

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 3156 of 2023

Petitioner :- Smt. Sapna Dwivedi

Respondent :- Lieutenant Colonel Upendra Kumar Dwivedi

Counsel for Petitioner :- Vivek Kumar Singh, Ramesh Singh

Counsel for Respondent :- Rahul Dubey

Hon'ble Jayant Banerji, J.

1. Heard Shri Vivek Kumar Singh, learned counsel for the petitioner and Shri Rahul Dubey, learned counsel for the respondent.

2. Affidavits have been exchanged.

3. Pursuant to the previous order of the Court dated 20.9.2023, it seems both parties appeared for mediation in the Allahabad High Court Mediation and Cancellation Centre. The report to the Court from the Mediation Centre is available, which reflects that the parties are not willing for mediation.

4. This petition has been filed seeking to set aside the order dated 24.1.2023 passed in Misc. Case No. 1 of 2021 (Lieutenant Colonel Upendra Kumar Dwivedi Vs. Smt. Sapna Dwivedi) by the Principal Judge, Family Court, Jhansi. Further relief has been sought to dismiss the Misc. Case No. 1 of 2021 itself.

5. A perusal of this petition that is filed by the wife reveals that there are several disputes pending between the parties. There are allegations and counter-allegations. Several allegations have been made in this petition and several allegations have been made in the counter-affidavit. In the midst of this is an 8 year old child, who is a son of the parties.

6. The respondent filed the aforesaid Misc. Case No. 1 of 2021 under the provisions of Section 7 read with Section 25 of the Guardians and Wards Act, 1890, seeking the custody of the child. An application was filed under Section 12 by the respondent under the Act, 1890, seeking interim custody or regular access to his son, who is a minor. The application is on record as an Annexure No. 8 to this petition. Against the aforesaid application, detailed objections were filed by the petitioner. By the impugned order

dated 24.1.2023, the Principal Judge, Family Court, Jhansi, has allowed the application nos. 20C, 22C, 24C, 30C, and 38C filed by the respondent to the extent that the respondent was allowed to speak to his minor son through video call between 6 p.m. to 7 p.m. on four days in a week, that is, on every Monday, Tuesday, Thursday, and Sunday. The petitioner was directed to make available her mobile number through which the respondent could speak to his minor son. Additionally, the respondent was permitted to meet his minor son at a place that was agreed by both parties, on two days in a week, that is, every Wednesday and Friday. It was provided that in case the parties are not agreeable for the respondent to meet his minor son at a particular place, the meeting shall be arranged between 3 p.m. to 5.30 p.m. in the mediation centre of the Family Court, Jhansi. Corresponding directions were also issued.

7. The contention of the learned council for the petitioner is that the direction for meeting the minor child on four days in a week through video call and two days in a week in person would create numerous difficulties for the petitioner. It has been stated that the respondent is an army officer and he is posted in the border areas and therefore, it would be rendered impossible for the minor to physically meet the respondent on the two days of the week specified. It is further contended that a child cannot be forced to speak or be on video conferencing for a period of one hour on the 4 days specified and this would create harassment for the child too.

8. Shri Rahul Dubey, learned counsel for the respondent has strongly opposed the petition. He has stated that false and fabricated cases have been lodged against the respondent and his family members by the petitioner only because the unbecoming conduct of the petitioner was discovered by the respondent. It is stated that the respondent is the father of his minor son and he cannot be deprived from showering his love and affection on the child at least by speaking to his son through video calls as well as from meeting him personally. However, learned counsel for the respondent has fairly conceded that the respondent is not posted in Jhansi but he is posted outside the State of Uttar Pradesh and therefore, it would be quite difficult for him to physically meet on the dates that were prescribed by means of the impugned order. He has suggested that whenever the respondent comes on leave to Jhansi, he may be afforded the opportunity to meet his son.

9. Having considered the facts and circumstances in this case and keeping in mind the paramount interest and welfare of the minor child of the parties, the direction of the Principal Judge regarding

conversation through video call between the respondent and his minor child on the days specified cannot be interfered with. It is but obvious that the respondent would be more than interested to speak to his minor son and the son may always want to speak to his father. The observations made by the Principal Judge, Family Court regarding the meeting of the respondent with his minor son that took place on 29.9.2022 is noted by the court. As far as the physical meeting on two days in a week on every Wednesday and Friday is concerned, in view of the statement by learned counsel for the respondent that the respondent is posted outside the State of Uttar Pradesh and that the respondent would like to meet his son whenever he comes to Jhansi, the order of the Principal Judge is modified to the extent that whenever the respondent comes on leave to Jhansi or is posted at Jhansi, he would be permitted to meet his son two days in a week on every Wednesday and Friday. The time for meeting his son would be for a period of two consecutive hours any time between 3 p.m. to 7 p.m.. The directions of the Principal Judge, Family Court in all other respects are affirmed and shall be strictly adhered to by the parties.

10. This petition is, accordingly, **disposed of**.

Order Date :- 18.10.2023

A. V. Singh

(Jayant Banerji, J.)