

Farooq Alam Baig vs Vania Mirza @ Priya Kumari on 3 April, 2025

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 3rd

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CM(M) 3424/2024, CM APPL. 17452/2025, CM APPL. 17453/20

CM APPL. 17462/2025 & CM APPL. 17463/2025

FAROOQ ALAM BAIG

Through: Petitioner-in-person

versus

VANIA MIRZA @ PRIYA KUMARI

.....Respon

Through: Dr. N. Pradeep Sharma, Mr. Naresh

Kumar, Mr. M.R. Singh, Mr. Vikas

Krishna, Ms. Kiran Sharma, Ms. Ti

and Mr. Virat Agarwal, Advocates

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner has filed a guardianship petition which was registered as GP No. 12/2018.
2. The aforesaid petition was taken up for consideration by the learned Judge, Family Court, on 19.01.2024.
3. Noticing that no one had appeared from the side of petitioner, the same was dismissed-in-default, while observing that petitioner was not interested in pursuing his such petition.
4. Petitioner, thereafter, moved an application seeking restoration and in his such application, he also gave reasons about his previous non-appearances.
5. Such application was moved by him on 01.02.2024.
6. Though the application had been moved without any unnecessary delay, the learned Judge, Family Court permitted restoration only after he was to be acquitted of charges in a criminal case i.e. case related to FIR No. 16/18 PS South Avenue, New Delhi registered for commission of offences under Sections 376/377/366/323/341/342/506/420/467/354B/34 IPC.
7. Petitioner appears in person and his grievance is merely to the effect that since he had filed application without any delay, learned Judge, Family Court should have permitted its restoration, instead of returning findings on merits of the main case.
8. Learned counsel for respondent submits that though the main Guardianship Petition filed by the

petitioner lacks any merit and substance, he would have no objection if the petition is, however, directed to be restored, without prejudice to his rights and contentions.

9. I have gone through the impugned order dated 09.08.2024 and some of the observations recorded therein are need to be extracted. These are as under:-

"8. The facts of the case are very delicately entangled with the outcome of the criminal case being faced by the applicant/petitioner and launched at the instance of the respondent/non-applicant's complaint. Till the time said criminal case is not adjudicated in favour of the applicant/petitioner, prima facie continuation of the present petition appears to be unfruitful and when this fact is taken into consideration, the present application also appears otiose.

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13. Furthermore, till the time applicant/petitioner is not clear of the charges which he is facing before the criminal court, he cannot be considered for the custody or guardianship of the child in question which as per the respondent was begotten under the above circumstances of rape, blackmailing and confinement committed by the petitioner upon the respondent, therefore, this Court is of the opinion that present petition should not be revived till he is cleared of the charges.

14. Of course he shall have liberty to revive/restore the preset petition as and when he is clear of the charges levelled by the State after investigation at the instance of the complaint of the respondent/ non-applicant.

15. Hence, granting liberty to the petitioner to get the present matter restored to its original number and position after he is acquitted of the charges in the criminal case that he is facing in FIR bearing No. 16 / 18 u / S 376/377/366/323/341/342/506/420/467/354B/34 IPC PS South Avenue, New Delhi, present application stands disposed of accordingly."

10. Apparently, there is no material change in the circumstances during the period when the petitioner had absented himself and did not appear before the learned Judge, Family Court. If learned Judge, Family court was of the view that petition was not maintainable, unless and until he was cleared in the aforesaid criminal case, it could have, if permissible under law, passed such order, when the suit was alive. Abovesaid criminal case is of the year 2018 and thus there was no material development between 19.01.2024 and 01.02.2024.

11. Needless to say, scope of appreciation in any such application related to restoration is very restricted and constricted and while disposing of such petition, the Court should, while being liberal, generally, refrain from making observations on the merits of the case, as such. Even if the main

petition lacked any substance, once restored, it can, still, be dismissed on merits, albeit, in accordance with law but to give a finding with respect to the main petition while, merely, considering a restoration application was not warranted from any angle whatsoever.

12. Keeping in mind the overall facts of the case and the gracious concession given by learned counsel for respondent, the impugned order is set aside and the Guardianship Petition stands restored to its original number and position. Learned Judge, Family Court, shall proceed further with the matter, in accordance with law.

13. Present petition, along with all the pending applications, stands disposed of in the aforesaid terms.

(MANOJ JAIN) JUDGE APRIL 3, 2025 /dr/SS