

Court No. - 81

Case :- HABEAS CORPUS WRIT PETITION No. - 385 of 2023

Petitioner :- Km. Niharika Dutt Kashyap (Minor)

Respondent :- The State Of U.P. And 3 Others

Counsel for Petitioner :- Avinash Pandey

Counsel for Respondent :- G.A., Hari Om Rai

Hon'ble Mrs. Jyotsna Sharma, J.

1. Heard Sri Avinash Pandey, learned counsel for the petitioner, Sri Hari Om Rai, learned counsel for respondent no.4 and learned A.G.A. for the State and perused the record.

2. This habeas corpus writ petition has been filed praying that respondent no.4, father of the corpus may be directed to handover the custody to her real mother-the petitioner.

3. From the submission of both sides these facts have come to the light:

i. the petitioner, mother of the corpus earlier filed a habeas corpus petition before the High Court of Bombay at Goa, for similar relief praying for direction to respondent no.4, father to give access to her child, through video conference/whatsapp. Copy of the order dated 20.08.2020 passed by the High Court of Bombay at Goa is on record. The High Court of Bombay at Goa permitted the petitioner to withdraw the petition with liberty to raise all the issues raised in the petitioner before an alternative forum.

ii. the petitioner Vandana Kumari Gananayak filed an application under the Hindu Minority and Guardianship Act, 1956 for seeking custody of her daughter in her guardianship, from her father. Admittedly, that application is still pending.

iii. Before filling of this petition under Hindu Minority and Guardianship Act, husband-respondent no.4 had already filed a case under Section 11 Hindu Marriage Act, 1955 as Case No.247 of 2201, Dr.Som Dutt vs. Vandana Kumari Gananayak. That case is also pending.

iv. the petitioner Vandana Kumari Gananayak also filed a matrimonial case before the Additional District & Sessions Judge at Durgapur, West Bengal being Matrimonial Suit No.469 of 2019 for obtaining divorce from husband-respondent no.4, under Section 13 (I) (i-a) of the Hindu Marriage Act, 1955 on 29.08.2019 and that divorce petition is admittedly still pending.

4. From the material on record and submissions of both the sides, it is clear that the matter involves a number of legal issues between them. Admittedly the petitioner initially filed a habeas corpus petition before the High Court of Bombay at Goa and didn't press it later. The petitioner, thereafter filed an application for obtaining custody of her daughter. The same is pending. In my view, an appropriate relief can be granted by the very court which is presently

seized of the matter of guardianship/custody. Moreover, as admittedly the petition for obtaining decree of divorce is pending since 2019, an appropriate order regarding custody of the child may also be passed by the court hearing the case of divorce.

5. For clarity provisions of Section 26 of the Hindu Marriage Act are reproduced as below:-

26. Custody of children. *In any proceeding under this Act, the court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and may, after the decree, upon application by petition for the purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending, and the court may also from time to time revoke, suspend or vary any such orders and provisions previously made:*

[Provided that the application with respect to the maintenance and education of the minor children, pending the proceeding for obtaining such decree, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent.]

6. In my view, in the aforesaid circumstances the forum for alternative relief is very much open and the petitioner has already filed such cases, hence there appears no good ground to interfere in the matter by means of this habeas corpus petition.

7. Hence, the habeas corpus petition is dismissed.

Order Date :- 16.10.2023

Asha