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

+ CM(M) 1053/2021 & CAV 65/2021, CM APPL. 41549/2021 (For Stay), CM APPL. 41550/2021 (For Exemption)

KINRI DHIR

..... Petitioner

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

versus

VEER SINGH

..... Respondent

Through: Mr.Sandeep Sethi, Sr. Adv. with
Mr.Saurav Upadhyay, Ms.Gargi Tuli,
Mr.Anuj Dhir and Ms.Hardikaa,
Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

ORDER

% **25.11.2021**

CM APPL. 41550/2021 (For Exemption)

Allowed, subject to all just exceptions.

The application shall stand disposed of.

CAV 65/2021

Learned counsel for the caveator/respondent has put in appearance.

The caveat stands discharged.

CM(M) 1053/2021 & CM APPL. 41549/2021 (For Stay)

Issue notice.

Since the respondent is duly represented, let a counter affidavit be

filed on this petition within a period of four weeks from today.

The Court has heard elaborate submissions addressed by the learned Senior Counsels of respective parties relating to the rights which can be claimed by a putative biological father to seek custody and/or visitation rights. Both sides have also placed for the consideration of the Court, various decisions rendered by this Court as well as by the Supreme Court dealing with matters relating to custody and the considerations which must weigh.

The present petition, however, emanates in the backdrop of an order dated 18th January, 2021 which was passed by the Family Court on a petition under Section 12 of the Guardians and Wards Act, 1890 moved by the present petitioner providing that the respondent herein would stand restrained from removing the minor child out of the custody of the mother. It is this order which was modified by the impugned order dated 28th October, 2021 with it being provided that the father would have visitation rights in respect of the child daily and permitting him to take the child out of the care of the mother during 6 P.M. and 8 P.M.

For the purposes of considering the prayer for interim relief, the Court notes that the proceedings before the Principal Judge were not based on any allegation of the mother failing to discharge her obligations or adequately caring for the needs and welfare of the minor child. The Court also bears in mind the fact that the minor child in question is merely 2½ years old. Prima facie and as this Court goes through the order passed by the Principal Judge, it is apparent that the court proceeded on the incorrect path of seeking to consider and evaluate the competing rights of parents to be accorded custody and/or granted rights of visitation. The above claims which are raised by

competing parents must necessarily be recognized as being subservient to the interest of the child which has always and consistently been recognized as being paramount. The order ultimately passed requires the minor child of 2½ years to be moved out of the residence and be taken by the respondent for a period of 2 hours on a daily basis. The Principal Judge has clearly failed to weigh or consider the disruptive and deleterious impact that this may have. Matter requires consideration.

List before the Roster Bench on 07.01.2022. Till the next date of hearing, there shall be stay of the order dated 28th October, 2021.

NOVEMBER 25, 2021
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YASHWANT VARMA, J.