

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: March 24, 2022

+ CM(M) 1053/2021, CM APPLs. 41549/2021, 43719/2021 &
45288/2021

KINRI DHIR

..... Petitioner

Through: Ms. Geeta Luthra, Sr. Adv. with
Ms. Shivani Luthra Lohiya, Ms.
Asmita Narula, Mr. Anubhav Singh
and Ms. Priyanka Prasanth, Advs.

versus

VEER SINGH

..... Respondent

Through: Ms. Rebecca M. John, Sr. Adv. with
Ms. Gauri Rishi, Mr. Manav Gupta,
Ms. Srishti Juneja, Ms. Garima
Sehgal, Mr. Sahil Garg, Mr. Ankit
Gupta, Ms. Praavita Kashyp, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. This petition has been filed with the following prayers:

“In light of the facts and circumstances stated hereinabove, the Petitioner humbly prays before this Hon’ble Court to:

A. Pass an Order setting aside the Order dated 28.10.2021 passed by the Ld. Principal Judge, Family Court, South-East, Saket Courts ; and / or

B. Any other order that the court may pass in light of justice, equity and good conscience.”

2. The petitioner in sum and substance is seeking setting aside of order dated October 28, 2021 passed by the learned Principal Judge, Family Court, South East District, Saket, New Delhi, to the extent that the respondent has been granted visitation rights of the minor child for two hours every day.

3. It is the case of the petitioner that the Trial Court has erred in partially allowing the respondent's application filed under Section 12 of the Guardian and Wards Act, 1890 ('GWA', for short) read with Sections 6(a) and 6(b) of the Hindu Minority and Guardianship Act, 1956 ('HMGA', for short) read with Section 151, Civil Procedure Code, 1908 ('CPC', for short). It is the stand of the petitioner in the petition that the respondent, who is the father of the minor child has admitted himself to be a putative father. The visitation rights being from 6 PM to 8 PM every day have been granted on two major grounds i.e., (i) respondent has admitted the paternity of the minor child and; (ii) respondent is residing in the same premises as the minor child and the petitioner albeit on a different floor. On these grounds, the Trial Court proceeded to grant visitation rights however, the same are misconceived and based on the misrepresentations of the respondent.

4. Ms.Geeta Luthra, learned Senior Counsel appearing along with Ms.Shivani Luthra Lohiya for the petitioner has stated that the petitioner is the mother and natural guardian of the minor child who has barely been weaned off from the

mother less than a year ago. She submitted that the minor child cannot be subjected to such a strict unreasonable regime. The Trial Court has disregarded the welfare of the child by permitting unsupervised access of the respondent to the minor child and left it open for him to take the child wherever he pleases during the time period between 6 PM to 8 PM. This is based on the presumption, that the respondent is living on the third floor and the petitioner is living on the fourth floor of the same premises which the petitioner contends to be incorrect. The petitioner stated that the respondent is not residing at the said premises for many months and is now taking the minor child to various unknown and undisclosed locations on the strength of the impugned order. It is also her case that the respondent has not been returning the child at 8 PM which is also a contravention of the impugned order.

5. Ms. Luthra has argued that it is the stand of the respondent that the minor child is his illegitimate son, since the respondent has taken a stand that the child is not born out of lawful wedlock. She stated that the legitimacy of the child flows from marriage and the respondent is a putative father and is not akin to a biological father. She has argued that the findings of the Trial Court run contrary to Section 6 of HMGA and the various judgments of the Supreme Court and the High Courts. She has relied on the judgment of the Supreme Court in the case of *ABC v. NCT of Delhi, (2015) 10 SCC 1* to state that in cases where the child is born outside of wedlock the maternity of the

mother is established in the women who gives birth to the child, however the paternity remains nebulous and in such cases the preference is given to the mother over the father. She has also relied on a judgment of the Bombay High Court in the case of *Dharmesh Vasantrai Shah v. Renuka Prakash Tiwari*, AIR 2020 Bom 233 wherein the Bombay High Court had denied custody of the minor child born outside of marriage to the father.

6. It is the case of Ms. Luthra that the respondent is unreasonable, obsessive, controlling and is denying his marriage after inducing the petitioner to cohabit with him on the pretext of marriage. She stated that the respondent is liable to be prosecuted through criminal proceedings. She has also alleged that the respondent suffers from various mental diseases and is unfit to take care of the child even for the duration of two hours per day. The petitioner as per the averments made in the petition has accused the respondent of stalking the petitioner and the minor child through videorecording. She has argued that the respondent cannot deny the marriage as well as the relationship which was akin to a marriage with the petitioner and thus the only conclusion that arises as per the stand of the respondent is that the child is illegitimate whether the marriage was valid, void or voidable. The stand taken by the petitioner is that the respondent has no legal right to visitation, custody or guardianship of the minor child and the petitioner is statutorily the natural guardian of the minor child.

7. It is the case of Ms. Luthra that the respondent although has contended that he is residing on a different floor of the same address as the petitioner, he has in fact, after filing the application under Section 12 of the HMGA moved out of the building. As per the knowledge of the petitioner the respondent is currently residing at the Oberoi Hotel, New Delhi. This factum, Ms. Luthra stated was overlooked by the Trial Court while granting visitation rights. These visitation rights have hampered the custody of the petitioner over the minor child and have had an adverse impact on the minor child. The sudden changes in the routine of the minor child has left him confused and have impacted not only his daily routine but also his upbringing. An application has also been filed by the respondent to increase the time of visitation without any concern over the sleeping routine of the child. It is the case of Ms. Luthra that the respondent by filing an application under Section 12 of the GWA wherein he sought modification of the Trial Court's dated January 18, 2021 and sought the direction to restrain the petitioner from taking the minor child outside the jurisdiction of the Trial Court along with interim custody and visitation. He had also sought a direction to allow the respondent to make a cleaning and disinfecting schedule for the minor child, which only goes to show his obsessive mental state. Allegations were also made against the petitioner that she was causing obstructions. The same were unsubstantiated and the learned Trial Court vide order dated January 18, 2021

passed the interim directions and gave the custody of the child to the petitioner. It is the case of the petitioner that the impugned order has been obtained by the respondent by misleading the Trial Court. As the respondent has denied marriage between him and the petitioner, he is also disentitled from claiming any rights of visitation over the minor child. Ms. Luthra has also contended that the petitioner and the child have been under the constant vigilance of the respondent either through CCTV or through the staff placed by him in the rented accommodation round the clock. This she stated has completely violated the privacy of the mother and child.

8. Ms. Luthra submitted that the respondent has constantly accused the petitioner of seeking the respondent's money and had also lied about the change in address of the petitioner. She stated that the petitioner was first moved from her matrimonial home from Dehradun to an accommodation at 1, Rajesh Pilot Lane, New Delhi and thereafter to the rented flat / homestay at Defence Colony. After the respondent had filed an application under Section 12 of the HMGA he moved out from the rented accommodation at C-99, Defence Colony, New Delhi. As per Ms. Luthra this entire charade had been orchestrated by the respondent only to show the Trial Court that he stayed in the vicinity to ensure visitation rights, whereas now he has shifted to a hotel accommodation. Ms. Luthra has argued that the objection to the visitation rights of the petitioner stem from the concern for the welfare of the child, the respondent has been

taking the minor child to various undisclosed locations that too in the middle of the COVID-19 Pandemic. She stated that taking the child to a new place everyday is detrimental to the interest of the minor child. The *mala fide* intention of the respondent is evident in his previous actions being:

i. Unilaterally moving the petitioner and the minor child to various locations apart from the matrimonial home.

ii. The respondent through his father expressed the intention of deserting the petitioner and declaring the marriage as void and also taking the custody of the child.

iii. The respondent has himself been moving constantly throughout Delhi and not staying at the accommodation which was represented to be his current accommodation before the Trial Court.

9. Ms. Luthra stated that the petitioner also preferred an application under the Protection of Women from Domestic Violence Act, 2005 against the respondent seeking appropriate reliefs. It is also her case that the respondent has constantly tried to reduce the role of the petitioner in the life of the minor child with a view to ultimately oust her from his life owing to his physical and financial capabilities. The respondent has harassed the petitioner through his family and employees. Ms. Luthra has argued that the respondent, who participated in all ceremonies of their wedding, has now turned to state that the

same did not constitute a wedding, is untrue and also is a testament to the *mala fide* harboured by the respondent. In this regard, she has drawn my attention to annexures P7 – P9, which are the photographs / screenshots of the wedding ceremony and functions held in Taiwan and Dehradun. By denying the validity of the marriage the respondent has brought in to question the legitimacy of the minor child which in itself is to the detriment of the well-being of the minor child.

10. Ms. Luthra stated, the respondent does not himself take care of the child but completely entrusts the minor child to his staff / employees and even after the objection of the petitioner, the respondent's employees only adhere to the instructions of their employer without having much regard for the minor child, due to which the child suffered from septicemia and was admitted in the hospital for two weeks. Despite of this, the respondent has sought to control each and every aspect around the minor child including but not limited to feeding, temperature control, never allowing the petitioner to be alone with the minor child, using her phone, etc. The respondent has tried to control each and every aspect of the life of the minor child to the exclusion of the petitioner and dictating how she ought to spend time with the minor child. She stated that despite being the natural guardian she was not allowed to have interaction with the minor child like a normal parent. The respondent has sought to reduce the dependence of the child on the mother.

11. Ms. Luthra has argued that the Trial Court has not passed orders on the maintainability of the application under Order VII Rule 11 CPC and also the application under Section 23 of the Protection of Women from Domestic Violence Act, 2005, the same was adjourned and left open.

12. Ms. Luthra has pointed to the various documents to show the previous behaviour of the respondent to state that the respondent has approached the Courts with unclean hands and has multiple times concealed and suppressed facts. To avoid the liability of maintaining the child and the petitioner the respondent has started alienating various properties. The submissions of Ms. Luthra can be summed up in the following manner:

I. The respondent has misrepresented and tried to mislead the Trial Court.

II. The respondent has made misrepresentations regarding his address.

III. The impugned order disregards the welfare of the minor child who is of a tender age.

IV. The respondent is a putative father and is not entitled to visitation / custody unlike a biological father. She has referred to the Judgment of *T.S. Dorairaj v. S. R. Lakshmi*, ILR 1947 Mad 519 and *Parayankandiyal Eravath Kanapran Kalliani Amma & Ors. v. K. Devi & Ors.* (1996) 4 SCC 76 .

V. In terms of the Judgment in *Gohar Begum v.*

Suggi Alias Nazma Begum, AIR 1960 SC 93, it is the mother who is sole parental authority for an illegitimate child.

VI. The respondent has taken contradictory stands before the Courts. The respondent should not be allowed to approbate and reprobate as held by the English Courts in *MPB v. LGK, [2020] EWHC 90 (TCC)*.

VII. The respondent is unfit to be granted any access to the child much less unsupervised access.

VIII. The aim of the respondent is to alienate and oust the petitioner from the life of the minor child and has obstructed the petitioner's care for the minor child. She has relied on the case of *Saraswatibai Shripad Vad v. Shripad Vasanti Vad, AIR 1941 Bom. 103*.

IX. The respondent is misusing his financial power to influence the minor child.

X. The conduct of the respondent is immoral and no relief should be granted to him.

XI. The respondent has misused the impugned order.

XII. No substantive petition has been filed by the respondent and the interim relief which has the effect of granting the final relief cannot be granted at an interim stage. Reference has been made to *U.P. and Others v. Ram Sukhi Devi, (2005) 9 SCC 733; Rosy Jacob v. Jacob A. Chakramakkal, (1973) 1 SCC 840;*

Vikram Vir Vohra v. Shalini Bhalla, (2010) 4 SCC; *Colonel Ramesh Pal Singh v. Sugandhi Aggarwal*, *Mat. App. (F.C.) 211/2019*, 409, *Manish Aggarwal vs. Seema Aggarwal* ILR (2013) I Delhi 210; *Radhey Shyam & Anr. v. Chhabi Nath & Ors.* (2015) 5 SCC 423; *Dr. Geetanjali Aggarwal v. Dr. Manoj Aggarwal* *Mat.App. (F.C.) 126/2019* decided on October 22, 2021, *Vaidehi Jagannathan Kothimangalam v. L. Badri Narayanan* CM(M) 483/2021 decided on July 27, 2021 and *Prashant Prakash Sahni v. Devika Mehra*, *Mat. App. (F.C.) 141/2020*.

13. Ms. Rebecca M. John, learned Sr. Counsel along with Ms. Gauri Rishi appearing for the respondent has contended that the order of the Trial Court suffers from no perversity and is a well-reasoned order, the same does not warrant exercise of jurisdiction under Article 227 of the Constitution. The Trial Court has granted visitation rights to the respondent after hearing detailed arguments from both the sides. Ms. John has drawn my attention to the salient findings of the Trial Court; (i) while deciding custody matters, the Trial Court has seen the interest and welfare of the minor child; (ii) the paternity of the minor child has not been disputed; (iii) the respondent is providing for all the needs of the minor child and; (iv) there is no reason as to why the minor child should be denied access to any of his parents. Ms. John has taken a plea that the present

petition is not maintainable under Article 227 of the Constitution and the same is an abuse of the supervisory jurisdiction of this Court. She has further stated that the Trial Court is within its jurisdiction to pass an Interlocutory Order under Section 12 of the GWA which does not suffer from any perversity. She has relied on the judgment of the Supreme Court in the case of *Rajni Gupta v. Vikas Gupta, 2019 SCC OnLine Del 11206*, to state that the supervisory jurisdiction of the High Courts should be exercised sparingly. The petitioner has failed to demonstrate any perversity in the impugned order and thereby this Court ought not to exercise its powers under Article 227 of the Constitution. She has also relied on the judgment of the Supreme Court in *Dalip Singh v. State of U.P., (2010) 2 SCC 114*, to state that the suppression of any fact amounts to misrepresentation. It is her case that based on the acrimonious relations between the petitioner and the respondent, the respondent fears that the petitioner would be psychologically manipulating the minor child.

14. The argument that has been advanced by the petitioner is that the visitation rights granted to the respondent are detrimental to the welfare of the minor child. The petitioner has failed to substantiate the claim that the visitation right granted to the respondent is detrimental to the welfare of the minor child. She has argued that taking the minor child out of the premises where he is currently residing is not a ground alone for setting aside of the impugned order. She further stated that the

petitioner herself has been taking the child out at odd hours without observing COVID-19 protocols and the same is apparent from the CCTV footage of the building. This, she has stated is the hypocrisy of the petitioner who has been feeding the child his regular meals in the car. The petitioner on various occasions has been taking the child out and returning well beyond 8 PM. Therefore, the argument that the visitation rights upset the schedule of the minor child is unmerited.

15. Ms. John rebutted the argument advanced by Ms. Luthra that the respondent has admitted to being a putative father and therefore, has no rights for visitation, custody or guardianship of the minor child. Ms. John argued that the paternity of the minor child has never been in dispute, inasmuch as it was the stand of the respondent before the Trial Court that he is the biological father of the minor child. The issue regarding the marriage between the petitioner and the respondent is not a subject matter of the current proceedings. In any case, Ms. John has argued that the respondent is a primary care giver of the minor child, which fact has also been acknowledged by the Trial Court. It is also the case of Ms. John that the minor child cannot be subject to such a strict and onerous schedule. The petitioner has failed to establish as to how meeting the child between the hours of 6 PM to 8 PM is to the detriment of the welfare of the minor child. It is the experience of the respondent that the minor child has always enjoyed his time with the respondent and the respondent had

been meeting the minor child on a daily basis pursuant to the impugned order. Ms. John has pointed to the photographs at Annexure R-1 to show that the time spent with the respondent has had a positive affect on the child. Ms. John has argued that the physical health of the minor child is likely to suffer if he continues to stay with the petitioner, who is negligent and abusive, and the same has affected the mental health of the child.

16. Ms. John has also countered the allegation that the respondent is living on the third floor and the petitioner is residing on the fourth floor. She has countered the allegation that the Trial Court has been misled. She stated that the respondent was forced to move out of the room on the third floor at C-99 Defence Colony to the second floor due to the request made by the building manager. The Trial Court has analysed the factors surrounding the welfare of the child and it would be incorrect to state that the impugned order was passed on the basis that the respondent resides in the same building. The respondent continued to maintain the room on the second floor up to December 20, 2021 however, after the order dated December 15, 2021 which mandated visitation to be supervised by the Local Commissioner, the respondent felt dejected and fully moved out after December 20, 2021.

17. Ms. John pointed to the various antics and behaviour of the petitioner before, during and after pregnancy to show the negligent behaviour of the petitioner; such as the petitioner

being reckless towards her behaviour with the staff, she continued to consume alcohol and smoke during and after pregnancy, unhygienic maintenance of environs, etc. She has argued that the minor child was born pre-maturely and suffered medical complications due to the unhygienic lifestyle of the petitioner. It was the respondent who provided the mother and the child with the best healthcare facilities and treatment possible. She has argued that all the expenses of the child have been borne by the respondent alone, who has even taken a sabbatical from work after the birth of his minor child. The bad habits of the petitioner continued even after the birth of the minor child and since the petitioner showed disregard towards the health of the minor child because of which he fell sick and was subsequently diagnosed with septicemia. After the child was cured of the disease the respondent with the consensus of the petitioner took a rented accommodation at Antara. It is the case of the respondent that neither Vana nor Antara are residential premises nor are they the matrimonial homes of the respondent and the petitioner. Since the petitioner insisted that she wanted a change in surroundings, the respondent rented the current premises located at C-99, Defence Colony, Delhi. During the COVID-19 pandemic the respondent has been a devoted father, giving little importance to his business and only looking after the minor child. It is the case of the respondent that the behaviour of the petitioner continued to get worse. The respondent has taken a stand that because of night feeding the

general health as well as the dental health of the minor child suffered. Ms. John stated that the sole objective of the petitioner is to extract huge sums of money from the respondent despite the fact that the respondent has been bearing all expenses of the petitioner as well as the minor child; even then the petitioner filed a petition seeking permanent custody of the minor child as well as instituted proceedings under the Section 12 of the Protection of Women from Domestic Violence Act, 2005 wherein she has sought maintenance to the tune of ₹50 Crores.

18. Ms. John submitted that the sole purpose of these proceedings is to exclude the respondent from the life of the minor child. The petitioner with her harsh and abrasive behaviour has created an unhealthy environment for the minor child. She stated that the petitioner was able to obtain an *ex parte* stay against the respondent vide order dated January 18, 2021 against which the respondent filed an application under Section 12 of the GWA and Section 6(a) and 6(b) of the HMGA. The respondent despite the differences between himself and the petitioner has ensured many facilities for the petitioner and the minor child such as fully serviced apartment, chef, steward, nanny, car with driver, basic needs of the child, groceries and accommodation for the staff. In addition to the aforementioned, the Trial Court vide order dated November 9, 2021 granted maintenance of ₹1 Lac each for the petitioner and the minor child, pursuant to which the respondent had paid a sum of ₹24 Lacs to the petitioner and the receipt of which has

also been acknowledged by the petitioner.

19. Ms. John stated that the petitioner in order to undermine the case of the respondent has levelled many personal allegations against the respondent. The same are listed hereunder:

- (a) The respondent is unreasonably, obsessive, controlling and suffers from Obsessive Compulsive Behavioural Disorder.
- (b) The respondent, who is an inept husband should not be granted visitation rights to the minor child.
- (c) The respondent has been indulging in stalking, monitoring and video-recording the biological mother of the minor child.
- (d) The respondent has been denying marriage with the petitioner in order to avoid maintaining the petitioner and the minor child.
- (e) Due to the visitation of the respondent the minor child gets very confused with the sudden changes in his schedule.
- (f) The respondent has attempted to reduce the role of the petitioner in the life of the minor child.
- (g) The respondent has ousted the petitioner from the various matrimonial homes at Vana, Antara and Rajesh Pilot Marg.

20. Ms. John concluded her arguments by stating that the respondent only seeks to spend time with his minor child which

he is being denied despite being a responsible and present biological father. Ms. John has also suggested that the respondent is agreeable to the fact that he be given consolidated visitation slots on any day of the week instead of the two hours every day. Ms. John has also relied on the following judgments in support of her arguments:

On Maintainability

- i. ***Rajni Gupta v. Vikas Gupta, 2019 SCC OnLine Del 11206;***
- ii. ***Ajay Pall v. Chanda Pall; 2015 SCC OnLine Delh 8916;***
- iii. ***Smt. Usha Kumari v. Principal Judge, Family Courts & Ors., 1997 SCC OnLine Pat 379;***
- iv. ***Smt Pallavi v. Shri Raj Kamal; 2007 SCC OnLine Jhar 360.***

On Visitation Rights

- i. ***Yashita Sahu v. State of Rajasthan & Ors., (2020) 3 SCC 67;***
- ii. ***Tushar Vishnu Ubale v. Archana Tushar Ubale, 2016 SCC OnLine Bom 33;***
- iii. ***Ritika Sharan v. Sujoy Ghosh, 2020 SCC OnLine SC 878;***
- iv. ***Ashish Dubey v. State of (NCT) of Delhi & Ors. 2020 SCC OnLine Del 362***
- v. ***Ruchi Majoo v. Sanjeev Majoo (2011) 6 SCC 479***
- vi. ***Amyra Dwivedi v. Abhinav Dwivedi & Anr., (2021) 4 SCC 698.***

On Welfare of the Child

- i. ***Gaurav Nagpal v. Sumedh Nagpal, (2009) 1 SCC 42;***
- ii. ***Athar Hussain v. Syed Siraj Ahmed & Ors., (2010) 2 SCC 654;***

iii. *Gayatri Bajaj v. Jiten Bhalla, (2012) 12 SCC 471.*

On Misrepresentation

i. *Dalip Singh v. State of U.P., (2010) 2 SCC 114.*

21. Having heard the learned counsel for the parties and perused the record, the issue which arises for consideration in this petition is whether the Family Court was justified in allowing the visitation rights of respondent for having access to the minor child for two hours per day. It may be stated that the petitioner had filed the petition under Section 7, 10 and 25 of the GWA which is pending consideration before the Family Court. The petitioner had also filed an application under Section 12 of the GWA for interim protection of the minor child. The petition and the application were considered by the Family Court on January 18, 2021 when the Family Court issued notice to the respondents and further restrained from removing the minor child from the custody and care of the petitioner mother. The respondent herein filed an application under Section 12 of the GWA and Section 6(a) and 6(b) of HMGA seeking modification of order dated January 18, 2021 when the impugned order dated October 28, 2021 had been passed. The relevant paragraphs of the orders reads as under:

“5. However, at present the court is not deciding the case on merits but it is only an interim application filed by the respondent seeking the visitation right of the child on daily basis. In Dhanesh Kumar Kasturia vs. Sangeeta Kasturia, 2008 (104) DRJ 326, the Hon’ble High Court has stated that the question

regarding the custody of a minor child cannot be decided on the basis of the legal rights of the parties. Custody of the child has to be decided on the sole and predominant criterion of what would best serve the interest and welfare of the child.

This observation which has been made by the Hon'ble High Court is at the final stage and not while deciding the interim application. In the present case this court is not deciding the main petition filed by the petitioner. The respondent has not denied the paternity of the child. The parties are living at the same address as respondent has arranged for a service apartment for the petitioner, where at present she is staying there with the child and the respondent is living upstairs in the same building. In such circumstances, there is no reason as to why respondent should be deprived of the love and affection of his child and vice-a-versa the child should not be deprived of the love and affection of his father. It may be mentioned that though the respondent has denied his lawful marriage with the petitioner but he has never denied that he is the father of the child. The paternity of the child is not in dispute. Rather it is the petitioner who has written again and again in her petition the child as to be illegitimate child. Respondent has nowhere denied that he is not the father of the child. Merely because he is denying his lawful marriage with the petitioner is no ground to tag the child as an illegitimate child, when his paternity is not in dispute and the respondent has never stated that he is not the father of the child. Under the Guardianship and Wards Act and also under the Hindu Minority and Guardianship Act, the main consideration for the court is to see the welfare and interest of the child. The court is not required to see the rights of any parent but it is the welfare and interest of the child which is to be predominantly seen by the court. The respondent has nowhere denied the

paternity of the child and has nowhere stated that he is not the father of the child. The child cannot be deprived of the love and affection of his father and vice-versa. Therefore, it is ordered that respondent will collect the child daily from the house of the petitioner where at present she is staying and will spend 2 hours every day from 6:00pm to 8:00pm, so that he can spend some quality time with the child and thereafter will return the child at the house of the petitioner where at present she is staying. It is further ordered that none of the parties shall take the child out of the jurisdiction of Delhi Courts without prior permission of the court. Regarding cleaning and disinfecting the residential premises or regular instructions to the caretakers, petitioner has stated that she is getting this regularly done and also instruct the caretaker in this regard regularly. Application under Section 12 of the Guardianship and Wards Act, 1890 read with Section 6(A), 6(B) of the Hindu Minority and Guardianship Act stands disposed of.”

22. I may state here, that this Court vide order dated November 25, 2021 had stayed the order dated October 28, 2021 which is the impugned order herein. Further, on December 15, 2021, this Court, till the final hearing, allowed the interim arrangement by which the respondent was permitted to meet the child every Saturday from 4 PM to 7 PM at the second floor of the same building where the petitioner is residing, in the presence of a Local Commissioner.

23. I have already reproduced the broad submissions made by Ms.Luthra. According to her, the respondent is a putative father and is not entitled to visitation / custody unlike the

biological father. She argued that it is the case of the respondent that the minor child is illegitimate as the child is born out of lawful wedlock.

24. On the other hand, Ms. John had argued the paternity of the minor child has never been disputed by the respondent, inasmuch as it is the stand of the respondent before the Family Court that he is the biological father of the minor child. I have seen the averments made by the respondent in the application before the Family Court wherein it is stated that he has accepted the child, though he and the petitioner never got married to each other.

25. In any case, it is the case of the respondent as contended by Ms. John that issue regarding the marriage between the parties is not the subject matter of the current proceedings. Ms. Luthra in support of her submission canvassing for the right of the biological mother, to have a first right to be a guardian has relied upon the judgment in the case of *ABC (supra)*, I have seen the said judgment; the facts in that case were that the Supreme Court was considering an appeal against a judgment of this Court wherein the first appeal of the appellant therein (who was an unwed mother) was dismissed, holding that her application for guardianship cannot be entertained unless she discloses the name and address of the father of the child which would have thereby enabled the Court to issue process to him. It is pertinent to mention that the said case is also factually different from the instant petition since in that case the

appellant was of the Christian faith and solely governed by the GWA. The appellant therein was also averse to disclosing the name of the father. The Supreme Court has in paragraph 10 has held as under:-

“10. Section 6(b) of the Hindu Minority and Guardianship Act, 1956 makes specific provisions with respect to natural guardians of illegitimate children, and in this regard gives primacy to the mother over the father. Mohammedan Law accords the custody of illegitimate children to the mother and her relatives. The law follows the principle that the maternity of a child is established in the woman who gives birth to it, irrespective of the lawfulness of her connection with the begetter. However, paternity is inherently nebulous especially where the child is not an offspring of marriage. Furthermore, as per Section 8 of the Succession Act, 1925, which applies to the Christians in India, the domicile of origin of an illegitimate child is in the country in which at the time of his birth his mother is domiciled. This indicates that priority, preference and pre-eminence is given to the mother over the father of the child concerned.”

26. It has also been stated in paragraphs 18 and 21 that the father has a right of being involved in the child's life which may be taken away if Section 11 of the GWA is read in such a manner, he is not given notice, however the Supreme Court in that case held that since that was the case of an uninvolved father, the Court found no reason to prioritise his rights over those of the mother or the child. The ultimate principle which guided the Supreme Court was the welfare of the child, which is to be prioritised over and above all else, including the rights of

the parents. The Supreme Court therein held that the welfare of the child in that case would not be undermined if the identity of the father is not disclosed and also added that the views of an uninvolved father are not essential to protect the interests of a child born outside wedlock who is being raised solely by his / her mother.

27. It must be must be stated here, the Supreme Court in that case was concerned with an issue wherein the mother was claiming guardianship of the child which is also the petition filed by the petitioner, but the issue regarding the impugned order is only with regard to visitation rights. Hence, for the purpose of the issue which arises in this petition, the judgment relied upon is not relevant at this stage.

28. The submissions of the learned Senior Counsels for the parties in their support and against the other party can be summed up as under:-

	Petitioner's Arguments	Respondent's Arguments
1.	Settled Law that Respondent-Putative Father, has no rights to visitation.	Visitation Rights of the father are essential for joint parenting. Paternity is not disputed.
2.	Respondent has made false statements to Court and committed Perjury.	Petitioner has filed the present petition with oblique purposes.
3.	Impugned Order falsely records that the Respondent takes care of the minor child.	Respondent has been taking care of all the needs of the Child. The respondent also took a sabbatical from work. Respondent is a primary caregiver of the Child.
4.	Impugned Order Disregards Interest and Welfare of Child as it upsets the schedule of the Child and the respondent has been taking the Child out	The Family Court has considered the interest of the child as paramount and allowed visitation and the same has to be done in a place where the child and the parent can act like a parent and child, such as at home, park,

	without following Covid-19 protocols.	or a restaurant.
5.	Minor Child's Welfare and interest is solely with the Petitioner who is a dedicated mother and the sole parental authority for an illegitimate Child.	Although the Petitioner states that the visitation is detrimental to the welfare of the child but has failed to substantiate her claims.
6.	Respondent has taken contradictory stands before the Courts and has changed his stance on marriage, residence, physical intimacy, wedding functions and interactions with the minor child.	The respondent had moved out from the third floor to the second floor of the building at the behest of the building manager. However, since the visitation hours were modified and were to be supervised by the Local Commissioner the respondent felt dejected and moved out of the premises on 20.12.2021.
7.	Contempt of Impugned Order and Order dated 15.12.2021	The monitored visitation on 18.12.2021 was very emotionally distressing for the respondent and the child. This also resulted in emotional distress and trauma to both the respondent and the child and for this reason the respondent desisted from the interim arrangement.
8.	The Respondent has tried to exchange custody of the child for money	Respondent has taken care of all the financial needs of the Child, including providing for the serviced apartment. Respondent has been paying a monthly maintenance of ₹1 Lac each to the mother and child.
9.	Petitioner's Fundamental Right to travel with her child cannot be restricted.	The petitioner herself has been taking the minor child out of the premises at odd hours without observing Covid-19 protocols and has even been feeding meals to the child in the car.
10.	Petition is maintainable within scope of Article 227 of the Constitution.	Well-Reasoned impugned Order, which doesn't warrant exercise Article 227 of the Constitution. The power conferred under Article 227 must be exercised in cases of exceptional rarity.
11.	Respondent is unfit to have access to the Child.	Conduct of the Respondent towards the Child is that of a responsible father. It's the Petitioner who is harsh and abusive in front of the Child.
12.	The Respondent suffers from	What is sought to be projected as OCD and a

	Obsessive Compulsive Behavioural Disorder (OCD)	need to control stems from the fact that the petitioner had been consuming alcohol and cigarettes during the entire pregnancy, along with her unhygienic habits, caused various complications with the child, during and after the pregnancy.
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29. In substance, the submission of Ms. Luthra is that the respondent not being entitled to the guardianship of the child, is also not entitled to the visitation rights. In fact, she had also relied upon the provisions of Section 6 of the HMGA to contend that the said provision recognises that the natural guardian, in the case of an illegitimate child is the mother and after her the father. This submission of Ms. Luthra is on the premise that the respondent has not recognised, the minor child as legitimate, which though Ms. John has denied by stating that the respondent accepts the minor child. Further, this submission of Ms. Luthra was opposed by Ms. John by stating that Section 6 HMGA should not be read in isolation but has to be read in conjunction of Section 13 of HMGA.

30. I must state that the said issue must not detain this Court from deciding the issue, which falls for consideration in this petition that is, the visitation rights granted in favour of respondent. It cannot be disputed that the respondent, being a putative father shall be entitled to visitation rights. While determining and granting such rights, more so when the child is of less than three years of age, surely his well-being / welfare is of paramount importance. At the same time, the minor must not

be insulated from parental touch [*Ref: Ruchi Majoo (supra)*] and influence of the other parent for healthy growth of child and development of his personality.

31. The Supreme Court in the case of *Amyra Dwivedi (supra)* while referring to the judgment in the case of *Yashita Sahu (supra)* held that in case a parent is not granted custody they shall be entitled to visitation. The relevant paragraphs are reproduced as under:

“3. In Yashita Sahu v. State of Rajasthan, this Court held that the welfare of the child is of paramount consideration in matters relating to custody of children. In this context, we may refer to para 22 of the judgment, which reads as follows:

“22. A child, especially a child of tender years requires the love, affection, company, protection of both parents. This is not only the requirement of the child but is his/her basic human right. Just because the parents are at war with each other, does not mean that the child should be denied the care, affection, love or protection of any one of the two parents. A child is not an inanimate object which can be tossed from one parent to the other. Every separation, every reunion may have a traumatic and psychosomatic impact on the child. Therefore, it is to be ensured that the court weighs each and every circumstance very carefully before deciding how and in what matter the custody of the child should be shared between both the parents. Even if the custody is given to one parent the other parent must have sufficient visitation rights to ensure that the child keeps in touch with the other parent and does not lose social, physical and psychological contact with any one of the two parents. It is only in extreme circumstances that one parent should be denied

contact with the child. Reasons must be assigned if one parent is to be denied any visitation rights or contact with the child. Courts dealing with the custody matters must while deciding issues of custody clearly define the nature, manner and specifics of the visitation rights.”

4. *When a court grants visitation rights, these rights should be granted in such a way that the child and the parent who is granted visitation right, can meet in an atmosphere where they can be like parent and child and this atmosphere can definitely not be found in the office of District Legal Services Authority. That atmosphere may be found in the home of the parent or in a park or a restaurant or any other place where the child and the parent are comfortable.”*

(emphasis supplied)

32. The question is whether the visitation rights of the minor child given in favour of the respondent on a daily basis for a period of two hours are justified. There is no dispute that the child is less than three years old. The plea of Ms. Luthra is that the impugned order disregards the interest and welfare of the child as it upsets the schedule of the child and the respondent has been taking the child out without following the COVID-19 norms. She also stated that the visitation rights hinder the custodial rights of the petitioner, with abrupt alterations in the time schedule of the minor has left him disoriented and also disregard the sleep schedule of the minor child.

33. On the other hand, it is the case of Ms. John that the respondent has been taking care of all the needs of the child, he

has also taken a sabbatical from work and that the respondent is a primarily care giver of the child.

34. There cannot be any dispute as held by the Supreme Court in the case of *Amyra Dwivedi (supra)* that the child has a right to love and affection of both the parents which supersedes the privilege of having access to the child of both the parents.

35. Similarly, a Coordinate Bench of this Court also in the case of *Pradeep Santolia & Ors. v. State & Anr. WP(Crl.) 3294/2018* decided on October 29, 2018 held that the child's ties with father should not be completely and perpetually stopped to ensure a healthy emotional quotient and a robust psychological growth of the child, for which the affection of both the parents would be necessary.

36. Though, many judgments have been referred to by both the parties, this Court is of the view, it may not be necessary to deal with all the judgments at this interim stage as the broad proposition has already been noted by this Court in the above paragraphs.

37. I find from the record when the impugned order was passed, the respondent was residing at C-99, Second Floor, Defence Colony i.e., the same premises where the petitioner is also staying, and the Trial Court has granted the benefit of visitation to the respondent for meeting the minor child in the said property only. It was stated by Ms. John that the petitioner has moved out of the property because the respondent could not have the benefit of normal unsupervised visitations where the

respondent and the child can have unhindered interaction. Be that as it may, noting the tender age of the minor child, who is less than three years old, this Court modifies the impugned order dated October 28, 2021 and directs as follows:

- I. The visitation hours given to the respondent by the Trial Court for 2 hours daily may not be conducive for the child of that tender age. Appropriate shall be instead of daily, the respondent shall have visitation rights on alternate weekdays i.e., Monday, Wednesday and Friday on which days he will collect the child at 6 PM and return the child to the petitioner at 8 PM on the same day.
- II. On Sunday, the respondent shall collect the child from the petitioner at 11 AM and return the child at 5 PM on the same day.
- III. The above visitation shall be subject to the respondent residing in the same property i.e., C-99, Defence Colony.
- IV. The respondent shall ensure the safety and well-being of the child; and ensure that necessary COVID-19 protocols are maintained and the child is not exposed by non-essential outings to public places. This does not preclude the respondent from taking the child to a nearby park.
- V. The respondent shall not take the child out of the territorial limits of the Courts in Delhi.
- VI. The respondent shall have unsupervised visitation rights to the child, i.e., the respondent would not be supervised

by a nanny, Local Commissioner, etc. However, during visitations, liberty is with the respondent to have his family members present.

VII. The respondent shall also be at liberty to speak / interact with the child through video call / audio call once a day on Tuesdays, Thursdays and Saturdays, in the evenings between 6 PM to 8 PM for not more than 10 minutes.

38. The present petition is disposed of. Needless to state, this Court has not expressed any opinion on the merits of the petition pending before the learned Family Court and the aforesaid directions are subject to final determination of the petition. No Costs.

CM APPLs. 41549/2021 (for stay) & 43719/2021 (for modification of order dated November 25, 2021)

Dismissed as infructuous.

CM APPL. 45288/2021 (under Section 340 Cr.P.C.)

I have seen the contents of the application, in view of my conclusion in the petition, this Court is not inclined to proceed with this application and close the same.

V. KAMESWAR RAO, J

MARCH 24, 2022/aky