

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 931 of 2019

- Smt. Shweta Tiwari, W/o Tushar Tiwari, Aged About 33 Years, Caste-Bramhin, R/o Gayatri Mandir Road, Bhadrpara, Balco Nagar, Tehsil and District-Korba, Chhattisgarh.

---- Petitioner

Versus

1. Tushar Tiwari, S/o Triyuginarayan Tiwari, Aged About 34 Years, R/o Village-Chandaniyapara, Ward No. 17, Janjgir, Tehsil-Janjgir, District-Janjgir-Champa, Chhattisgarh.
2. Ku. Swetushi, D/o Tushar Tiwari, Caste-Bramhin, Minor Aged 4 Years 09 Month, Guardian Smt. Shweta Tiwari, R/o Village Chandaniyapara, Ward No. 17, Janjgir, Tehsil Janjgir, District-Janjgir Champa Chhattisgarh.
3. Swetush, S/o Tushar Tiwari, Caste-Bramhin, Minor Aged 3 Years 04 Month, Guardian Smt. Shweta Tiwari, R/o Village-Chandaniyapara, Ward No. 17, Janjgir, Tehsil Janjgir, District-Janjgir-Champa Chhattisgarh.

---- Respondents

For petitioner	:	Mr. Rohit Sharma, Advocate.
For respondent	:	None.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order On Board

05/12/2019

1. The petitioner feeling aggrieved by the order dated 13.9.2019 passed by the learned Family Court, Janjgir in CMJC No.32/2018 has preferred this petition challenging the same.
2. It submitted by the counsel for petitioner, that the petitioner had filed an application for grant of custody of her minor children against the respondent before the learned Family Court. Her application for grant of interim custody was rejected by the said Court on 22.4.2019, however, an order was passed granting temporary custody to the petitioner for a period of one month, in the month of May, 2019 and also, further, interim custody with visitation right in the week end of first

and last week of every month, was granted. When the respondent deliberately did not comply with the said order, an application was filed for compliance of the order dated 22.4.2019, which was decided on 18.6.2019 and it was held by the Court, that the petitioner may file an application for execution of the order. The respondent has never complied with the order of interim custody/visitation right of the petitioner and the matter was again taken into consideration on 13.9.2019 and it has been held by learned Family Court that since no decree is passed, the execution proceedings cannot be continued. It is submitted that the petitioner has become helpless, despite there being an order for her visitation right in respect of her minor children, she is unable to enjoy the fruits of that order.

3. Perused copies of the order-sheets filed along with the petition.
4. Section 10 of Family Courts Act, 1984 provides that the provisions of Code of Civil Procedure and of any other law for the time being in force shall apply to the suits and proceedings [other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)] before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil court and shall have all the powers of such court.
5. The order dated 22.4.2019 passed by the Family Court granting visitation rights-cum-temporary custody to the petitioner is still in force and has not been set aside. The observation of the Court in the order dated 13.9.2019 that as there is no decree in favor of petitioner, cannot be upheld and is not sustainable, for the reason that the rules of Civil Procedure Code are not strictly applicable in the proceedings before the Family Court. Any order which has been passed by a Court has to be effective and meaningful, therefore, any Court by refusing to execute the order passed by itself cannot be allowed. An order passed by a Court, which is neither set aside by a Court, nor challenged by the opposite side, has to be obeyed and complied with. The learned Family Court has the power to find option and as Section 10 of the Family Courts Act, 1984 permits the application of the provisions of the Civil Procedure Code, therefore, the provision under Section 151 of CPC can also be exercised to give effect to the order of the Family

Court passed in favor of the petitioner giving her visitation rights and also temporary custody of her child. In this situation, the impugned order dated 13.9.2019 deserves to be interfered with.

6. Accordingly, the petition is disposed off at the motion stage. The impugned order so far it relates to refusal to execute the order dated 22.4.2019, is set aside and the learned Family Court is directed to proceed and see that the order dated 22.4.2019 is complied with in letter and spirit by the respondent No.1 herein.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nisha