

# Ms. Manju Srivastava vs Shri Sandeep Srivastava & Anr. on 3 April, 2025

**Author: Navin Chawla**

**Bench: Navin Chawla**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 03.04.2025

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MAT.APP.(F.C.) 131/2025

Ms. MANJU SRIVASTAVA

Through: Appearance not given. ....

versus

SHRI SANDEEP SRIVASTAVA & ANR.

....Res

Through: None

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE RENU BHATNAGAR

NAVIN CHAWLA, J. (Oral)

CM APPL. 19752/2025 (Exemption)

1. Allowed, subject to all just exceptions.

MAT.APP.(F.C.) 131/2025 & CM APPL. 19751/2025 (STAY)

2. This appeal has been listed before us on mentioning. It challenges the Order dated 01.04.2025 passed by the learned Family Court, New Delhi District, Patiala House Court in G.P. No. 18/2024, titled as Sandeep Srivastava v. Manju Srivastava, by which the learned Family Court has directed as under:

"This Court is of the opinion that petitioner should take the interim custody of the child for only one overnight in the beginning, hence, he can take the child on 04.04.2025 at 05:00 P.M. and handover the custody back to the respondent at 2:00 PM on 05.04.2025. The handing over the custody on both occasions shall take place at Children Room, Dwarka Court, New Delhi. Petitioner after reaching home along with child shall make a video call to the respondent to intimate safe arrival of the child at his home and for allowing the respondent to see the child for five minutes. In case, child feels uncomfortable at night for any reason and despite his effort child does not settle down with him at night, petitioner would immediately contact the respondent and deliver the child at the residence of the respondent under videography. Since the petitioner will handover the child back on Saturday, the interim visitation which is otherwise scheduled on Saturday, would remain

suspended for 05.04.2025."

3. The learned counsel for the appellant submits that the boy child is only three years old and would require the company of his mother. She further submits that the respondent is already enjoying the visitation rights over the minor child from 03:00 P.M. to 05:00 P.M. every Saturday. She submits that there was no reason to bring about a change in the visitation rights and in any case, allow an overnight stay of the child with the respondent.
4. We are not inclined to accept the submissions made by the learned counsel for the appellant.
5. While deciding the applications for interim visitations and custody, the paramount consideration is the welfare of the child. A child should have love and affection of both parents for his proper and complete physical, mental, social and psychological development. The child of a tender age cannot be deprived of the company of his father as the same is also necessary for his overall development. As per the contentions of the appellant, the respondent is having visitation for two hours on every Saturday. The respondent has been granted overnight visitation rights for developing a bond between him and the child.
6. Admittedly, the child is being sent by the appellant to a day- care from 10:30 Am to 4 PM. Hence, the child is managing himself without his mother for a long time and this fact raises a presumption that the child is not totally dependent on his mother. The respondent is not a stranger being the biological father of the child. The learned counsel for the appellant has not been able to convince us to any genuine difficulty or prejudice that can be caused to the child due to overnight visitation with his own biological father.
7. Moreover, the learned Family Court itself in the Impugned Order is conscious of the fact of the tender age of the child and while granting overnight visitation, has made suitable arrangement for any unforeseen situation. The Impugned Order states that in case the child is uncomfortable at night for any reason, the respondent would immediately contact the appellant and deliver the child at her residence under videography.
8. As is evident from the Impugned Order itself, the learned Trial Court has taken note of the fact that the child's birthday was on 03.04.2025 and the appellant wanted to enjoy the birthday with the child the way she wants. It was for that reason that the visitation was shifted to 04.04.2025.
9. As far as the overnight visitation is concerned, the learned Family Court observed that it is more of a psychological barrier of the appellant than an actual problem of the child that is forcing her to resist the visitation rights.
10. We are in agreement with the findings of the learned Family Court. We, therefore, find no merit in the appeal. The same is dismissed.

NAVIN CHAWLA, J RENU BHATNAGAR, J APRIL 3, 2025/Pr/K/ik Click here to check corrigendum, if any