

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

Present:

The Hon'ble **JUSTICE ARINDAM SINHA**

And

The Hon'ble **JUSTICE SUVRA GHOSH**

F.M.A.T. 131 OF 2020

WITH

I.A. NO. CAN 1 OF 2020 (OLD CAN 1744 OF 2020)

Suman Mondal

Versus

Priyanka Mondal

For the Appellant : Mr. Debasis Sur, Adv.
Mr. Suman Dey, Adv.,

For the Respondent: Mr. J.N. Manna, Adv.

Heard on : 18th January, 2021

Judgment on : 20th January, 2021

SUVRA GHOSH, J. :-

1. The appellant is aggrieved by order dated 28-01-2020 passed by the Learned District Judge Purba Medinipur, in case no. 23 of 2016 under Section 10 of the Guardians and Wards Act, 1890.
2. The fact, in a nutshell, is that the appellant and the respondent are parents of a six year old girl child and we are informed that their marriage was dissolved by a decree of divorce on mutual consent under section

13(B) of the Hindu Marriage Act, 1955 on 16-08-2018. The appellant/father prayed for custody of the minor daughter under section 10 of the Act of 1890 before the Learned Trial Court and was granted permission to visit the child periodically under section 12 of the Act. In course of proceedings under the Act of 1890, the appellant filed an application before the trial court under section 151 of the Code of Civil Procedure praying for allowing him to admit his daughter in a Public English medium institution at his own cost for the purpose of overall development and welfare of the child. The said application was considered and rejected by the Learned Trial Court upon hearing both the parties by the order impugned with an observation that the appellant/father did not disclose the name and particulars of the school where he intended to admit the child and also that nothing was produced by the father to substantiate his contention.

3. The operative part of the order impugned is set out:-

“It is, thus,

Ordered

*that the petition under section 151 of Code of Civil Procedure as filed by the petitioner-father on 27-01-2020 stands hereby rejected on contest with cost of Rs. 5,000/- which is to be deposited by the petitioner-father by **06-02-2020** with the Secretary, District Legal Services Authority, Purba Medinipur.*

It is made clear that in the event such cost is not deposited, the visitation order as passed in favour of the present petitioner-father will remain stayed

sine die.....”

4. The appellant who is aggrieved by the said order has submitted that the child is deprived of proper care and education in the custody of the respondent and ought to be admitted in a good school under care and supervision of the appellant during her tender years to ensure optimum welfare and development of the child.
5. We notice that the contention of the appellant in the application under section 151 of the Code of Civil Procedure was that he intended to admit his daughter to Apex Academy to pursue her academic career. It has been rightly observed by the Learned Trial Court in the order impugned that no particular of the said school was disclosed by the appellant/ father who also produced no evidence in support of his contention that the child was deprived of proper education in the custody of her mother. We find no perversity in the said observation of the Learned Court in rejecting the application.
6. However, the default clause stating that in the event the cost imposed upon the appellant to the tune of Rs. 5,000/- was not deposited, the visitation order granted to him would remain stayed sine die, cannot be sustained for the simple reason that the application in question was filed with regard to proposed admission of the child to an English medium school by the appellant at his own expense. The application has nothing to do with the right of visitation granted by the Court in favour of the appellant by an earlier order. The trial court, in disposing of the application under section 151 of the Code had no authority to travel beyond the relief sought to be prayed in the petition itself as allowing the said prayer or otherwise had no nexus whatsoever with the prayer for

visitation allowed by a separate order earlier. Such portion of the order impugned requires to be deleted/set aside. The order granting visitation right remaining unchallenged, the Court can under no circumstances suo motu turn around and modify/cancel the said order in course of disposal of a prayer completely distinguishable from the earlier one.

7. Order dated 28-01-2020 passed by the Learned District Judge, Purba Medinipur, in case no. 23 of 2016 be modified to the extent that the portion of the order “It is made clear that in the event such cost is not deposited the visitation order as passed in favour of the present petitioner-father will remain stayed sine die.” be set aside.
8. The remaining portion of the order is confirmed.
9. The appellant is directed to deposit the cost of Rs. 5,000/- as directed by the order impugned within two weeks from this date failing which legal consequences will follow.
10. F.M.A.T. 131 of 2020 is disposed of accordingly.
11. I.A. No. CAN 1 of 2020 (Old CAN 1744 of 2020) is also disposed of.
12. There will be no order as to costs.
13. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Arindam Sinha, J.)

(Suvra Ghosh, J.)