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

+ CM(M) 1053/2021 & CM APPL. 20045/2022 and
REVIEW PET. 119/2022

KINRI DHIR

..... Petitioner

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

versus

VEER SINGH

..... Respondent

Through: Mr. Kapil Sibal, Sr. Adv. with
Ms. Gauri Rishi, Mr. Manu Sharma,
Ms. Srishti Juneja and Ms. Garima
Sehgal, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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04.05.2022

CM APPL. 20045/2022

Exemption allowed subject to all just exceptions.

Application is disposed of.

REVIEW PET. 119/2022

1. This Review Petition has been filed by the respondent / applicant seeking review of order dated March 24, 2022 whereby this Court granted him visitation rights to the minor child, subject to the respondent / applicant residing in the same property i.e., C-99, Defence Colony.

2. It may be stated here that the respondent / applicant had earlier filed an SLP being SLP (Civil) No.6555/2022 before the Supreme Court challenging the order to the extent of condition No.III, which reads as under:-

“III. The above visitation shall be subject to the respondent residing in the same property i.e., C-99, Defence Colony.”

3. The Supreme Court disposed of the SLP on April 18, 2022 by stating as under:-

“Learned senior counsel appearing for the petitioner points out that the substance of the complaint of the petitioner is the condition which is put in clause III to be found at page 30 of the special leave petition paper book. It reads as follows:

“III. The above visitation shall be subject to the respondent residing in the same property i.e., C-99, Defence Colony.”

It is his complaint that the petitioner is actually not residing in the property C-99, Defence Colony which was a rented property. It is further pointed out that it was in fact, brought to the notice of the Court as well and still, this condition is imposed to enjoy the visitation rights.

We think that this is a matter which the petitioner may bring to the notice of the Court by filing an appropriate proceeding. Without prejudice to the said right, the special leave petition will stand dismissed. Pending application stands disposed of.”

4. Mr. Kapil Sibal, learned Sr. Counsel appearing for the respondent / applicant would submit that the visitation rights granted to the respondent / applicant were made subject to him staying in the above premises, is clearly untenable, as it was represented before the Court that the respondent /

applicant had moved out of the said premises and this fact has been noted by this Court in paragraphs 16 and 28, which reflects in the following manner:-

“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.

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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.”

5. Mr. Sibal also states that the conclusion of this Court that the Trial Court has granted the benefit of visitation to the respondent / applicant for meeting the child in the said property only, is not correct as no such condition was put by the Trial Court. He states such a condition could not have been put by this Court, more so when the Court had granted permission to take the child to the park and also observed that he should not take the child out of the territorial limits of the Courts in Delhi. In other words, the

respondent / applicant was at liberty to take the child anywhere within Delhi. Hence, the condition need to be reviewed / withdrawn.

6. On the other hand, Ms. Lohiya has contested the very review petition on the ground that the affidavit in support of the review petition predates the petition itself and as such is no affidavit in the eye of law. She states, condition No.III has been rightly put as, it was the case of the respondent / applicant himself in CM No.43719/2021 that the parties are living at the address in a service apartment arranged by the respondent / applicant and the petition / non-applicant and the child are living upstairs in the same building. She also draws the attention of the Court to the order of the Trial Court at internal page No.15 to contend that even the Trial Court has observed as under:-

“The parties are living at the same address as respondent / applicant has arranged for a service apartment for the petition where at present she is staying there with the child and the respondent is living upstairs in the same building.”

7. She also states, in fact it is the case of the petitioner / non-applicant that the respondent / applicant was not staying at the premises and has been staying at the Oberoi Hotel. She states that condition No.III put by this Court is an appropriate condition in the facts of this case and seeks the dismissal of the review petition.

8. Having heard the learned counsel for the parties on the review petition, I may, at the outset state when the Trial Court had passed the impugned order, it was the case of the respondent / applicant that he was residing in premises No.C-99, Defence Colony. As per his version, he continued to stay there even during the pendency of the present petition till

December 20, 2021. However, he has shifted out of the said premises, as he felt dejected because of the fact that the visitation hours were modified and were to be supervised by the Local Commissioner.

9. Even this Court vide order dated December 15, 2021 has allowed visitation though as an interim arrangement to meet the child every Saturday from 4.00 PM to 7.00 PM on the second floor of the building. It appears, the said direction has been passed on the submission made on behalf of respondent / applicant that he be permitted to collect the child and take him to a room on the second floor of the same building, which is in his exclusive possession.

10. In any case, this Court, while modifying the impugned order of the Trial Court dated October 28, 2021, had noted the fact that the minor child is of tender age of less than three years and it is no denial to the fact that ultimately while giving visitation rights, it is the interest of the child, which is paramount.

11. I see no reason to entertain the petition, the same is dismissed.

V. KAMESWAR RAO, J

MAY 4, 2022/ak