

Court No. - 16

Case :- HABEAS CORPUS WRIT PETITION No. - 238 of 2024

Petitioner :- Virika Singh (Minor) Thru. Her Father Shashank Pal Singh

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Home Lko. And 2 Others

Counsel for Petitioner :- Nandita Bharti

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed,J.

Heard Ms. Nandita Bharti, learned counsel for the petitioner as well as Sri Ashok Kumar Singh, learned A.G.A.-I for the State and perused the record.

This Habeas Corpus Writ Petition has been filed seeking following main reliefs:

"(a) issue a writ, order or direction in the nature of writ of Habeas Corpus to the opposite parties to set the detinue at liberty forthwith and to hand over custody of the petitioner to his father within stipulated time as may be directed by this Hon'ble Court;

(b) issue an appropriate order or direction to the Opposite Party No.3 to allow unconstrained, exclusive physical and telephonic access at will between the petitioner and her father with prior written intimation to the Opposite Party No.3;

(c) issue order or direction to the Opposite Party No.3 to allow and let the petitioner spend 100% of her school's winter vacation and 50% of his school summer vacation with the petitioner's father;."

Learned counsel for the petitioner submits that the marriage of the opposite party no.3 and Shashank Pal Singh (the petitioner) was solemnized on 04.12.2011 and they were living happily. Thereafter, the opposite party no.3 went to her parents home and she is not coming back and even she is not allowing the petitioner to meet the corpus i.e. minor child.

Learned A.G.A.-I for the State submits that the relief sought in this Habeas Corpus Writ Petition could not be granted by this Court as the father of the minor child could not be able to point out any illegality or any infirmity regarding the custody with the mother. Thus, the prayer made in this petition could not be granted by this Court and if the father wants custody of the minor child, then the remedy lies before the appropriate forum

under the Guardians and Wards Act, 1890 or Hindu Minority and Guardianship Act, 1956 for claiming the custody of minor child in accordance with law.

Learned A.G.A.-I further submits that if the wife of the petitioner is not coming from her parents' house to live with him, then he has a remedy to file a suit under Section 9 of the The Hindu Marriage Act, 1955 before the appropriate forum.

After some argument, learned counsel for the petitioner submits that he may be permitted to approach the competent court in accordance with law under the Guardians and Wards Act, 1890 or Hindu Minority and Guardianship Act, 1956 for claiming the custody of minor child and also to file a suit under Section 9 of the Hindu Marriage Act, 1955 before the appropriate forum.

In view of the statement made by learned counsel for the petitioner, he is permitted to approach the appropriate forum in accordance with law for claiming the custody of minor child, if not already filed and also to file a suit under Section 9 of the Hindu Marriage Act, 1955 before the appropriate forum, if not already filed.

Learned counsel for the petitioner confined his prayer that in the interest of justice, the father may be provided visitation right to meet the minor child.

Accordingly, the father of the minor child, namely, Shashank Pal Singh is permitted to meet the child on third Sunday of every month starting from August, 2024 at the residence of opposite party no.3 or the school where the detinue is studying from 10:30 A.M. till 01:30 P.M. with the condition of giving a day's prior information to the respondent No.3- Smt. Shweta Chauhan Singh (mother) regarding his arrival. The Principal of the school is directed to allow the father to meet the minor child, if his name is registered as father of the corpus in their records. It is further provided that father may have conversation with his child by mobile phone, whats app call or video call during 7:30 P.M. to 8.30 P.M. on fourth Wednesday of every month. It is made clear that both the parties will not create any nuisance at the time of meeting.

If the father of the child wants to give any gifts on account of love and affection or do anything for well being of child then mother/ respondent no. 3 or any of her family members will not make any objection. However, father shall keep in mind that such thing will be given, which are for use and safe for the child's health.

With the above observations/directions, this habeas corpus writ petition is finally **disposed of**.

Order Date :- 13.8.2024
Saurabh