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

+ C.R.P. 52/2022 & CM APPL. 18406/2022 (stay)

SHILPA SINGH

..... Petitioner

Through: Ms. Preeti Singh, Mr. Sunklan
Porwal, Mr. Shubam Kaushik, Ms.
Saumya Dwivedi, Ms. Priyanka
Madavaran and Ms. Kumkum
Mandharya, Advocates

versus

VIKAS KHANNA

..... Respondent

Through: Mr. Amish Aggrwala, Mr. Kuldeep
Jauhari, Mr. Karan Ahuja, Mr.
Anubhav Tyagi, Ms. Ekta and Mr.
Sagar Mehlawat, Advocates

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

ORDER

13.04.2022

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This petition is directed against an order dated 02 April 2022 passed by the Family Judge granting visitation rights albeit supervised and in the concerned Court complex. The order is assailed with learned counsel contending that in light of the restraint which stood imposed by the Court dealing with the application made under the Protection of Women from Domestic Violence Act, 2005 [**“PWDV”**] and more particularly the order of 06 August 2021 made therein, the rights of limited visitation as granted by the Family Judge would not only be incongruous and incompatible but also wholly arbitrary and illegal.

Having heard learned counsel for parties this Court finds no ground to sustain the challenge on grounds addressed on the aforesaid lines for the

following reasons.

The Court notes that the order passed under the PWDV was based upon the allegations which were made by the petitioner here against the husband. There was no allegation of cruelty or physical abuse levelled against the husband in relation to the children.

Bearing in mind the allegations that were laid by the petitioner the Court notes that the respondent here stood restrained from communicating with the children and the complainant in any manner whatsoever in light of the order passed in the PWDV proceedings. It was further provided in those proceedings that the respondent would not disturb the custody of the children.

That order in the considered opinion of this Court would not detract from the authority and jurisdiction as conferred on the Family Court to consider the grant of interim visitation rights to the father of the minor child. It is pertinent to note that the provisions of the PWDV do not in the considered opinion of this Court denude the Family Judge of the jurisdiction to make arrangements as embodied in the order impugned. Ultimately the ambit and extent of the two competing statutes must be harmoniously construed so as to avoid a situation of repugnancy and conflict. This very aspect was noticed and underlined by a learned Judge of this Court in **Amit Kumar and another Vs. Charu Makin [2017 SCC OnLine Del 7861]** where the Court held:-

10. It is thus evident that notwithstanding anything contained in any other law as an interim measure in the best interest of the child and to avoid any harm to the interest of the child/children, the Court under Section 21 of the PWDV Act can pass order granting temporary custody of the child/children and/or make necessary arrangements for the visit of the child. However, PWDV Act is not a final remedy for the custody and guardianship

issues of a minor child. Section 7(g) of the Family Courts Act, 1984 vests jurisdiction in a Family Court to decide suits or proceedings in relation to the guardianship of a person or the custody of or access to any minor. Section 7(g) of the Family Courts Act, 1984 provides for the remedy i.e.:

“7. Jurisdiction

(1)

(a)

(g) a suit or proceedings in relation to the guardianship of the person or the custody of, or access to, any minor.”

11. The petitioner having already availed the remedy under the Family Courts Act and having lost in respect of the prayer made in the present petition cannot be permitted to continue with this remedy. Moreover, as stated by the learned counsel for the petitioner, he has already challenged the order dated 26th December, 2016 passed by the learned Additional Principal Judge, Family Court, West District before this Court in an appeal.

12. Similar issue came up for consideration before the High Court of Rajasthan where in the decision reported as 2014 LawSuit (Raj) 545 Payal Agarwal v. Kunal Agarwal it was held:

11. Under section 21 of the Act 2005 independent remedy has not been provided to seek custody of the minor child and jurisdiction has been conferred on the Magistrate to grant temporary custody of such a child to the aggrieved person during the course of hearing of an application for grant of protection order or for any other relief under the provisions of Act whereas under the provisions of the Act of 1984 any person can file an independent suit or proceeding in relation to the guardianship of the person or custody of or access to any minor. Thus, the scope of Act of 1984 is much wider in comparison to Section 21 of the Act of 2005. As the non obstante clause used in Section 21 of the Act of 2005 does not refer to any particular statute or provision or provisions of a particular statute and rather it is general in nature, the Court has to determine the scope of its use very strictly. The law is that when a non obstante clause is used in the aforesaid fashion, the extent of its impact has to be found out on the basis of consideration of the intent and purpose of insertion of such a clause. When a non obstante clause is used in such a blanket fashion the Court has to determine the scope of its use very strictly. Section 8 of the Act of 1984 confers exclusive jurisdiction upon the Family Court in relation to the suits and proceedings of the nature mentioned in explanation to Section 7 of the Act. Although, Section 21 of the Act of 2005 also contains the non-obstante clause, but the same has limited application and despite being subsequent legislation it cannot have overriding effect on

the Act of 1984. When both the enactments have the non obstante clause then in that case the proper perspective would be that one has to see the subject and dominant purpose for which the special enactment was made and in case the dominant purpose is covered by the contingencies, then notwithstanding that the Act might have come at a later point of time still the intention can be ascertained by looking to the objects and reasons. The Act of 1984 was specially meant for establishment of special Courts so that matters referred in explanation to Section 7 of the Act can be dealt by the special Courts established for that purpose whereas the object of enactment of the Act of 2005 was to protect the woman from being victim of the domestic violence and to prevent the occurrence of domestic violence in the society.

The petition consequently fails and stands dismissed along with pending applications.

YASHWANT VARMA, J

APRIL 13, 2022
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