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

% *Date of decision: 10th July, 2023*

+ **MAT.APP.(F.C.) 90/2023 & CM APPL. 17949/2023**

VIKRAM LAL Appellant

Through: Appearance not given.

versus

POOJA Respondent

Through: Mr. Ravi Rai, Advocate along
with respondent in person.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The present Appeal under Section 19 of the Family Courts Act, 1984 read with Section 151 of the Code of Civil Procedure, 1908 has been filed by the appellant/father against the Order dated 05.04.2023 passed in GP No. 10/2023 by the learned Judge, Family Courts, Tis Hazari, Delhi *vide* which the custody application filed by the respondent/mother under Sections 7 and 25 of the Guardians and Wards Act, 1890 seeking custody of the child was allowed.

2. The relevant portion of the impugned Order dated 05.04.2023 is as under:

“Hence, keeping in mind all the facts and circumstances, the respondents are directed to give the custody of the subject child to the petitioner-mother on 12.04.2023 at 11:00 AM before Court Counselor Ms. Sarika Saini, attached with this Court. During hearing, the child was found to be equally comfortable with the respondents also,



*therefore, to ensure that the child gets love & affection of both his parents and grandparents, the overnight visitation rights are given to the respondents and **accordingly the petitioner-mother is directed to give the custody of the child to the respondent no. 1 on every first & third Saturday of the month at 05:00 PM, who will return he custody of the child to the petitioner-mother on the following Monday morning by 11:00 AM. The pick and drop of the child will be managed by the respondents themselves from and at the house of the petitioner-mother.***”

3. It is argued on behalf of the appellant/father that it is the respondent/mother who had herself abandoned child and left the matrimonial home when the child was barely three months old. The child is being looked after by the appellant/father. Hence, the prayer is made that the impugned Order dated 05.04.2023 be set aside and the custody of the child be returned to the appellant/father.

4. During the course of the arguments, it has emerged that the appellant had married the respondent (his second wife) in the year 2020, while his divorce from his first wife took place only in the year 2023. At the time of marriage of the appellant and the respondent, the first marriage of the appellant with his first wife was subsisting.

5. It is an admitted fact that the appellant got married to respondent on 29.06.2020 and one son was born on 14.03.2021. The respondent had claimed that in January, 2022, she was given merciless beatings by the appellant and his family members and she was left at her matrimonial home.

6. On 24.03.2022, the appellant and his family members had visited her parental house and forcibly snatched the custody of the child.

7. The learned Judge, Family Courts, Tis Hazari considered the tender



age of the child and all other surrounding facts and directed the appellant to hand over the custody of the child to the respondent/mother. In addition, the appellant/father has been granted overnight custody of the child on first and third Saturday of every month.

8. The impugned Order is well-reasoned and balanced giving cogent reasons for handing over the custody of the infant child, who is barely two years old, to the respondent/mother. At the same time, in the interest of the child, the appellant/father has been allowed overnight custody of the child, twice a month.

9. Accordingly, considering the tender age of the child, the impugned Order cannot be faulted.

10. Therefore, we find no merit in the present Appeal, and the same along with pending application, is hereby dismissed.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

JULY 10, 2023

S.Sharma