trial. The Experts witness is expected to put before the Court all material inclusive of the data so that Court may form an opinion on the basis of such material.

35. The Counsellors may, thus, be consulted to assist the Court to understand the psychology of the child to be able to make informed decisions in the welfare of the Child, but having engaged closely with the child to understand them, also become privy to various facts in private domain. They are not detached third party Expert, but a person who closely



interacts with the child. In this sense, they are not Expert Witness who can be examined as a witness in the Court.

36. To explain or justify the three Reports, the learned Family Court in the impugned order has rightly observed that *“a child counsellor deals with the psychology of the child after interaction and observation of the child and also considering the other relevant factors before preparing the report. Such à report of a child counsellor can be opposed by the party by filing objections but such child counsellor cannot be summoned as a witness to prove his/her report and further cannot be subjected to cross-examination. A child counsellor understands the child better than his/her parents not only because he understands the child psychology but also because he knows what is good for the child. The petitioner cannot claim as a matter of right to cross-examine the child counselling in order to disapprove his report because in child custody cases the Court has not to give importance to the rights of the parents but to the welfare of the child.”*

37. The learned Family Judge has rightly denied calling the Counsellors for their cross-examination. The Petitioner–father may bring in any other evidence to rebut the Report of the Counsellors and to establish his cordiality and comfort during his meetings with the child. Furthermore, he can address arguments or file his Objections to counter the facts alleged in the Report.

38. It has been argued by him that the tutoring of the child and parental alienation is quite evident from the fact that the child has echoed the same allegations as the mother as is evident that she has now narrated the incidents that she was pushed by her father in the Mall when she was three years old and that he was responsible for her Nanu’s death during Covid



period. However, it is a matter of argument and the Petitioner is at liberty to file his Objections and address arguments on the basis of the Report, which has already been provided to him.

39. The *second witness* which the Petitioner wanted to cross-examine is the Respondent–mother to refute the subsequent events which have transpired after the judgment was passed in May, 2023. The Petitioner was well within his rights to question the Respondent/mother in order to establish the veracity of the allegations levelled by her in her testimony and she should have been allowed to be cross-examined by the Petitioner. Moreover the Order of the Division Bench dated 05.04.2023 itself granted the right of further cross examination of the Mother,

40. Therefore, the impugned Order dated 19.08.2023 [in CM(M) 1523/2023] is partly set aside with liberty to the Petitioner to cross-examine the Respondent and any other witness in order to establish / prove his averment that the child is being tutored by the mother. However, it is made clear that considering it is a case which has been remanded for additional evidence only on limited aspect, the learned Family Court shall expedite the trial and conclude the trial preferably within six months.

Petition CM (M) 2100/2024: for grant of visitation Right to the Grandmother

41. The second Petition CM(M) 2100/2024 has been filed by the Petitioner seeking visitation rights in respect of his mother i.e. grandmother of the minor child, essentially on the ground that she is an old lady of about 82 years of age and the child must not be deprived of the affection and love of the grandmother.



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42. However, in view of the allegations that have been made, this Court is not inclined to pass any Order. However, the Petitioner is at liberty to move appropriate Application before the learned Family Court which may pass appropriate order after considering the same in accordance with the law.

43. With aforesaid, these petitions are accordingly disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

November 20, 2024

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