

09.02.2021

Item No. 08

Ct. No. 04

PG

F.A.T. 19 of 2021
With
I.A. no. CAN 1 of 2021

Soumya Chatterjee
Vs.
Priyanka Das Chatterjee

Mr. Probal Kr. Mukherjee, sr. adv

Mr. Jayanta Narayan Chatterjee

Ms. Paramita Mukhopadhyay

Ms. Jayashree Patra

....for applicant/
appellant

Mr. Partha Pratim Roy

Mr. Dyutiman Banerjee

Mr. Satyam Mukherjee.....for respondent

The application is for stay of operation of impugned order no.4 dated 24th February, 2020 made in the application of respondent/wife invoking section 38 in Special Marriage Act, 1954. Mr. Mukherjee, learned senior advocate appears on behalf of applicant / appellant while Mr. Roy, learned advocate appears on behalf of respondent/wife. By consent, the appeal itself is taken up for hearing on papers in the stay application, upon dispensation of all formalities. Mr. Roy waives service of notice of appeal.

Mr. Mukherjee submits, his client was not able to file objection to the application. Ever since there has been separation, the girl child is with his

client in the environment she is used to. By impugned order, there has been direction for respondent/wife to get custody of the child till further order. His client is aggrieved and therefore the appeal and application for stay of operation of impugned order.

Mr. Roy submits, the child is autistic. There is not a statement in the stay application regarding last development screening, let alone her condition. Appellant is ignorant about the condition of the child. Documents in respect of the child's condition were produced before the Court below.

We have perused the application for custody made by respondent / wife. There is no disclosure in it regarding the condition of the child, as has been submitted on behalf of respondent. Impugned order also does not say anything about condition of the child. As such, we have to reverse impugned order and remand the application for rehearing on the procedure we hereby direct.

By 15th February, 2021 respondent will serve copy of supplementary affidavit disclosing documents in respect of condition of the child, to appellant. Appellant will file objection to the application as well as supplementary affidavit, advance copy of which must be served by 22nd February, 2021. Either party will produce this order before the Court below and

obtain date of hearing post 22nd February, 2021. Learned Court below will deal with the application thereafter as expeditiously as possible. Omission to file supplementary affidavit or objection should not impede the rehearing. In event there is omission by both parties to file their respective affidavits by 22nd February, 2021, impugned order will stand confirmed.

We record here that Mr. Roy wants visitation right exercised by his client in the meantime. Mr. Mukherjee submits, his client will not oppose. Respondent may apply before the Court below for visitation in the meantime.

The application and the appeal are disposed of as above.

(Arindam Sinha, J.)

(Suvra Ghosh, J.)