

2022 LiveLaw (Del) 441

**IN THE HIGH COURT OF DELHI AT NEW DELHI
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
CONT.CAS(C) 41/2022; 06.05.2022**

Family Law - Settlement Agreement - Custody and Visitation Rights - the overall development of the children should ideally involve both the parents and that the settlement agreement should reflect the same. [Para 5]

Petitioner through: Mrs. Kajal Chandra with Ms. Sakshi Anand, Advocates

ORDER

CONT.CAS(C) 41/2022 & CM APPLs. 11765/2022 & 11977/2022

1. The instant contempt petition has been filed for the alleged noncompliance of the order dated 03.08.2017, passed by the learned Principal Judge, Family Courts, Saket Courts in HMA No.494/2017.

2. It is stated by the learned counsel for the Petitioner/wife that the Respondent/husband has violated the order dated 03.08.2017 which is based on a settlement agreement entered into between the parties inasmuch as the Respondent/husband is neither coming forward for second motion nor is he fulfilling his obligations with regard to the monetary settlement of the child.

3. Per contra, learned counsel for the Respondent/husband submits that the Petitioner/wife is not permitting the children to meet the Respondent and is actively obstructing the father from developing a bond with his children. 4. Relevant portion of the settlement agreement dated 12.12.2016 regarding the visitation rights reads as under:

“.....

CUSTODY AND VISITATION RIGHTS

i) *The parties agree that the custody of both the children Aarini Gandhi and Vyom Gandhi shall remain with the Second Party.*

ii) *That the first party is not claiming the right to have visitation with the children keeping in mind the tender age and welfare of the children. As the First party will be happy and more than willing to meet both the children Aarini Gandhi and Vyom Gandhi therefore as and when the children desire and/or require to meet the first party in the presence of the family members of both parties and/or otherwise. Second party shall have no objection to the same.*

iii) *The Second Party agrees and undertakes that as and when Aarini Gandhi and/or Vyom Gandhi every express their desire to have access to the First Party, the Second Party shall ensure the same. It is agreed by the Second Party that on mere expression of any such desire or willingness on the part of the children, Aarini Gandhi and/or Vyom Gandhi to meet the first party, the second party shall ensure such meeting or interaction of the first party with the children under the supervision of parental grandparents of the children or blood relatives of the first party.*

iv) *The parties agree that on both the children Aarini Gandhi and Vyom Gandhi attaining the age of 10 years, the First party shall be free to request the appropriate court to provide the*

visitation rights taking into consideration the will of the children as per legal provisions applicable thereto.

v) *That parties agree that in case the Second Party remarries, the First Party shall have the right to request the court to reconsider the visitation rights taking into consideration the free will of the children as per the legal provisions applicable.*

vi) *That first party is giving up the custody in the interest and welfare of the children, but he would be more than willing and available to meet the children if they so desire, at the family parental house of the first party under the supervision of blood relatives of the first party.*

vii) *That Second party agrees that in case the children desire to contact the first party then the children shall be given the contact number of the second party and be provided with the arrangement required to have access to the first party under the supervision of parental grandparents or blood relatives.*

viii) *That parties agree that the parental grandparents of the children namely Aarini Gandhi and Vyom Gandhi or the blood relatives of the first party shall have free access to the children to assess their welfares and well being at any time.*

ix) *The parties agree that in case of the demise of the second party, the first party shall have the right to request the appropriate court to reconsider the custody/visitation rights of children taking into consideration the free will of the children as per the legal provisions applicable thereto.*

x) *The first party agrees to hand over Dog to the second party at the time of recording of the statement of the parties during second motion petition for divorce by mutual consent.....”*

5. A perusal of the settlement agreement reveals that the visitation rights of the Respondent/husband have been made contingent upon the desires of the children. This virtually eviscerates the right of the Respondent/husband to visit his children and inhibits the development of a secure attachment between the father and his children. It also does not fix any responsibility on the Respondent/father to aid in the growth of the children. The overall development of the children should ideally involve both the parents and the settlement agreement should reflect the same.

6. In view of the above, the matter is sent back to the Delhi High Court Mediation and Conciliation Centre in order to draw a comprehensive parental plan carving out the responsibilities of both the parents in the development/future of the children can be drawn whose well being remains paramount.

7. Both the parties are directed to be present at the Mediation Centre on 20.05.2022 at 11:00 AM. The Delhi High Court Mediation and Conciliation Centre is requested to appoint a senior Mediator to draw the said parental plan.

8. List on 28.07.2022.