

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 418 of 2020

- Manish Singh S/o Late Shri Shambhunath Singh, Aged About 35 Years, Occupation Business, R/o Village Jhauaa, Post Office Dhingwara, Tehsil Digwara, District Chhapra (Bihar), Bihar

---- Petitioner

Versus

- Smt. Vandana Singh W/o Shri Manish Singh, Aged About 32 Years, Occupation Teacher L.B. Class-2, R/o DC Road, Behind Hanuman Mandir, Thana and Tehsil Ambikapur, District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

---- Respondent

For Petitioner – Shri Achyut Tiwari, Advocate.
For Respondent – Shri Sunil Tripathi, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

25-11-2020

1. This petition has been brought seeking indulgence of this Court to quash the order dated 24-01-2020 passed by learned Family Court, Ambikapur, District Surguja, Chhattisgarh and grant of relief to the petitioner.
2. The respondent has filed Civil Suit No.229A/2018 before learned Family Court Ambikapur, District Surguja praying for divorce from the petitioner under Section 13 of the Hindu Marriage Act. A son has born from the wedlock of the petitioner and the respondent who aged two years at the time of filing the suit, who is in custody of the respondent. It was during pendency of this civil suit the petitioner filed an application under Section 151 of the CPC, submitting that the respondent is not allowing him to visit their son, therefore, a direction be issued to the respondent to bring the child in the Court, so that the petitioner would be able to meet him. It is also stated in the application that the petitioner has filed a civil suit in District Court Chhapra, Bihar for custody of the child. The contents of the application were denied by the respondent in her reply submitting that she has no knowledge about filing of any suit in District Court Chhapra, Bihar and the prayer for issuance of direction was also opposed.

Learned Family Court has held in the impugned order that in case the child is directed to be kept present in the Court, that would give rise to a dispute between the parties, hence, the application was dismissed and disposed off.

3. It is submitted by learned counsel for the petitioner that the petitioner being father of the male child is his natural guardian, therefore, he has a right to meet his child. By the impugned order learned Family Court has not given any valid reason for refusing the prayer made in the application. The refusal is based only on assumption that the parties may raise dispute in presence of the child. Therefore, the order passed is not a speaking order.

Relying on the judgment of Hon'ble the Supreme Court in the matter of **Yashita Sahu Vs. State of Rajasthan**, (2020) 3 SCC 67 it is submitted that best interest of the child is to have parental care of both the parents. Therefore, it is in the best interest of the child that he should have allowed to meet his father, i.e., the petitioner. Hence, the impugned order is erroneous and unreasonable and has been passed without considering the welfare of the child.

4. Learned counsel for the respondent opposes the submission and submits that learned Family Court has not committed any error in passing the impugned order. The respondent is not aware of any petition filed by the petitioner for custody of the child in the Court at Chhapra. The petitioner is finding pretext to linger on this proceeding because of which the application has been filed. Hence, the petition be dismissed.

5. Considered on the submissions. The dispute between the petitioner and the respondent is already present in the form of litigation between them. Learned Family Court ought to have considered on the prayer made by the petitioner by keeping in view welfare of the child. The reason assigned that the parties may dispute with each other in presence of the child does not appear to

be a proper reason to be given for disposing off the application. The place of visiting the child may be varied in the order, if it is considered that atmosphere of the Court is not suitable and congenial for the child. It is always necessary that while allowing or rejecting a prayer made in application, Court has to do so by assigning proper reasons. Therefore, I am of this view that learned Family Court has not assigned proper reasons for dismissing the application filed by the petitioner and the order passed is not a speaking order keeping in view the welfare of the child. Therefore, this petition is disposed off at motion stage. The impugned order is set aside and the application filed by the petitioner under Section 151 of the CPC in the aforesaid civil suit is restored and learned Family Court is directed to give opportunity of hearing to the parties and decide the application afresh.

Sd/-

(Rajendra Chandra Singh Samant)
Judge