

Neelam vs Naresh Kumar 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.) 202/2024

NEELAM

.....Appell

Through:

Mr.Amit Kumar, Ms.Aaina
Verma and Mr.Tushar Gund,
Advs. alongwith appellant and
minor girl child in person

versus

NARESH KUMAR

.....Respondent

Through:

Mr.Amit Sisodia, Ms.Vijay
Nandini Sidodia and
Mr.Shubham Tiwari, Advs.
alongwith respondent, minor
boy child and his grandfather
in person

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE RENU BHATNAGAR

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed by the appellant, challenging the Order dated 17.11.2023 passed by the learned Family Court, Central District, Tis Hazari Courts, New Delhi (hereinafter referred to as 'Family Court') in G.P. No. 31/2022, titled Naresh Kumar Aneja v. Neelam, directing that the interim custody of the minor girl child be given to the father, who is the respondent herein, and that the appellant herein may go and visit the girl child on the 2 nd and 4th Saturday of every month. The respondent was also directed to pay the travelling charges of Rs.1,500/- to the appellant for her every visit to meet the child/children.

2. The parties have been blessed with two children; a girl child born on 07.11.2013 and a boy child born on 02.02.2015. They have been living separately from each other since June 2021. Post the separation, the girl child has been in the custody of the appellant, while the boy child has been in the custody of the respondent.

3. The learned Family Court, in the Impugned Order, records that it has interacted with the girl child, who stated that she wanted to go and reside with the respondent; she further stated that she had spoken to the respondent clandestinely over the phone on one occasion. The learned Family Court held that the welfare of the child being of paramount importance, therefore, it would be

advisable that the custody of the girl child be given to the respondent.

4. Today, we have interacted with the girl child as well as with the parties. The girl child is around 11 years of age and is quite mature and understanding and is capable to make an intelligent decision. During the interaction, the girl child firmly stated that she is willing to reside with her mother/appellant and that she told the learned Family Court about going with the respondent as the respondent had, in turn, told her that the appellant would also be accompanying the girl child and that the family would get reunited at Jammu. She further stated that she is presently studying in a school in Delhi and has just passed third standard. She stated that she, along with her mother/appellant, is staying with her maternal grandmother.

5. During the interaction with the parents of the child/parties, the appellant informed us that the child is doing very well in her class and secured good marks. The respondent has informed us that he has a one-room accommodation where he along with his father, brother, and the minor boy child, is residing.

6. Admittedly, since the day of separation, the girl child is staying with the appellant/mother whereas the boy child is staying with the respondent. Though a child requires love and affection of both the parents for emotional, physical and social development, and biological father has a right to meet a child, a mother is better placed than a father to look after all the needs, biological, etc., of a girl child.

7. Keeping in view all the above circumstances, we are of the opinion that the Impugned Order, which was primarily based on the willingness of the minor girl child, can no longer be sustained.

8. With the consent of the parties, however, we direct that the appellant shall allow visitation rights to the respondent, the minor boy child, and also the grandfather of the minor girl child, on every second and fourth Sunday of every month between 10 A.M. to 6 P.M at Delhi. The respondent may pick up the girl child from the house of her maternal grandmother at 10 A.M. and drop the child at the same place by 6 P.M. on the same day. The respondent shall not take the girl child out of Delhi during such visitation.

9. For further visitation rights or for the modification of the above arrangement, if so warranted, the parties may move a fresh application before the learned Family Court, and the learned Family Court shall decide on the same remaining uninfluenced by any observation made by us hereinabove and being not bound down by the interim arrangement that has been arrived at before us by the consent of the parties.

10. The appeal is disposed of in the above terms.

11. Dasti NAVIN CHAWLA, J RENU BHATNAGAR, J APRIL 3, 2025/sg/DG Click here to check corrigendum, if any