

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2982 of 2015

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1. Rishikesh Kumar Son of Ram Bihari Choudhary, resident of Shivpuri North , C.P. Thakur Road, Road NO. -2, Professor Colony Shivpuri , Police Station- Shastrinagar, District- Patna.

.... Petitioner/s

Versus

1. Urvashi Patel D/o Sri Dhaneshwar Kumar Singh Resident of Anishabad, behind post office , in the Campus of Maulana Azad Engineering College, P.S. - Gardanibagh, District- Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rakesh Kumar
: Mr. Akshaylal Pandit
For the Respondent/s : Mr. Suresh Mishra

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

4 16-11-2016 Heard learned counsel for the petitioner and learned counsel for the respondent.

Perused the impugned order dated 19.02.2014, passed by the learned Principal Judge, Family Court, Patna in Matrimonial Case No. 620 of 2013 whereby the learned court below rejected the application filed by the husband/petitioner praying for custody of their daughter.

From perusal of the impugned order it appears that the Ext. (a) series and Ext. (b) series were considered by the court below and also considered the report of the Dr. dated 10.01.2014 and recorded a clear finding that no medicine of the said disease or any other disease was prescribed to her rather the child is well



healthy and the husband was advised vaccination. The court below also found that the ultra sound of the opposite parties was done on 4.4.2013. It appears that the documents produced by the petitioner issued from M.G.M. Hospital and Research Centre Private Limited which have been annexed as Annexure-5 series were also produced before the court below. The Principal Judge, Family Court on consideration of these documents and after hearing the parties recorded clear finding that the Hepatitis B infection is preventive in nature and for such prevention the mother as well as the child have been vaccinated and the petitioner was also advised vaccination as stated above. So the apprehension of the petitioner that his daughter will be infected in due course is nothing but a mere surmises and conjectures.

The Hon'ble Supreme Court in the case Jai Singh & Ors. Vs. Municipal Corporation of Delhi reported in of 2010(9) 385 has held that the High Court under Article 227 of the Constitution of India, has the jurisdiction to ensure that all Subordinate Courts as well as statutory or quasi judicial Tribunals, exercise the powers vested in them, within the bounds of their authority. The High Court is therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well recognized



constraints. It can not be exercised like a “bull in a China shop,” to correct all errors of judgment of a court, or Tribunal, acting within the limits of its jurisdiction. This correctional jurisdictional can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice. The Hon’ble Supreme Court further held that the High Court cannot lightly or liberally act as an appellate court and re-appreciate the evidence. Generally, it can not substitute its own conclusion for the conclusions reached by the courts below or the authority/quasi judicial Tribunals.

In the present case as stated above, both the parties produced their respective documents before the court below and then the court below considered the submission of both the parties and has arrived at a conclusion. This court is not sitting in appeal therefore, for the purpose of supervising the impugned order the High Court cannot substitute its own conclusion on the basis of the same facts and material available on record.

Further, it may be mentioned here that the divorce case has been filed on the ground that the wife is suffering from Hepatitis B. The decree will be granted only after the evidence that may be produced and if the court will record a finding in favour of the husband. The custody of the child has been sought

for during the pendency of the divorce case on the ground that the husband apprehends that the child may also get infection of Hepatitis (B). For the purpose the court below has recorded finding that the child is well and healthy.

In view of the above facts and circumstances of the case, I do not find any reason to interfere with the impugned order in exercise of supervisory jurisdiction as it cannot be held that the order passed by the court below is without jurisdiction or the order has been passed in the manner not permitted by law or that it occasion failure of justice.

Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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