

02
23.07.2021
TN

CO No.276 of 2021

Rezina Khatun
Vs.
Raibul Karim

(Via video conference)

Mr. Uday Sankar Chattopadhyay

.... for the petitioner

Mr. Souvik Maji,
Mr. Uttiya Roy

.... for the opposite party

The petitioner challenges an order granting leave to the opposite party-father to hold video conferencing calls with the minor daughter of the parties.

Learned counsel for the petitioner-mother contends that a suit for restitution of conjugal rights is not maintainable under any codified Mohammedan Law. As such, in such a non-maintainable suit, no interim order could be passed.

Secondly, the present case, regarding seeking video conferencing rights, pertains to the guardianship and custody of the child and could, at

best be decided under the Guardians and Wards Act, 1890 (hereinafter referred to as “the 1890 Act”).

However, under Section 4 of the 1890 Act, it is contended, the power to take up such applications is conferred on the District Judge. Hence, the Civil Judge (Junior Division), in any event, was not empowered to pass any order regarding visitation, custody or guardianship of the daughter of the parties even under the 1890 Act.

Thus, learned counsel for the petitioner submits that the impugned order was passed without jurisdiction and is bad in law.

Learned counsel appearing for the opposite party-father submits that the right to seek restitution of conjugal rights, particularly keeping in view that marriage under Mohammedan Law is in the nature of a contract, is available in Mohammedan Law. Learned counsel contends that several High Courts have consistently held that restitution of conjugal rights can be sought by Mohammedans as well.

It is next contended that the order impugned was an innocuous one and, as such, would not affect any right of the petitioner to justify interference in the present revisional application.

Upon hearing learned counsel for the parties, it is evident that the Civil Judge (Junior Division) did

not have the power under the 1890 Act to pass any order regarding visitation/video conferencing or allied orders in respect of the minor child.

However, since the said Act does not apply in the present case, it has to be seen whether the trial court had jurisdiction at all to grant an order of visitation of child through video conferencing.

The decree sought in the suit is for restitution of conjugal rights in favour of the plaintiff against the defendant.

In such a suit, orders regarding visitation of child and ancillary matters are in aid of the final relief claimed in the suit.

The argument, that the relief is not claimed in the suit, advanced by the petitioner, does not hold water since such a ratio would invalidate the premise of the provisions of various Acts governing other communities granting visitation rights in connection with matrimonial suits.

Moreover, the maintainability of the suit is arguable before the Civil Judge (Junior Division), but not *ex facie* to the extent that the trial court is robbed of the jurisdiction to grant such an order even under its inherent powers, as codified in Section 151 of the Code of Civil Procedure.

Hence, the trial court had sufficient jurisdiction to pass the order impugned herein.

Accordingly, CO No.276 of 2021 is dismissed on contest, without any order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)