

Arvind Kumar Vs. Neha Malik

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Court : Delhi

Decided On : Dec-19-2013

Judge : S.Ravindra Bhat

Appellant : Arvind Kumar

Respondent : Neha Malik

Advocate for Def. : Mr. Prabhjit Jauhar, Ms. Anupama Kaul

Advocate for Pet/Ap. : Mr. Neeraj Pandey, Mr. Deepak Pandey

Judgement :

§~1 * IN THE HIGH COURT OF DELHI AT NEW DELHI + MAT.APP.(F.C.)
46/2013 ARVIND KUMAR Appellant Through: Mr. Neeraj Pandey with Mr.
Deepak Pandey, Advocates. versus NEHA MALIK Respondent Through: Mr.
Prabhjit Jauhar with Ms. Anupama Kaul, Advocates. CORAM: HON'BLE MR.
JUSTICE S. RAVINDRA BHAT HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

1912.2013 % This is an appeal against the order of the Family Court dated 21.09.2013. The respondent had sought - through an application under Section 26 of the Hindu Marriage Act - modification of the visitation rights in respect of minor child; the rights had been worked out through a settlement which was a precursor to a mutual consent decree of divorce issued by the competent court on 4.8.2011. The visitation rights were in respect of the minor son Tejas who has born on

30.08.2006. After considering the contentions of the parties during the course of which the Trial Court noticed that the respondent was not averse to visitation rights to Tejas father, i.e., the present appellant but expressed reservations on account of the fact that she had relocated with the child at U.K., the Court permitted the mother to take the child to the U.K. subject to the condition that she would visit once in a year during the child's annual vacation and would also provide custody to the child's father for half of the period of the stay in India. On the first date of hearing, after hearing counsel for the parties, this Court was of the opinion that so far as the merits of the appeal are concerned, no interference with the order of the Trial Court was called for. However, the appellant was directed to deposit the accumulated arrears payable in terms of the settlement dated 24.12.2010. The Court also directed the appellant to continue depositing Rs.20,000/- per month in terms of the settlement. Thereafter, the Court issued the following directions: - (ii) An undertaking by the respondent/Neha Malik to abide by the terms of the trial court's order in this case and also to ensure that the minor child is brought to India at least once annually to facilitate the visitation rights given to the appellant /husband, shall be incorporated; (iii) During the course of submissions, the learned counsel for the respondent had stated that Rakesh Yadav with whom the respondent had married after the divorce on 4th August, 2011 would also file an undertaking. The respondent shall also ensure that the affidavit of Sh. Rakesh Yadav, duly affirmed and attested by the concerned official in the Indian High Commission, UK shall be filed before the next date of hearing. (iv) The undertaking in the form of affidavit in compliance with the directions (ii) and (iii) above, shall be filed within two weeks.

The affidavit undertakings of Ms. Neha Malik, respondent (mother) and that of Mr. Rakesh Yadav to whom she is now married are on the record. Mr. Rakesh Yadav is a British passport holder; the couple is residing in London. Pursuant to the directions, the affidavit of Mr. Rakesh Yadav duly verified and attested by the Assistant Consular Officer, High Commission of India, London, dated 6.12.2013 was filed. The said affidavit as well as the affidavit of Ms. Neha Malik dated 12.12.2013 are hereby taken on the record. Both of them are bound to comply with the terms of the directions and the undertaking furnished to the Court. In the light of the above, the Trial Court's impugned order is modified to the extent that the

respondent and Rakesh Yadav shall be bound by the terms of the undertaking to give effect to the visitation rights directed by the Family Court in its impugned order. Likewise the appellant shall continue to pay the maintenance amount agreed to by him in the settlement of 24.12.2010. The same shall be deposited in an agreed account. As far as the amount deposited by the appellant is concerned, it is open to the respondent to apply to the Trial Court to withdraw the entire amount deposited till date and also seek appropriate orders from time to time for withdrawal of the said amount if the amount is not directly given to Ms. Neha Malik. It is clarified that the appellant shall not be denied reasonable visitation rights in case he visits the U.K. This is subject to his giving sufficient advance notice to the respondent Ms. Neha Malik. The appeal is disposed off in the above terms. S. RAVINDRA BHAT, J NAJMI WAZIRI, J DECEMBER 19 2013

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