

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2656 of 2021

- Smt. Smita Akhilesh, W/o Saurabh Sharma Aged About 45 Years R/o Rawatpura Colony, Phase 1, Near Vidyut Sub Station, Raipur (C G) Civil And Revenue District Raipur.,
----- **Petitioner**

Versus

1. Saurabh Sharma, S/o Late Shri J D Sharma, Aged About 46 Years
2. Minor Kumar Aadet Sharma, S/o Saurabh Sharma, Aged About 13 Years Through Its Natural Guardian Saurabh Sharma, S/o Late Shri J D Sharma, Aged 46 Years,
3. Minor Kumari Aagha Sharma, D/o Saurabh Sharma, Aged About 11 Years Through Its Natural Guardian Saurabh Sharma, S/o Late Shri J D Sharma, Aged 46 Years,
All are R/o Murlidhar Mandir, Aaminpara, Purani Basti, Raipur Chhattisgarh.
4. Collector Raipur Chhattisgarh., District : Raipur, Chhattisgarh

----- **Respondents**

For Petitioner	:	Mr. Manay Nath Thakur, Advocate
For State	:	Mr. Ashish Tiwari, Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

02.07.2021

1. Heard
2. The instant writ petition has been filed by the mother of minor children - respondents No. 2 & 3. The respondent No. 2 is a minor son aged about 13 years and the respondent No. 3 is a minor daughter aged about 11 years. The husband of the petitioner has been arrayed as the respondent No. 1. it is contended that the petitioner and the respondent No. 1, who are husband and wife, are litigating before the Family Court Raipur. The litigation is about the custody of the children and an application under Section 8 of the Guardians and Wards Act, 1890 (hereinafter referred as 'the Act of 1890') is pending before the Family Court Raipur.
3. Learned counsel for the petitioner submits that because of the lock-down for last one and a half years, no regular proceedings are being conducted before the Family Court Raipur, and recently as has been known to the petitioner, the daughter is ailing. Therefore, under these circumstances, the petitioner has

approached this Court to exercise the extraordinary jurisdiction so as to allow the visiting rights and meet the respondents No. 2 & 3 - son and daughter periodically till the application under the Act of 1890 is decided. Further allegations were made that few criminal cases are pending against the husband. He further submits that the petition before the Act of 1890 may be decided as early as possible and the direction may be passed accordingly.

4. As appears, the petitioner who is a mother, is fighting for custody of her children i.e. respondents No. 2 & 3 from her husband- respondent No. 1. The judicial notice of the facts can be taken that at present, because of the pandemic lock-down, the normal working of the Court has been slowed down which would naturally have an effect on hearing of the cases by trial Courts. The submission of the petitioner is that the daughter is ailing, as such, she is required to be looked after and visiting right be given to her cannot be ordered to take backseat because of the fact the paralyse of the normal functioning of the Court. The application under Section 8 of the Act of 1890 is already pending before the Family Court Raipur which may be adjudicated in the passage of time.
5. Since the limited functioning of the Court has its own peril to the right of the litigants, the particular petition before this Court by the mother of the child with a submission that she may be given the visiting rights and also allow the children to get treated cannot be shelved. The welfare of the child is always a paramount feature and if the mother is given the right to meet, it would not anyway hamper the interest of the child irrespective of the fact that the father may not want it. In order to give the right of visit or to have the company of the child, no detailed enquiry would be necessary. Consequently, this Court, in the peculiar scenario and the background that the normal functioning of the Court are slow, can direct the visiting right to the mother which may include to take care of the ailing child. Therefore, it is ordered that the mother, the petitioner herein, shall be allowed to have the company of both the minor children on each Sunday of the month. And as suggested, the mother will pick up the child in between 10am to 11am thereafter

shall keep them in custody upto 7pm to 9pm and return them in between 7pm to 9pm to the husband. If need be, the assistance and support also be provided by the State machinery to implement the order of this Court. It is further expected that the Family Court Raipur shall adjudicate the application filed under Section 8 of the Act of 1890 within a reasonable time.

6. With the aforesaid observation/ direction, the writ petition stands disposed off.

Sd/-

(Goutam Bhaduri)

JUDGE