

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 315 of 2016**

1. Punyaban Patel S/o Shri Bimaleswar Patel, Aged About 47 Years
Occupation Service, R/o Satkama, Via Kuchinda, Tah & P.S. Kuchinda,
Distt. Sambalpur, (Odisha)

---- Petitioner**Versus**

1. Smt. Jay Kumari Chaudhary (divorced) W/o Punyaban Patel, Aged About
35 Years, Occupation Service, R/o Saraibhaddar Bypass Road, Raigarh,
Tah & Distt. Raigarh (Chhattisgarh) At Present Plat No.3 E, Street 51,
Sector 8, Bhilai Distt. Durg (Chhattisgarh)

---- Respondent

For Petitioner : Shri M.K. Sinha, Advocate

(Hon'ble Shri Justice Chandra Bhushan Bajpai)
Order On Board

06/05/2016

1. Heard on admission.
2. The facts in brief required for adjudication of the instant Writ Petition(227) are that the petitioner and the respondent have married on 19.1.2001. Riyam, a male child is born out of their wedlock. The respondent had filed Civil Suti No. 45-A/2010 for divorce. During the pending the said Civil Suit, the present petitioner/non-applicant filed an application for custody of the child. The said application was dismissed on 8.5.2012. Thereafter, the matter reached before the Division Bench of this Court in First Appeal (M) No. 82/2012. The Division Bench of this Court vide judgment dated 15.3.2013, disposed of the said First Appeal accordingly as the parties jointly filed an application, I.A.No.10/2013. In paragraph 6.(D), the conditions agreed by both the parties are as below:

“6. (D) That, the appellant/ husband can take the child along with him during summer or winter or Dushehara vacation once in a year and will return before end of vacation”.

The applicant had filed an application before the executing Court for execution of the order passed by the Division Bench of this Court under Section 151 of the Code of Civil Procedure, 1908 (for short the CPC). The Court below while hearing the said application in execution case No. F 03/2016 vide order dated 28.4.2016 held that as the respondent had filed documents that Riyam is a student of Class 10th and he has to attend the Coaching Classes during Summer Vacation. The said fact is for the welfare and future of Riyam and as the respondent had agreed that the petitioner may take his son during Winter Vacation, hence, the executing Court rejected the prayer of the petitioner for taking his son during Summer Vacation. Against the said order, the petitioner had preferred the instant Writ Petition wherein grounds are taken that looking to the order passed by the Division Bench of this Court, the petitioner may be permitted to take his son during Summer Vacation. The executing Court is under obligation to comply with the orders passed by this Court. So far as Coaching and related facts are concerned, the petitioner is a Professor and he can very well guide his son during Summer Vacation, hence, the order passed by Court below dated 28.4.2016 may be quashed and the petitioner may be permitted to take his son in the Summer Vacation.

3. Heard learned counsel for the petitioner, who entirely supported the grounds taken in the instant Writ Petition and submitted that looking to the order passed by this Court and the other facts both may be allowed and relief as sought may be granted.

4. In order to appreciate the arguments advanced in this behalf, perused the instant Writ Petition, the order passed by the Court below dated 28.4.2016 and the order passed by the Division Bench of this Court dated 15th March,

2013, the application filed by the petitioner before the executing Court.

5. It is a settled law that primarily welfare of the child has to be looked into. The judgment passed by the Division Bench of this Court vide order dated 15th March, 2013, the Division Bench of this Court has already allowed the application jointly filed by the parties on the conditions and stated in para 6.(D) that, the appellant/husband can take the child along with him during summer or winter or Dushehara vacation once in a year and will return before end of vacation.

6. From perusal of the said condition, on which, both the parties were agreed goes to show that the petitioner cannot claim as a matter of right to take his son in a specific vacation. Parties are agreed for Summer Vacation or Winter Vacation or Dushehara vacation. With this, discretion left with the court to consider the prayer and to decide in which Vacation the petitioner may be permitted to take his son. During hearing of the said application on behalf of the respondent documents regarding participation in Coaching Class are filed. The learned Court below, appreciated the matter and held that as Class 10th is important for educational career and as the respondent has not denied to send her son with the petitioner. On the other hand, she indirectly consented to take the son during Winter Vacation. Upon considering the entire facts, the executing Court dismissed the prayer of the petitioner to take his son during Summer Vacation. In the considered view of this Court, the Court below had acted as per paragraph 6.(D) of the judgment passed by the Division Bench of this Court, appreciated the facts and used lawful discretion to reject the prayer to take the son for the moment.

7. On due consideration, I do not see any illegality or impropriety to interfere with the said order.

8. Consequently, the instant Writ Petition is dismissed at the motion stage itself as not maintainable.

9. No order as to cost.

Sd/

(Chandra Bhushan Bajpai)
Judge