

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 84 of 2015

1. Chairman, Child Welfare Committee District Programme Officer, Office Premises, Building No. 5, Durg, District Durg, Through : Present Chairman Mukesh Soni Son Of Kunj Lal Soni, Aged About 45 Years, District Programme Officer, Office Premises, Building No. 5, Durg, District Durg Chhattisgarh
2. Secretary, Seva Bharati Matri Chhaya, Office At Kududand, District Bilaspur C.G., Branch Matri Chhaya Dhanora Road, Madhuban Nagar, Borsi, Durg, District- Durg, Chhattisgarh Through : The Secretary Abhay Bapte S/o Late Shankar Lal Bapte, Aged About 52 Years, R/o Kududand, Bilaspur District Bilaspur Chhattisgarh

---- Appellants

Versus

1. Barkha Soni D/o Girdhar Lal Soni Aged About 31 Years R/o Surya Nagar, Sikola Bhata, Durg, District- Durg, Chhattisgarh
2. State Of Chhattisgarh, Through : Collector, Durg, District Durg, Chhattisgarh

---- Respondent

For appellants	: Shri Ankul Biswas, Advocate.
For Respondent No.1	: Shri U.N. Awasthi, Sr. Adv. with Shri Anurag Jha, Advocate.
For Respondent No.2	: Shri Vivek Sharma, Govt. Advocate.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Inder Singh Uboweja

Order On Board By Justice Pritinker Diwaker

17/03/2016

With the consent of the parties, the matter is heard finally.

02. Challenge in the present appeal is to the order dated 10.7.2015 passed by II Additional Principal Judge, Family Court, Durg, directing the appellants to give foster care of minor child Tuktuk @ Hina to

respondent No.1 Barkha Soni for three months.

03. Counsel for the parties fairly submit that the stipulated period of three months has already expired and on account of stay order dated 29.7.2015 passed by this Court and pendency of the present appeal, the Court below is not proceeding in the matter. They submit that the appeal can be disposed of with a direction to the Court below to decide the main case itself expeditiously, preferably within two months, in accordance with law.

04. Counsel for the appellants submits that in fact, the Court below has no jurisdiction to entertain and decide the case and therefore, liberty may be given to the appellants to file an appropriate application to this effect before the Court below.

05. Counsel appearing for respondent No.1 submits that the point of jurisdiction has already been decided by the Court below and it has every jurisdiction to decide the case. He submits that in case any such application is filed on behalf of the appellants, liberty may be reserved with respondent No.1 to oppose the same by filing reply.

06. Be that as it may, as life of the order impugned has already come to an end, at this stage we deem it fit to direct the Court below to decide the main case itself strictly in accordance with law considering all the aspects of the case, including the point of jurisdiction if raised. Considering the fact that stay was granted in favour of the appellants and custody of the minor child is with the appellants, it is directed that till decision of the main case, custody of the minor child Tuktuk shall remain with the appellants.

07. Parties to appear before the Court below on 4th April, 2016.

08. Registry to send back the original record to the concerned Court forthwith.

09. It is made clear that nothing in this order shall be construed as an expression of opinion on rights of the parties or the jurisdictional issue, and the same shall be considered and decided by the Court below in accordance with law.

10. With the aforesaid observations, the appeal stands disposed of.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(I.S. Uboweja)

Judge