

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 141 of 2016

1. Smt. Ranjana Pandey W/o Praveen Pandey, aged about 27 years, R/o Near Shri Bihar Telephone Tower, Sarkanda, P.S. Sarkanda, Tahsil & District Bilaspur (Chhattisgarh) (Non-applicant)

---- Petitioner

Versus

1. Praveen Pandey S/o Vidhya Prakash Pandey, aged about 40 years, R/o Village Sakri, P.S. Chakarbhata, Tahsil Takhatpur, District Bilaspur (Chhattisgarh) (Applicant)

---- Respondent

For Petitioner – Smt. Renu Kochar, Advocate.
For Respondent – None, not noticed.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

01/03/2016

1. Heard on admission.
2. Facts of the case in brief are that the applicant/respondent had filed an application before the Family Court Bilaspur, C.G. under Section 6 of the Hindu Minority and Guardianship Act, 1956 (in short 'the Act, 1956'), the same is registered as Civil Suit No.516A/2014 and the same is pending. The applicant/respondent had also filed another application under Section 6 of the Act, 1956 against Kuber Tiwari (father of the present petitioner), the same is also pending as Misc. M.J.C. No. 15/15. In both the cases, common issues were framed whether the best welfare of the minor is with the custody of applicant/respondent. On 17-11-2015 by the order of the Family Court, the Court directed for joint trial in the matter. As per facts of the Civil Suit No.516A/14, the applicant/respondent prayed that custody of minor Vivek be given to him from the petitioner, i.e., the wife. Facts of the MJC No.15/15 is based on the fact that the petitioner/non-applicant held convicted in a sessions case and as she is languishing in jail and the minor presently is with the

custody of father of the wife, i.e., Kuber Tiwari, the applicant/respondent prayed that he be given custody of the minor as father. The petitioner/non-applicant had filed an application under Section 151 of the Code of Civil Procedure, 1908 (in short 'the Code') and prayed that the Court should proceed only with the Civil Suit No.516A/14. The Court below vide order dated 18-12-2015 in Civil Suit No.516A/14 held that as both the cases are directed for joint trial, evidence has to be recorded jointly and as there is no any element of double jeopardy as the evidence has to be recorded for once and the cases shall be disposed of jointly thereby the trial Court rejected the prayer of the petitioner/non-applicant. Against the said order the petitioner preferred the instant WP(227) and taken grounds that the Court below failed to observe that since the application under Section 6 of the Act, 1956 is pending, there is no necessity of filing another case for custody of the child from the petitioner's father; the issue involved in both the cases are same, hence, the second case filed by the respondent was not maintainable and under the inherent power of the Court, the Court ought to have held that the proceeding may run only in Civil Suit No.516A/14; proceedings on the same issue is abuse of process of law, hence, it is prayed that order dated 18-12-2015 be quashed and this Court pass any other consequential order which it deems fit with the facts and circumstances of the case.

3. Heard learned counsel for the petitioner.

4. Learned counsel for the petitioner elaborately supported the grounds taken in the instant WP(227) and prayed that relief as sought may be given by allowing the instant WP(227) and by quashing the order dated 18-12-2015.

5. For the purpose of appreciation regarding the arguments and grounds of the petitioner, the instant WP(227), impugned order and the provisions of law are perused.

6. For consideration of the matter, Section 10 of the Code is relevant which reads as under :-

10. Stay of suit— No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

7. It is settled law that when any provision for any prayer is available in the Code powers under Section 151 of the Code is not attracted. After perusal of the entire order sheet dated 18-12-2015, it goes to show that the concerned civil suit has been filed by the respondent under Section 6 of the Act, 1956 against his wife for the custody of his minor son Vivek, thereafter, as the petitioner/non-applicant convicted in a sessions trial and as she is serving sentence and as the minor is in the custody of father of the petitioner/non-applicant namely Kuber Tiwari, the present respondent/applicant had filed an application for the custody of minor Vivek from her wife's father Kuber Tiwari and the Court below registered that matter as MJC for the prayer of custody of the child vide order dated 17-11-2015 and the Court below ordered for joint trial, clubbed both the cases and directed that evidence be recorded together and further directed that both the cases be disposed of together and jointly. With the above facts, Section 151 of the Code is not attracted as already there is provision under Section 10 of the Code. Also though the issue is the same, i.e., custody of the minor in both the cases but, both the cases are different as they are between the different parties, a very core issue for fulfillment of Section 10 of the Code. With this, in the considered view of the Court, Section 10 of the Code is not applicable.

8. As the Court below ordered that both the cases be tried jointly, evidence recorded jointly and thereafter disposed of jointly. With the above order, I am not convinced that any element of double jeopardy is attracted and as also there is no bar for praying against two different non-applicants for the custody of the minor in the light of changed circumstances, i.e., where a non-applicant against her a regular civil suit is pending under Section 6 of the Act, 1956 and in a developed further circumstances as she is languishing in jail after conviction in a sessions trial and the custody of the minor changed from her to her father Kuber Tiwari. With the above facts, filing of the subsequent MJC is not against any provision of law and the order dated 17-11-2015 passed by the trial Court as appreciated in the order dated 18-12-2015 requires no interference.

9. I do not see any illegality or impropriety in the order dated 18-12-2015. Consequently, the instant WP(227) is having no substance and the same is hereby dismissed at the motion stage itself.

10. The petition dismissed.

11. No order as to cost.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE