

**Shilpi Thapar Vs. Manan Thapar**

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**Court :** Delhi

**Decided On :** Nov-23-2015

**Judge :** Najmi Waziri

**Appeal No. :** CM(M) No. 1425 of 2013 & CM Nos. 20801 of 2013, 9238, 20961 of 2014, 59, 2747 & 113567 of 2015

**Appellant :** Shilpi Thapar

**Respondent :** Manan Thapar

**Advocate for Def. :** Mr. Prosenjeet Banerjee

**Judgement :**

Open Court:

1. This petition seeks the setting aside of the order of 21st December, 2013 passed by the learned Guardian Judge (West), in G.P. No.53/2012. By way of the said order, interim custody of the child -- Master Siddhid, was directed to be handed over by the petitioner-mother to the respondent-father on 3rd January, 2014 till 6th January, 2014. The said order has become infructuous by virtue of subsequent orders of this Court and the interim custody and visitation rights were duly afforded to the parents in the interest of the child. On 2nd January, 2014 when the case was first listed in, the following order was passed the interest of the child on the:

CM(M) No.1425/2013 and C.M.No.20801/2013(stay)

1. Issue notice, returnable on 3rd January, 2014.

2. Mr. Sanjay Poddar, learned senior counsel for the petitioner states that the minor child Master Siddhid is 4 years old and presently is not keeping well as he has been suffering from viral fever and other cold related infections for the last 15 odd days. It would, in the circumstances, not be appropriate for the child to be transferred temporarily into the custody of the father. Therefore, the petitioner mother seeks that the interim order granting interim custody of the child to the father from 3rd to 6th January, 2014 be stayed. However, the petitioner will welcome the father when he visits the child at her residence so that the due paternal affection is available to the child which indeed is every child's right.

3. In view of the aforesaid submissions of counsel apropos ill-health of the child, it would not be in the latter's overall interest and welfare if his custody is disturbed from the mother, at least till his stated convalescence, hence operation of the order of the Trial Court to the extent that it grants custody of child to his father from 10.00 a.m. of 3rd January, 2014 to 4.00 p.m. of 6th January, 2014 is stayed. However the father will be free to visit the child at the residence of the mother and who shall ensure that a conducive environment is made available for his proper meeting and interaction with his son Master Siddhid. The father would also be free to take the child to a doctor/hospital for a second opinion or other medical care as may be deemed necessary. The mother (petitioner) or any other maternal relative or assistant could accompany the father for this purpose between 3rd and 6th January, 2014.

4. Order as well as notice be given dasti under signatures of the Court Master ?

Thereafter the case had floundered in a manner that no parent would wish for his/her child. The subsequent orders have a rather unfortunate story to tell. On 25th April, 2014 the Court recorded:

CM APPL. 6972/2014 in CM(M) 1425/2013

This CM seeks modification of this Court's orders dated 10.01.2014 and 26.03.2014 and cessation of visitation of the child with the father. The grounds mentioned are that the child is undergoing some psychological treatment. The psychiatrist has neither mentioned the reasons nor the symptoms of such alleged disorder.

This Court notices that initially meetings were held in the office of Mr. Sanjay Poddar learned Senior Counsel and it was only when the counsel for the parties confirmed that the meetings were fruitful and yielding the desired results that the father was permitted to take the child out to any child friendly place including the house of child's paternal grandparents. It was also observed that the mother could be in the vicinity of the place of visitation, so that she could observe the visitation from a distance without being a distraction, and the father would be free to bring along his mother i.e. child's paternal grandmother for the visitation.

There was clear progress apropos the building up of a reckonable bond between the father and the child. Now, after almost 11 weeks, this application has been preferred stating that the child is suffering from some emotional disorder which may prove detrimental to the mental health of the child. The medical report is dated 18th of March which is prior to the directions issued by this Court on 26th March, 2014. If the medical report were to be relied upon then the mother should have brought it the notice of this court. If the visitations have or were having an adverse impact on the child then she ought to have intimated the Court promptly; indeed it would be deemed her duty to do so in the overall interest of the child. However, she herself chose to ignore the report perhaps for its sheer irrelevance due to the subsequent events. Evidently, the medical report of 18.03.2014 is unreliable, it purports to overreach the orders of this Court. No reason is made out to entertain this application. The same is hereby dismissed.

Learned counsel for the petitioner states that for the last two occasions, the child could not be brought to meet the father since he was not keeping well. Mr. Prosenjeet Banerjee, learned counsel for the respondent states that there was no such communication to the respondent. Counsel for the petitioner/applicant Mr. Satya Narain states that a SMS was sent from his mobile number to the father.

Counsel for the petitioner upon instructions, assures the Court that the child shall be brought to meet the father on the days ordered by this Court. It is further agreed by them that all communication apropos fixing or change of schedule shall be only between the counsel for the parties by phone or e-mail address at least four hours in advance. Learned counsel for the respondent Mr. Prosenjeet Banerjee has given his mobile number as 9810150114. Every visitation default shall be made up by making the child available for visitation with the father on the next such date as the father may intimate.

The visitation hours are hereby increased from four hours to six hours. Now, the visitation meetings will be held four times in a month on weekends. The weekend meetings may be adjusted mutually between the parties for any gazetted or local holiday in the month.

CM(M) 1425/2013

Renotify on the date already fixed i.e. 06.05.2014. ?

The order dated 6th May, 2014 reads as follow:

CM No.20801/2013

Learned counsel for the parties, upon instructions, states that the visitation hours may be reduced but the frequency of the meetings could be increased. Accordingly, the visitation hours are reduced from six hours to three hours each and the frequency is increased to six times a month. The additional two visitations can be on the weekends or holidays with the mutual consent of the parties. As directed earlier, the communication apropos visitations shall be done through counsel for the parties.

List on 30th October, 2014. ?

The order dated 26th May, 2014 reads as under:

Learned counsel for the respondent states, on instructions, that without prejudice to his rights and contentions the respondent will pay an amount of Rs.1.00 lakh towards the expenses that may have been incurred by the petitioner-Mother for

the maintenance of the child since their estrangement. The aforesaid amount shall be deposited in two instalments, on 9.6.2014 and 30.6.2014, into the account in which the other payments are being made.

He submits that the Trial Court order impugned in this petition had granted visitation rights to the father to share the holidays with the son and interim custody of the son for four (4) days was granted to the father. However, that could not be given effect to. He submits that in the last nearly five (5) months, the father has met the child eighteen (18) times and there has been much progress, which has been recorded in this Court's order on 26.3.2014 and again on 25.4.2014. He submits that the holidays would be meaningful for the child, if the child spends some quality time with the father. This Court finds that with the progress having been made in the preceding months, it would be in the overall interest of the child to permit the father to keep the child for one (1) night at a time. The father will take the child on 31.5.2015 at 4:30 p.m. and drop him back at 4:00 p.m. the next day. To overcome any difficulties with respect to timing, the coordination shall be through respective counsel. The exercise shall be repeated for the next weekend too.

It is informed that the birthday of the child falls on 30th June. As requested by the learned counsel for the respondent-father, it is directed that on 30.6.2014, the child shall be partly in the custody of the father. The father shall pick up the child on 30.6.2014 at 10:00 a.m. and drop him at 4:00 p.m. and thereafter the child shall remain with the mother for the remaining part of the day.

List on 30.10.2014. ?

There was alleged non-compliance of the orders dated 25.04.2014 and 26.05.2014 by the mother and three contempt petitions were preferred by the respondent-father against the petitioner-mother, which are stated to be pending. Accordingly, Ms. Nandita Choudhary, Child Psychologist at Lady Irwin College, RAK Child Study Centre, New Delhi was asked for her advise apropos the visitation rights of Master Siddhid. On 14th January, 2015 the following order was passed:

At request of the learned counsel for the parties, renotify on 9th March, 2015.

The learned counsel for the parties submit, upon instructions, that both the parties would make efforts for the meetings to be more conducive and the mother especially, would make concerted efforts to prepare the child to meet the father every time a visitation/meeting is scheduled.

The learned counsel for the applicant submits that the mother's employment is being affected because of the regular visitation schedule fixed by the Court, for which she has to bring the child.

In the circumstances, Mr. Prosenjit Banerjee, the learned counsel for the defendants, states, upon instructions, that he has no objection to rescheduling of the Saturday visitations so as not to affect the plaintiff/mother's employment. Therefore, visitation for Saturdays is, for the time being clubbed with the visitation hours of Sunday. Accordingly, the child would meet the father every Sunday from 12 p.m. to 6 p.m. (for a maximum period of six hours). The visitation could be either at the Mediation Centre or such other place as may be decided by the Mediator. The visitation scheduled for weekdays shall be held between 5:30 p.m. and 7:30 p.m. or such other lesser hours as the father may agree to, so as to accommodate the mother's travelling after office hours on weekdays.

The learned counsel for the plaintiff/applicant further submits that the mother has employed a private tutor for the child and the interim allowance needs to be revisited in view of the burgeoning expenses of a growing child. The amount earlier fixed by this Court was Rs.15,000/- per month on 10th January 2014. A year has passed by. Factoring-in the rate of inflation, the growing needs of the child and the expenses towards the tutor, the interim maintenance amount is revised to Rs.25,000/- per month, without prejudice to the rights and contentions of the parties. ?

During the course of hearing, the Court noted that the father/respondent had voluntarily made payments of Rs.15,000/- per month to the mother for the

maintenance of the child, without prejudice to her rights of maintenance under Section 24 of the Hindu Marriage Act, 1955. Over and above this, the father had also paid Rs.1,00,000/- to the mother during the course of the proceedings. From 13th January, 2015 onwards, the father had paid an enhanced maintenance amount of Rs.25,000/- per month to the mother.

With the consent of the parties, the chamber of Mr. Sanjay Poddar, the learned Senior Advocate was used as the venue for meeting of the parties and the child. They were to meet four times a month for a duration of four hours every weekend. Subsequently, Mr. Sanjay Poddar, the learned Senior Advocate withdrew from the proceedings.

On 5th March, 2015, the following order was passed.

The learned counsel for the parties submit, upon instructions, from the respective parties, i.e., the mother and the father of the child, Master Siddhid, that on the occasion of Holi tomorrow, the child shall be brought to the GK-II Welfare Association, Opposite Anupam Sweets, M-Block Market, New Delhi by 11:00 a.m. A car shall be arranged by the defendant/father, which shall bring the mother and the child to the Holi Milan Festival where the counsel for the parties may remain present, if they so desire. The child will be left with the father for at least one (1) hour. The mother may remain in the vicinity and shall maintain some distance so that the father can have a meaningful interaction with the child without any distraction to the child. The mother will prepare the child for this meeting to assist in a meaningful interaction between the father and the child so that a healthy bond is built between them. The mother would be free to take back the child at 1:00 p.m.

At this stage the learned counsel for the parties request for the appointment of a Local Commissioner, who shall observe the proceedings. Accordingly, Ms. Nidhi Chopra, Advocate (Mobile Nos.9654852099; 9911220961), who is present in Court, is appointed as the Local Commissioner, who shall remain present during the period the child remains with the father.

On Saturday and Sunday, i.e. 7th and 8th March, 2015, the child shall be brought to the father's house at 11:00 a.m. and shall leave from there at 1:00 p.m. The

mother may stay in the vicinity, if she so desires without being a distraction to the child. She will endeavour to gradually wean away the child from herself so that he begins to exercise his independent volition apropos his natural father “ the respondent. The latter shall provide a vehicle to her for the facilitation and duration of the visit. For the duration the child remains will be with the father, only the Local Commissioner shall remain with the child. The mother will prepare their child for these meetings also. Mr. Prosenjeet Banerjee, the learned counsel for the defendant submits that the defendant/father will endeavour to bring the child's cousins of the same age group so as to provide him additional accompany.

The fee of the Local Commissioner is fixed at Rs.15,000/- per day apart from travel and other out-of-pocket expenses.

List before the Court on 12.3.2015.

The Local Commissioner shall file her report by 11.3.2015.

Dasti to the learned counsel for the parties under the signature of the Court Master. ?

On 12th March, 2015, the report of the Mediator was considered and the following order was passed.

The Local Commissioner's report is taken on record. It has a detailed account of the meeting held on 6th, 7th and 8th March, 2015. The report notes that some progress has been made in the three meetings, particularly on the 2nd day when the child showed no aversion to meeting or being with the father. Indeed, the father and the child were playing together in a separate room away from the mother. Upon a query put to the Local Commissioner, she informs the Court that her impression is that the child is not averse to meet the father as long as he has no apprehension that he will be taken away by the father. It appears that the child requires the reassurance of the mother's presence.

In the circumstances, the Court is of the view that further meetings, preferably twice a week, should continue at a child friendly place.

The learned counsel for the parties suggest that, for the moment, the Delhi High Court Mediation and Conciliation Centre, Administrative Block which has child friendly amenities would be the best suited place for the meetings.

Accordingly, the child shall be brought to the aforesaid centre tomorrow i.e. on 13.03.2015 at 3.00 pm where the father will meet him from 3.00 pm to 5.00 pm in the presence of Ms. Veena Ralli, Mediator who had assisted the parties earlier. Further visitations be held on 21.03.2015 and 27.03.2015 at the same place and time in the presence of Ms. Ralli. In her absence, the meeting/visitations shall be held in the presence of Ms. Nidhi Chopra, Local Commissioner. The mother shall remain at visible distance from the child during the visitations as a form of reassurance to him but not necessarily in the same room.

The learned counsel for the parties submit that Dr. Nandita Chaudhary, Child Psychologist and Family Counsellor, has been consulted earlier. She has informed them that she would be available in Delhi only after 29th March, 2015 but her schedule of fees and convenience has to be ascertained. Let them do so by the next date of hearing.

The fees of the Local Commissioner, if she is required to assist, shall be Rs.15,000/- per visitation meeting.

The Mediator, as well as the Local Commissioner, if so required, shall file their reports by 25th March, 2015 with a copy of the same to the learned counsel for the parties.

Renotify on 26th March, 2015.

Dasti under the signature of the Court Master. ?

On 26th March, 2015, the following order was passed.

CM No.2747/2015

The mediator's report is submitted in a sealed cover which has been opened and read. It states that the meeting between the child and the father has been encouraging. The mediator further noticed that the child kept on holding (sic) hand

of his mother and kept on clinging to her. He threw all the items with full force brought near him for diverting his attention towards toys. On being offered a glass of water, he did not hesitate in picking up the glass and throwing with full force totally oblivious of its effect. A strange thing was noticed that when he picked up the glass, he was smiling and said he wanted to but he threw the glass with full aggression. ?

The report further observed that there was no significant effort made from the side of the mother to let the child leave her hand..... ?

The situation portrayed was as if the child does not live without (sic) mother at all whereas the child goes to school and the mother (sick) goes to office. In both the situations, the child stays without mother..... ?

The report further states that after the aforesaid incident of throwing of the glass with full aggression, the mediator took the child outside the Mediation Centre with the father and allowed the child to walk around Chamber Block-2 in the arms of his father, while he was observed by the mediator from a distance. It was noticed that the child was comparatively more comfortable and was smiling, but the minute he was brought near his mother, he again held her hand and started saying that he would not leave his mother's hand.

The aforesaid observations show that the child surely requires the assistance and intervention of a child psychologist. This Court is of the opinion that the child is neither scared of the father nor is he uncomfortable in the company of his father. If anything, the aggressive behaviour occurred when the child was in the presence of his mother.

The learned counsel for parties submit that Ms. Nandita Choudhary, the child psychologist who would be consulted by the parties is likely to be available after the 29th of March, 2015 and that she would be consulted during the ensuing holidays on a regular basis.

The parties shall present themselves before Ms. Nandita Choudhary depending upon her convenience. The parties shall consult her with the child on the 1st of

April, 2015 and on such successive dates and time, as she may indicate. A communication in this regard shall be made between the parties through an SMS or an e-mail.

The learned counsel for parties assure full and prompt cooperation for the proper psychological assessment and consultation with the child psychologist Ms. Nandita Choudhary, in the overall welfare of the child.

Renotify on 16th April, 2015.

After evaluation of the child's psychological condition Dr. Nandita Choudhary, the Child Psychologist gave her expert opinion through four reports which are reproduced hereunder:

In the report dated 1st September, 2014 the Child Psychologist had observed as follows:

1. The child is very close to the mother and shares an affectionate bond with her.
2. There is no doubt that his attachment to the mother is indicative of some anxiety, perhaps on account of being in the court environment, it is not very favourable for child.
3. There is NO DOUBT that the child showed extreme hostility towards the father, both for drawing and in person. He constantly looked at the mother to see her facial expression. When the mother and I encouraged him to accept things from the father or pick up something he had thrown, he willingly followed the instructions. It seemed as if the child's hostility towards the father is not SIMPLY on account of the relationship or incident with the father, but also a STORY that has been created for him by others, may be not the mother but may be the other family members with which he spends his day after school, while the mother is at work.'
4. It is no possible for me to verify whether the father did indeed slap the child or not, or whether the child is tutored and by whom and how much, but the end result is clear.

5. The child is disturbed, anxious and actively hostile towards and rejecting of the father. The cause of this can be many and some possible ones are listed here:

The father wants to be close to the child but cannot accept mother's role, although he said towards the end that he does not want to take the child away.

The father wants to be with the child alone, but the child is afraid for some reason. It may have had to do with the father's last visit, but that cannot be only thing. The father has definitely been demonised in the child's mind by SOMEONE. My feeling is that it is not the mother, but the people whom he stays with. They love him and I don't think they realize how much this is hurting him.

The child is very confused and ambivalent and therefore even aggressive BUT was willing to smile at and to accept the father WHEN the mother told him to..

My recommendations:-

Based on my observations both mother and father are to focus in each other place in the child's life and each of them wants to the BEST for the child. However, in going about this they have lost focus of the child on account of the bitterness between them and the history of legal battles that have clearly aggravated the situation. At the end of the day, it is the child who has been biggest victim of this drama.

The child is highly anxious, disturbed and destructive and this needs immediate attention.

1. They must return to regular visits of the father. The first visit MUST BE in the mother's presence. For the sake of the child's psychological well being she MUST be positive towards the father. I have counselled both father and mother and have demonstrated to them the extent of the damage they have already done to the child.

2. Extended family members MUST be told that by demonizing the father, the child is being damaged. This must stop. If the mother is also doing this, even subtly, it MUST STOP otherwise child will have long term difficulty with anxiety and hostility.

3. After the first visitation with both, if it is acceptable to the child, the mother can it around while the father take a more active role.
4. The next visit can be independent between father and child.
5. Custody of the child MUST remain with the mother.
6. The father's place in the child's life MUST be treated positively by the mother and the family otherwise the child will SUFFER irreparable psychological damage if this kind of hostility continues. Please see the scratched out drawings as evidence. ?

In her reported dated 25th May, 2015, the Child Psychologist gave the following instructions for the month of June, 2015:

1. There will be two visits where the mother and father will be present.
2. The location will be picked by the child.
3. One of them should be on the child's approaching birthdate
4. The mother and her family must prepare Siddhid for the meetings with a positive approach. However hard this may be for them. This is in the child's best interest. The child must NOT be given a choice. He will be able to do it and will understand once the adults around him DO NOT give him a choice.
5. When the father comes, the mother will withdraw from active participation and ignore the child gently, allowing him to move around. In case he asks to go the toilet or drink water, she must firmly tell him You are old enough you are a big boy, you can wait If he asks to sit on her or cling to her, she must gently but firmly insist he is old enough to sit on his own and play with his father. The mother should be reaching a book or magazine.
6. For his part Manan MUST NOT insist on showing or giving the child anything. He should be pleasant and open and willing, but NOT forceful in his approach to the child. The child must seek out the father, even if it means an hour of waiting in silence. Manan must smile favourably and pleasant smiles at the child and say, I

have come to meet you, to spend time with you. I want to be here with you ?. The visits should be quiet and interactive as and when the child approaches. This change in attitude will surprise the child, and he will seek different ways of dealing with it. This is what I am concerned about. Please report his reactions to me when we meet.

7. For birthday party, the father must be present, carry something for the child. The mother **MUST** receive the gift and show it to the child and say your father has brought this for you ?. After the birthday is over and the father has left, the mother must remind the child, even if he chooses not to pick it up.

8. There is no need to mention any fake and sugary praise for each other, since Siddhid is very bright and will realize something is wrong. Be factual like your father brought this for you and I want you to play with it ?. Don't insist, but don't ignore.

9. The other visit can be anywhere where the CHILD chooses. Firmly he **HAS TO BE TOLD**, you have to meet your father, then give him a choice about place. Please do **NOT** ask him **IF** he wants to meet the father. This will confuse him. Choice must be given about details and not whether or not the meeting will happen. This firmness along with some choice will make the child feel as if he has some say in the matter.

10. These two visits **MUST** be conducted carefully. I trust that both Shilpi and Manan love their child and would like to see him happy. Please understand that in case these instructions are not followed and these conditions are not complied with, I shall withdraw my participation in the case. Both parents must keep a report ready for me (verbal) when we meet in July. In case I find any unwillingness or resistance on their parts, the offer of assistance shall be withdrawn forthwith.

11. After the meeting with me in July at the Centre, I will take a call on independent visitations with the father. This is in the child's best interest and the mother has to start preparing the child for this. If I find that Shilpi is resisting this, or Manan is forcing this, again my threat to withdraw shall be executed.

12. Please take this very seriously and comply. This is in their child's best interest.

13. The only person who I am willing and trust as an observer is the Mediator, Mrs. Veena Ralli. This is only in case there is a request. From my side, I am willing to trust the parents, as I think they have understood my point in approaching this in this manner.

14. The duration of the visit, that is the presence of the father, should be mutually decided. I will leave this detail to them.

15. The father and mother as well as the family members **MUST UNDER NO CIRCUMSTANCES** criticize the other parent. And no investigations about what happens should be approached. The visits will **ONLY** discuss future meetings and other activities. No investigations should happen through the child, even in the future, else you will tear the child to pieces, emotionally. Mothers, grandmothers, aunts and uncles **MUST** restrain themselves in discussing family politics in the child's presence, now and later. This has already had many serious consequences.

16. I will meet the parents in July after I receive a call that these two visits have been successful. ?

In the report dated 13th July, 2015 the Child Psychologist observed:

Siddhid Thapar

13.07.2015

As scheduled, both Shilpi and Manan arrived in the Nursery School before time. Siddhid was asleep on a stool, with his head in his mother's lap. Although I had little opportunity to observe the child in this session since he was asleep, I did get to converse with and observe both parents together. I must report here that there is a clear thawing of the relationship between the two and the atmosphere related to the child and towards each other was pleasant for the first time since I started seeing the family. Both reported that there were two meetings in the month of June scheduled before and on Siddhid's birthday. They were advised to have two

meetings with the joint presence of both parents. The three of them met in a public place of the child's choice, a mall. Both parents reported that Siddhid was still clinging to the mother as usual, refused to take any gift from the father and still refuses to play with that since it was given by the father, Shilpi reported. Shilpi also mentioned about three times, that on account of the fact that there was to be a joint meeting on the child's birthday, saying the travel plans were spoilt, the travel plans were changed. And then went on to further describe the birthday itself, which was held just one day before the beginning of school term. She also added that much of the child's holiday homework was to be completed, and was mentioning how she has really no patience with that since she is not creative ?. She also mentioned that she would now have to carry Siddhid out since he was sleepy and sluggish, at which point, I intercepted and said that this was not advisable for two reasons. The child must learn that he is in a public space and should walk on his own, even if he is sleepy (as long as not fully asleep); and secondly, Shilpi herself needs to care for her own health and back (she frequently complains of backache). Picking up a tall six year old is not easy. But I have noticed that Shilpi does it often. This intense need to be stuck to the mother seems clearly reserved for periods when the father is around. I repeated to Shilpi that the father's conduct can no longer be held exclusively responsible for such an intense reaction, even if it were true; and it is Shilpi and Siddhid's other caregivers who need to work more seriously on the acceptance of the father. Something in the child's current environment is sustaining this clinging and it must be attended to. This sort of clinging is not at all conducive to a happy and comfortable childhood, much of which has already been disrupted for Siddhid. It needs to be understood that a speedy and effective strategy for movement of Siddhid towards independent time with the father is an urgent need, both for the child as well as for the mother. And certainly also for Manan, who has shown sensitivity and understanding, and has accepted how in the past his frustrations had led him to force the child to be with him. He says he understands that this is harmful and has promised that will never happen again.

When the topic of the strain on Shilpi as well as her mother, in caring for Siddhid came up in the conversations, related to homework as well as care, I used the opportunity to insert a suggestion. But first I decided to ask Shilpi Do you trust

Manan with Siddhid; I mean, do you trust him to keep the child safe ?. Without hesitation, Shilpi said Yes ?. Manan reminded her of the time when he (the child) would wake in the night and he (Manan would wake up and pace around with him in his arms. Shilpi agreed to that and nodded her head. Siddhid was still drowsy and clinging to the mother with his head on her lap. This was the moment I was looking for. I suggested to Shilpi that she should understand that here is the child's other parent, so keen to participate in parenting, who would be willing to keep the child on days when she is busy and also assist in things that she may not be wanting to do (homework); why doesn't she accept that offer. I continued saying that being a complete single parent is a huge strain, and her mother (Shilpi's) has placed her life on hold, staying away from her husband (Shilpi's father) to assist Shilpi. Why don't you understand that you have a willing and able person, one whom you say you trust; why don't you accept him as a partner in caring for the child? Why deprive the child of this support and this relationship? You know it cannot happen without your approval, the child is so sensitive to what you say and do. Instantly when the issue of independent visitations came up, there was a clear stonewalling again saying the child is not ready.

This is my assessment. Shilpi continues to treat Siddhid in a baby-like method to keep him within her range, and uses this as a continued excuse to keep Siddhid from having independent time with Manan. I am not implying that this is deliberate; more likely that this is subconscious. I cannot believe that a child who goes to school and spends the day on his own, is good in studies and is able to be with his tutor and spends much of the day away from his mother, is unable to spend independent time with the father. I am suggesting now, a clear and distinct strategy for independent time of the father with Siddhid is a long-term goal. By long term, I mean two months from now. Manan has waited patiently on the sidelines, and I want him to understand, that rather than gifts, it is DOING things together, like homework and sightseeing, that will have the best impact. I am concerned that this should not be forced, and yet the clinging and cringing is persisting. For this, Shilpi will have to be together for a while and then pretend to go to the toilet or something, clearly informing the child that she will take a while, and that Siddhid HAS to be with the father and enjoy himself during that time. This script has to be in place before leaving, otherwise Siddhid will return to his violent

expressions of the past. In order to do this, the practice has to start now, each time they meet in a week, short departures within range are recommended. After this, these should get longer. Shilpi and Manan both have to make time for this. I will be happy to be present for two sessions per month, the other two must be done closer to where the child is.

Shilpi can be given another two months to complete this transition. I believe that Manan has been very patient in waiting on the sidelines to spend time with his child, and Siddhid is too young to know that the father is his partner parent. This has to be explained to him. What the two parents do between each other is their decision as adults, to live together, to separate or divorce; but what they do with the child impacts a life for whom the court and therefore I, am responsible. That decision cannot be left to Shilpi for she is not in a position to take that decision. She is too closely bound by her resentment towards Manan to see his point of view. It is essential that she be given a timeline for this transition, and I am transitioning to independent visits by the father.

My concern during our sessions has always been that the fact that 6 year old Siddhid is attached to his mother, in fact, clinging to his mother, is one reason why Shilpi can argue that he is not ready to be with the father and that this will create stress for the child. In fact this is definitely true. Yet, there is a distinct observation I have made that Shilpi therefore continues to support and even encourage this clinging, arguing with emotion, he is just a child. Although I can fully understand her concern, I am also equally (if not more) concerned about the fact that Siddhid must now begin independently meeting his father. If he is able to stay all day without his mother, interact with and be successful at school and also stay with his grandmother, there is absolutely no reason why he should not spend independent time with the father. I therefore urge the court to allow weekly joint meetings where Manan gets substantial time with the child along with the mother till October 1st. The easing up of the relationship between the two will certainly facilitate a thawing of things with the father. In order for this to happen, Shilpi may be instructed to work systematically and concertedly, along with all other caregivers, to provide a smooth transition to independent time with the father. If they do not allow for this to happen, the child will suffer greatly, both the absence of the father, as well as

more seriously, the continued hostility that will further prevent the child from gaining a mature passage to middle childhood. In fact, it has been found in recent research, that father absence has far more serious consequences for boys than for girls. The parents will do well to read the following-link for their information.

<http://www.theguardian.com/lifeandstyle/2015/may/09/philip-zimbardo-boys-are-a-mess>

Nandita Chaudhary ?

In her final report dated 3rd September, 2015 the Child Psychologist notes:

Report of meeting with Shilpi and Manan Thapar

20th August, 2015

RAK Child Study Centre

Lady Irwin College

At the outset, I would like to thank Mr. Manan Thapar for his donation to the Child Study Centre for an amount of 15,000/-. The receipt for the same may be picked up from the Office of the RAKCSC, Lady Irwin College.

The 20th of August, 2015 meeting was for me, personally, very distressing. Although there seemed to be some courtesy between Shilpi and Manan which has been a transformation since I first met them, the lingering hostility and reluctance to allow Manan to play an active role as a father still remains. On asking about the visitations that the parents have had together in the month of August, both parents reported that they had met in a public place which the child is familiar with. Shilpi reported that the child remains completely reluctant to go to the Mall (where he goes very often anyway) and keeps questioning the mother about why he has to go. Based on my knowledge of children, I find it difficult to imagine an autonomous resistance from the side of the child. At this age children's memories and interpretations of others is completely guided by the primary caregivers; in this case the grandmother (maternal) and mother. It is so unfortunate that in spite of repeated discussions and deliberations on the role of a father in a son's life, even

when the father and mother do not get along, have failed to be accepted by the mother. I continue to see a clear, repeated and persistent reluctance from the side of the mother to allow her son to meet with the father. Her opinion is that the son gets upset. Even though I have tried to help the mother to see that she herself has a key role to play in the acceptance of the father, the small efforts that are made in my presence do not appear to be carried over. Otherwise, I have no doubt that the father would have been accepted. Further, despite the long hours and intense advice put in by me saying the child has a right to the father, and the father has a right to the child, and that the mother (who reports being overworked and physically challenged by the caregiving as well as work schedules which she has regularly mentioned), the idea that the father can share the caregiving has not been accepted by her. I base my evaluation on the following fact.

I was shocked to hear a request from the mother about the cancellation of visits by the father, asking why they were necessary and why does the child need to be exposed to this. I indicated that we have had a long series of discussions in this regard and that they will be able to see the benefits of this interaction (with the father) only in the long term, as will the difficulties of growing up with discord. Since the child is still young, there is still time to mend the bonds even though the parents may not see eye to eye. Many progressive countries do not allow any one parent to even leave the city where the child is growing up, by law, in order that the child can experience both parents. I find this backward step in the case deeply grieving. I reiterated again, that it was the child's right, and it would help her, and that it is also the father's right, who has been repeatedly asking and awaiting a green signal for when the child can be with him independently since whenever the mother is around, the child clings to her.

The mother seems to clearly act as if Siddhid is hers and hers alone, and Manan is an unnecessary person in their lives, or worse still, a negative force. This attitude of the mother was highly inappropriate in my opinion, and I thought that it indicated clearly to me, that at least I was unable to get through to Shilpi regarding the psychological impact of her persistent position, and the deep dangers that lurk in the child's future, the early signs of which have already been manifested in several previous encounters. Children need fathers as much as they do the

mothers, especially when they have moved beyond the early years of infancy. Shilpi has said to me clearly, in no uncertain terms, that when Siddhid was a baby, she trusted Manan with his care without any reservation. He would even put the child to sleep sometimes when Shilpi was tired, they both discussed. I cannot imagine what forces now urge Shilpi to judge Manan as a negative influence. Shilpi holds the father responsible for the insecure attachment that the child continues to show, by clinging to, smooching her repeatedly, holding her face so that she can speak to no one else, and sitting on her, making rather inappropriate pouting faces at her. I completely disagree with this evaluation, since the child has hardly spent a couple of hours with the father in the last five months since I have been supervising their meetings. Most of this time is spent clinging to the mother. The responsibility for these insecurities has to be borne by the present caregivers of the child, namely the grandmother and mother, and not the fleeting encounters with the father.

I would like to urge the Hon. Justice that I wish to withdraw as counsellor for this case on account of the fact that I am unable to make the mother appreciate the best interests of the child in spite of repeated discussions. I think that it is essential for Manan to remain an active father for Siddhid's psychological development, and gain independent time with him on a regular basis at the earliest. I would urge the Hon. Justice to find a solution to the impasse which can only happen now with his intervention.

Nandita Chaudhary, Ph. D.

September 3, 2015 ?

It is a matter of record that Dr. Nandita Choudhary has all along refused to accept any money for her assistance to the Court, which has been duly appreciated by this Court in the order dated 11th May, 2015 which reads as under:

The learned proxy counsel for the petitioner submits, upon instructions, that Dr. Nandita Choudhary, the Child Psychologist has held two sessions with Master Siddhid; she has suggested that she would like four sessions with the family starting from 7th May, 2015 on every Thursday between 4 pm to 6 pm. The

learned counsel further submits that Dr. Nandita Choudhary has declined to accept any payment as a matter of principle since her services in this case are a contribution to society. It is submitted that she has further conveyed through counsel that if the parties so desire, they may make a donation to the Centre which runs a programme for under-privileged children with disability, but such donation may be made after sessions are over so as not to influence the course of the meetings or for any impression being formed that there was any financial element in the proceedings.

The Court would respect Dr. Nandita Choudhary's wish and appreciates her gesture.

At request of learned proxy counsel for the parties, renotify on 15th July, 2015.

In the meanwhile, let the report of the Dr. Nandita Choudhary be brought on record. ?

Mr. Prosenjeet Banerjee, the learned counsel for the respondent, informed the Court that the order of 1st September, 2014 in Contempt Case (C) No.464/2014 observed that Dr. Nandita Chaudhary has opined that the visitation rights of the father with the minor child should be restored and the petitioner as well as her family members should be positive about the visitation rights of the minor child with the father. Taking the report of Dr. Nandita Chaudhary into consideration, the Court was of the view that the visitation rights of the father with the minor child should be restored forthwith. However, considering the child's inhibition towards his father at that period in time, it was considered would be appropriate that the initial meetings should be held in the presence of the psychologist.

The final report dated 3rd September, 2015 of Dr. Nandita Choudhary, is self explanatory and would be of immense authority and value in determining the manner in which the child's custody should be adjudicated. She has observed that I continue to see a clear, repeated and persistent reluctance from the side of the mother to allow her son to meet with the father. Her opinion is that the son gets upset. Even though I have tried to help the mother to see that she herself has a key role to play in the absence of the father, the small efforts that are made in my

presence do not appear to be carried over. Otherwise, I have no doubt that the father would have been accepted. Further, despite the long hours and intense advise put in by me saying the child has a right to the father, and the father has a right to the child, and that the mother (who reports being overworked and physically challenged by the caregiving as well as work schedules which she has regularly mentioned), the idea that the father can share the caregiving has not been accepted by her. ?

Mr. Sumit Chander refers to the report of 13th July, 2015 to state that the learned Child Psychologist had observed: Although I had little opportunity to observe the child in this session since he was asleep, I did get to converse with and observe both parents together must report here that there is a clear thawing of the relationship between the two and the atmosphere related to the child and towards each other was pleasant for the first time since I started seeing the family. ?

The learned counsel for the petitioner, fairly also refers to the portion of the report which says that And certainly also for Manan, who has shown sensitivity and understanding, and has accepted how in the past his frustrations had led him to force the child to be with him. He says he understands that this is harmful and has promised that will never happen again. To a query put by the Child Psychologist to the mother Do you trust Manan with Siddhid; I mean, do you trust him to keep the child safe. Without hesitation, Shilpi, said Yes ?. Manan reminded her of the time when he (the child) would wake in the night and he (Manan would wake up and pace around with him in his arms. Shilpi agreed to that and nodded her head. ?

The report also advises and cautions: The child must learn that he is in a public space and should walk on his own, even if he is sleepy (as long as not fully asleep); and secondly, Shilpi herself needs to care for her own health and back (she frequently complains of backache). Picking up a tall six year old is not easy. But I have noticed that Shilpi does it often. This intense need to be stuck to the mother seems clearly reserved for periods when the father is around. I repeated to Shilpi that the father's conduct can no longer be held exclusively responsible for such an intense reaction, even if were true; and it is Shilpi and Siddhid's other caregivers who need to work more seriously on the acceptance of the father.

Something in the child's current environment is sustaining this clinging and it must be attended to. This sort of clinging is not at all conducive to a happy and comfortable childhood, much of which has already been disrupted for Siddhid. It needs to be understood that a speedy and effective strategy for movement of Siddhid towards independent time with the father is an urgent need, both for the child as well as for the mother. In the final report the Child Psychologist submits that despite long hours and intense advice put in by the Child Psychologist to the effect that child has a right to the father and father has a right to the child and that the mother, the idea that the father can share the caregiving has not been accepted by her.

For the reasons mentioned in the said report the Child Psychologist, finally concludes that: the child was never given sufficient time to develop the requisite affinity with the father or become comfortable with him, hence he kept clinging with the mother and ii) it is essential for the father to remain an active in the child's life for the latter's psychological development, therefore it was essential for the father to gain independent time with the child on a regular basis at the earliest.

The first interim order on which the petition was preferred has long become infructuous but the pendency of this case before this Court for the last nearly twenty-three months have shown that the child's interests emotional growth and psychological development have suffered adversely because he was neither encouraged not facilitated by the mother to meet the father in the manner which a child psychologist would have wanted for him. It is the responsibility of the Court to enhance the interest of the child. The report of the Child Psychologist cannot be doubted. The previous conduct of the parties would show that the child has been kept far away from the father and too close to the mother.

Vide order dated 6th May, 2014, the father was given visitation rights four times in a month on weekends. Subsequently, this order was modified to six meetings of three hours in a month, which meant that there would have been 48 meetings to be held for three hours each for six times in a month. But the child is stated to have met the father for not more than 12-14 times as per the Court's order, including the meetings before the Child Psychologist.

Mr. Chander, the learned counsel for the petitioner, submits on instructions, that the child was made available whenever the father asked. Mr. Prosenjeet Banerjee, the learned counsel for the respondent contends that the meetings never took place. Indeed this had led to the three separate contempt petitions pending against the mother because of her recalcitrant conduct.

The court would note that Child Psychologist has based her opinion and advice on the basis of clinical observation and repeated interactions with the parents and the child over a period of five months. It is her opinion that the child's overindulgent association with the mother is injurious to his growth. This Court is of the view that that any factor or influence which is injurious to the child his well-being and balanced psychological development should be removed. The mother's care for the child is stifling his emotional growth and her over protective concern is inhibiting the development of his individuality and personality. It is therefore necessary to immediately remove this unhealthy influence from the child's world.

The respondent-father lives with his parents who are in their early 60s and are always available at home to take care of the child. Hence, when he comes back from school, he would always have the care of his grandparents. Mr. Prosenjeet Banerjee submits that children of Master Siddhid's age will also be present at the father's house to keep him company.

The Court is of the view that the father should have an important role in the child's growth. It cannot be overlooked that the development of the personality of any child, particularly that of a male child, is strongly influenced by the presence of the child's father. Depriving the child of the same would be injustice to the child.

The Court refers with benefit to the observation in *Paramjit Singh Lamba vs. Smt. Prabjot Kaur*, 111 (2014) DLT 117, wherein it was held that the parents would end up wasting the better part of their lives in Court, and this should soon bring them to their senses. Their folly, however, is no justification for not endeavouring to achieve the best for the unfortunate child, who has no role or say in the spousal spat. This fact is evident in the present case also and the child psychologist has duly warned against its deleterious effect upon the psychology of Master Siddhid.

The Court further opined that As has been observed, it is for the mother to ensure that the daughter has a healthy interaction with her father, lest an opinion be formed that she is deliberately turning the daughter against her father. If such an opinion is formed by the Court, there would be no option available to the Court but to award/transfer the custody to the father in the hope that with the change the child would adopt a more balanced and healthy attitude towards both her parents.  
?

The Court has observed for the last 23 months that the efforts of the mother have failed and there has been no healthy interaction with the father and therefore keeping in view the facts of the case and the views of the Child Psychologist, the interest of the child his interim custody is granted to the respondent-father, Mr. Manan Thapar with effect from 28.11.2015. Mr. Sumit Chander, the learned counsel for the petitioner would seek some time to prepare the child so that he can be weaned away from the custody of the mother.

The mother shall have the right to visit the child as per the visitation rights granted to the father by this Court's order dated 14.1.2015 i.e., six times in a month for a duration three hours duration However, it would always be open to the parties to enhance such meeting time at their mutual convenience or should other exigencies arise. The mother shall prepare the child for spending few days with the father in the first instance and shall hand over the custody to the father in the presence of Ms. Veena Ralli, the learned Senior Mediator on 28.11.2015 at 11.00 am. A copy of this order be sent to Ms. Veena Ralli. The application stands disposed off in the above terms.

Mr. Prosenjeet Banerjee, the learned counsel for the respondent would state, upon instruction, that he would be agreeable to the child spending the weekend, i.e., Friday evening till Sunday night with the mother. He further submits that father shall take care of child's needs.

Should the parties require any further notification of the schedule, they would be free to approach the Family Court concerned.

The amounts which are being paid to the mother shall be continued to be paid without prejudice to the rights of the parties. The holidays shall be divided equally between the parties.

The petition and the application shall stand disposed off in the above terms.

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