

GAHC010099392019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Cont.Cas(C)/259/2019

KASHYAP KUMAR BHATTACHARYYA
S/O SRI ANIL KUMAR BHATTACHARYYA, EVAS EDEN, HOUSE NO. 13,
MANIK NAGAR, RAJDHANI NURSERY, ZOO ROAD, GUWAHATI-781005,
DIST.- KAMRUP (METRO), ASSAM

VERSUS

GEETANJALI DEBI AND ANR.
D/O DR. JIBESHWAR CHAKRABORTY, C/O DR. JIBESHWAR
CHAKRABORTY, HOUSE NO. 11 SUWANI PATH, SRIMANTAPUR, 2ND BYE
LANE, GUWAHATI-781032, DIST.-KAMRUP (METRO), ASSAM

2:JIBESHWARCHAKRABORTY
HOUSE NO. 11 SUWANI PATH
SRIMANTAPUR
2ND BYE LANE
GUWAHATI-781032
DIST.-KAMRUP (METRO)
ASSAM

For the Petitioner(s) : Mr. A. K. Bhattacharyya, Sr. Advocate
: Ms. R. B. Deb, Advocate

For the Respondent(s) : Mr. B. Gogoi, Advocate
: Mr. A. Chaliha, Advocate

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 22-09-2023

1. The instant contempt proceedings have been initiated for violation of the order dated 16.02.2019 in Misc. (G) Case No.8/2018 passed by the Principal Judge, Family Court No.1, Kamrup at Guwahati.

2. It appears from a perusal of the final order dated 16.02.2019 that the parties have mutually agreed on certain terms and conditions which were mentioned in the joint affidavit filed by the Petitioner and the Respondent No.1 in Misc. (G) Case No.8/2018. The said terms and conditions of the said petition formed a part of the order dated 16.02.2019. This court have also duly taken note of the said affidavit containing the various terms and conditions. The said terms and conditions were in Paragraph No. 2 (a), (b) and (c) and as the same have relevance to the present dispute, the same are reproduced hereinunder:

“2. That the Deponents have mutually agreed for the good and well being of the Ward on the following issues regarding Visitation Rights of the Ward, Miss Raaisha Bhattacharyya, to her Father, the Petitioner, and other issues regarding the Ward’s general upbringing which are the subject matter of Misc(G) No. 8 of 2018:

a) In a calendar year in the months of June and November the Ward has to prepare and appear for her half-yearly and annual examinations respectively, so, the Ward does not have to visit her Father’s residence in these two months, instead, the Father will come to visit the Ward at her place of residence for any two days in a month according to the convenience of the Ward. For the remaining ten months in a calendar year the Ward will visit her Father at his residence for any two days in a month for a minimum of four

hours in a day according to the convenience of the Ward. Care should be taken that the Ward's visits to her Father never falls below the said twice a month frequency.

b) The Ward will also visit her Father at his residence on the day of the annual Shraddha of her paternal grand-mother, Late Eva Bhattacharyya, which generally falls during Kali Puja in the month of November. The Ward will be allowed to attend other social events and functions of importance including funerals and Shraddha ceremonies at the residence of her Father when someone in her immediate paternal family dies in the future and in which the Ward's presence is naturally and socially expected.

c) The Maternal Grandfather, Mr Jibeswar Chakrabarty, may accompany the Ward whenever he can on such visits of the Ward to her Father."

3. From the above quoted terms and conditions in which both the parties of the instant proceedings have duly agreed to, it reveals that in the month of June and November, the daughter of the Petitioner and the Respondent No.1 would have to prepare and appear for her half-yearly and annual examinations and as such, the daughter need not visit her father's (the Petitioner's) residence in those two months. Instead, the Petitioner would come to visit his daughter at her place of residence for any two days in a month according to the convenience of the daughter. It was also agreed that for the remaining 10 months in the calendar year, the daughter would visit her father i.e. the Petitioner at his residence for any two days in a month for a minimum of 4 hours in a day according to the convenience of the daughter. It was also agreed that care should be taken that the daughter's visit to the petitioner never falls below twice a month frequency. It was also agreed to that the daughter would visit the Petitioner at his residence on the day of the annual Shraddhha of her paternal grant-mother which falls during Kali Puja in the month of November.

The daughter further would be allowed to attend other social events and functions of importance including funerals and Shraddha ceremonies at the residence of the Petitioner when someone in her immediate paternal family dies in future and in which the daughter's presence is naturally and socially expected. It was also agreed to that the Respondent No.2 herein may accompany the daughter whenever he can on such visits of the daughter to her father i.e. the Petitioner.

4. It reveals from the contents of the contempt application that pursuant to the said order dated 16.02.2019 passed and the terms and conditions agreed to in the mutual affidavit which was made a part of the order dated 16.02.2019, the Respondent Nos. 1 and 2 did not care to abide by the said terms and conditions and on the other hand, the Respondent Nos. 1 and 2 had made it difficult for the Petitioner to meet his daughter. It is under such circumstances that the instant contempt application was filed for initiating contempt against the Respondent Nos. 1 and 2 for willful disobedience and violation to the order dated 16.02.2019 containing the various terms and conditions as agreed to in the mutual affidavit dated 16.02.2019.

5. The records reveals that an affidavit-in-opposition was filed by the Respondent No.1 on 24.01.2020. In the said affidavit-in-opposition, the allegations made to the effect that the Respondent Nos.1 and 2 had obstructed towards the compliance with the final order dated 16.02.2019 have been denied. It was also stated in the said affidavit-in-opposition that the Petitioner has been meeting his daughter as per the mutually agreed time table at his residence however, after a few visits, the daughter of the Petitioner refused to meet the petitioner and her paternal grand-father at his residence for reasons best known. It was also mentioned that the Respondent No. 1 never

discouraged or obstructed the Petitioner from visiting their daughter at her place of residence. Further to that, it was mentioned that the Respondent No.1 was appointed as a Judicial Officer stationed at Mangaldoi on 28.11.2019 and she was undergoing training at Guwahati since 09.12.2019. It is also seen from the records that an application was filed before the Principal Judge, Family Court, Kamrup (M) at Guwahati by the Respondent No.1 seeking modification/alteration of the order dated 16.02.2019 passed in Misc. (G) Case No.8/2018.

6. From a perusal of the said application, which is a part of the record, it transpires that it was prayed that the order dated 16.02.2019 be modified thereby granting liberty to the daughter to attend the house of the Petitioner herein as and when she desires or alternatively, the Petitioner may visit the house of the Respondent No.1 to see the daughter as and when he likes or desires and also to meet the daughter after the school being over namely St. Mary's High School near Guwahati Club. The said application was registered and numbered as Misc. (J) Case No.133/2019. To the said application so filed by the Respondent No.1 before the learned Principal Judge, Family Court, Kamrup (M) at Guwahati, the Petitioner herein filed an application before the learned Family Court stating inter alia that the said modification petition should not be entertained and be kept in abeyance in view of the pendency of the instant contempt application. It is submitted at the Bar that the said modification application is still pending in view of the pendency of the instant contempt proceedings.

7. It further reveals from the records that the Respondent No.1 in the meantime was transferred from the post of Judicial Magistrate, 1st Class,

Darrang, Mangaldoi to the post of Judicial Magistrate, 1st Class, Dibrugarh vide a notification dated 19.11.2022 and presently the Respondent No.1 is functioning as the Judicial Magistrate, 1st Class, Dibrugarh. This Court further takes note of that during the pendency of the instant proceedings, the parties have been trying to settle the disputes amicably as regards the visitation rights of the Petitioner. It is also relevant to take note of that as the custody of the child is with the Respondent No.1 and the child is presently studying in Class-V in Don Bosco Higher Secondary School at Dibrugarh, certain difficulties had arisen as regards the compliance to the order dated 16.02.2019 taking into consideration the well being as well as the education of the child.

8. On 15.09.2023, when the matter was listed, a proposal was submitted on behalf of the Respondent No.1 that other than the months on which the child has to prepare for her examination i.e. in the month of June and November and taking into account the distance, the Respondent No.1 would be ready to bring the child to Guwahati so that the Petitioner can meet the child at his residence. It was also mentioned by Mr. B. Gogoi, the learned counsel appearing on behalf of the Respondent No.1 that it would not be possible to bring the child twice in a month to Guwahati as it would hamper her studies taking into account the distance and the time which would be required for travel from Dibrugarh to Guwahati and vice-versa. This Court therefore vide the order dated 15.09.2023 directed the Respondents to file an affidavit bringing on record the said proposal. The said affidavit was filed on 21.09.2023. For the purpose of the instant case, paragraph No.2 of the said affidavit being relevant is reproduced hereinunder:

“2. That, in pursuance to Hon'ble Court's order dated 15.09.2023 passed in the instant Contempt Case 259/2019, the deponent begs to

undertake that she will ensure that the ward visits and meets the petitioner once every month till she is posted as a Judicial Magistrate, First Class in Dibrugarh and the ward pursues her studies in Don Bosco Higher Secondary School in Dibrugarh. The deponent will coordinate with the petitioner before any such visit and the same will be honoured after a mutually agreed date and time.

Further, the deponent most humbly begs to state that the expenses of transportation of the ward and the accompanying guardian from Dibrugarh to Guwahati and their return therefrom should be borne/ split equally between the petitioner and the respondent no.1/deponent herein.

Be it mentioned herein that in the event of the transfer of the respondent No.1/deponent herein from Dibrugarh the visiting arrangement will be mutually arranged by the parties herein as per new place of posting of the deponent herein."

9. Mr. A. K. Bhattacharyya, the learned Senior counsel appearing on behalf of the Petitioner submits on instructions that the Petitioner is agreeable to the terms mentioned in paragraph No.2 as quoted hereinabove except that the Petitioner is only going to pay the expenses of transportation of his daughter and not the accompanying guardian from Dibrugarh to Guwahati and their return and such expenses shall be paid immediately upon the invoices being furnished to the Petitioner. The learned Senior counsel further submits that this arrangement as mentioned in Paragraph No.2 is only agreeable so long the Respondent No.1 under whose custody the daughter of the Petitioner resides is posted at Dibrugarh. It was submitted by the learned Senior counsel that the moment the Respondent No.1 is posted at nearby District of Kamrup (M), the said Respondent No.1 would be bound by the said terms as agreed to in the mutual affidavit dated 16.02.2019.

10. Taking into account the above more particularly the additional affidavit filed by the Respondent No.1, submission made by the learned Senior counsel appearing on behalf of the Petitioner and also considering the well being of the daughter as it would be inconvenient for the daughter to travel twice in a month to Guwahati, this Court modifies the Clause 2(a) of the mutual affidavit on the basis of the additional affidavit and the submission of Mr. A. Bhattacharyya, the learned Senior counsel to the extent that till the Respondent No.1 is posted at Dibrugarh, the Respondent No.1 shall ensure that the daughter of the Petitioner and the Respondent No.1 visits and meets the Petitioner once every month at the residence of the Petitioner except during the months of June and November when the daughter has to prepare for her examination. The Respondent No.1 in terms with the said undertaking as mentioned in the additional affidavit shall coordinate with the Petitioner before any such visit and upon coordination, both the Petitioner and the Respondent No.1 shall agree to a mutually agreed date and time. It is made clear that this arrangement shall continue till such time the Respondent No.1 is posted at Dibrugarh or at a distant location or subject to such orders passed by the learned Family Court considering the welfare and well being of the daughter of the Petitioner and the Respondent No.1.

11. This Court further directs that the Petitioner shall bear the transpiration expenses of his daughter from Dibrugarh to Guwahati and vice-versa upon the invoice being furnished by him to the Respondent No.1 or the person accompanying the daughter of the Petitioner and the Respondent No.1. It is further observed that in case the Respondent No.1 is transferred to Guwahati or a nearby location, the visitation rights of the Petitioner shall be in terms with Clause 2(a) of the mutual affidavit dated 16.02.2019 unless and until any other order is passed by the Family Court on the parties approaching the said Court.

12. Taking into account the above and the additional affidavit so filed by the Respondent No.1, this Court is not inclined to further proceed with the instant contempt proceedings and accordingly, the contempt proceedings stands dropped.

13. Before concluding, this Court finds it relevant to mention that the modification to the Final Order dated 16.02.2019 by the instant order more particularly at Paragraph Nos. 10 & 11 shall be a part of the Final Order dated 16.02.2019 and the parties henceforth would be at liberty to take such further steps as deemed fit before the Family Court, Kamrup (M) at Guwahati taking into consideration the well being and welfare of the daughter of the Petitioner and the Respondent No.1 as the same is paramount.

JUDGE

Comparing Assistant