

**(2011) 03 DEL CK 0454**

**Delhi High Court**

**Case No:** C.M. (M) No. 670 of 2010

Shri Bharat Tanwar and Another

APPELLANT

Vs

Shri Ajeet Singh

RESPONDENT

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**Date of Decision:** March 17, 2011

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 8 Rule 1A, 151
- Constitution of India, 1950 - Article 227
- Guardians and Wards Act, 1890 - Section 25, 7
- Penal Code, 1860 (IPC) - Section 306, 34, 406, 498A

**Hon'ble Judges:** S.L. Bhayana, J

**Bench:** Single Bench

**Advocate:** Anjali Chopra, for the Appellant; Vikas Goyal, for the Respondent

**Final Decision:** Allowed

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**Judgement**

S.L. Bhayana, J.

The present petition under Article 227 of the Constitution of India has been filed for setting aside the order dated 06.02.2010, whereby the learned trial Court has dismissed the application moved by the Petitioners under Order VIII Rule 1-A read with Section 151 of CPC (hereinafter referred to as "CPC") and application u/s 151 of the CPC .

2. Briefly stated, the relevant facts of this case are that the Respondent has filed a petition u/s 25 of the Guardian and Wards Act claiming custody of the minor child Master Paras. Whereas, the Petitioners have also filed a petition u/s 7 of the Guardians and Wards Act for being declared as the Guardian of Master Paras. Both these petitions have been consolidated in one petition bearing No. G-24/05 filed. The Respondent is the natural father of Master Paras and Petitioner Nos. 1 and 2 are maternal uncle and aunt of the child. The Respondent was married Anita, sister of Petitioner No. 1 on 03.03.1995 and with this wedlock Master Paras was born on

04.05.2000. It is alleged that Anita had died due to harassment and torture for dowry by the Respondent and his family members. A criminal case was also registered against the Respondent and his family members u/s 306/498-A/406/34 of Indian Penal Code in P.S. Farsh Bazar. Since the death of the mother, the child is in the care and custody of Petitioner Nos. 1 and 2.

3. However, it is stated that due to the lack of knowledge the documents regarding the details of the status of the Petitioners and expenses being incurred upon the minor child could not be furnished before the trial Court. Therefore, the Petitioners had filed an application under Order VIII Rule 1-A read with Section 151 of CPC for production of documents, which has been dismissed by the trial Court vide order dated 06.02.2010.

4. Aggrieved, the Petitioners have filed the present petition.

5. I have heard the arguments advanced by the counsel for the parties and perused the record carefully. The contention of the Petitioners are that they may be permitted to file on record before the trial Court, the additional documents regarding the expenses being incurred by them in respect of the minor child Master Paras and property papers to show that they are financially capable of looking after the minor child. Whereas, learned Counsel for the Respondent has asserted that no sufficient cause has been shown by the Petitioners for not filing those documents at the appropriate stage and for not proving the same during evidence.

6. Learned Counsel for the Respondent has further asserted that the evidence of the Petitioner has been closed on 21.05.2009 but the Petitioners did not place the said documents on record either at the appropriate stage or till the conclusion of their evidence. The other contention of the Petitioner is that a personal interaction with the minor child would enable the Court to ascertain whether the present custody deserves to be disturbed. In response thereto, learned Counsel for the Respondent states that personal interaction has already been carried out by the trial Court on 02.06.2007 and as per the observations made in the order dated 02.04.2007 passed in CM(Main) No. 278/2007, this Court had also carried out chamber interaction.

7. Therefore, on the basis of the above mentioned facts and circumstances, I agree with the view taken by the Trial Court, which is reproduced below:

Even otherwise also, this Court is of the view that none of the parties has any right to move any such application by requesting the Court to have chamber interaction with the child and it is within the discretion of the Court to have chamber interaction with the child if required.

8. I, therefore, hold that there is no need for the trial Court to hold a meeting with the child, as prayed in the petition. Regarding the prayer of setting aside the impugned order, I am of the view that in matter of custody of a minor child the paramount consideration of the court is the "welfare of the minor", the future of the

child is of prime consideration to this Court. The Petitioner did not place the relevant documents on record at the time of examination of their witnesses. These documents are necessary to prove the controversy between the parties.

9. In the interest of justice, the present petition is partly allowed, subject to payment of Rs. 10,000/- as costs to the Respondent before the next date fixed before the trial Court. The Petitioner is directed to file the relevant documents before the trial Court. The prayer regarding holding a meeting by the court with the child in the chamber is rejected.

10. With these observations, the petition stands disposed of.

11. A copy of this order be sent to the trial Court for compliance.