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30-03-2022

FMA 352 of 2022
CAN 1 of 2022

Ct. 8

Isra Bano
Versus
Sahani Begum

Mr. Siddhartha Banerjee, Adv.
Mr. Dyutiman Banerjee, Adv.
Mr. Aniruddha Bhattacharyya, Adv.
...for the appellant

The custody over two minor daughters and one minor son was the subject matter of an application under Sections 7 and 8 of the Guardians and Wards Act, 1890. The applicant is the grandmother, who approached the learned Trial Court for appointing her as guardian and custodian of the minor children along with other prayers.

The learned Trial Judge, amongst others, had taken into consideration the order passed by a learned Single Judge in a criminal revision, being CRR 2530 of 2021, in which the learned Single Judge appointed Mr. Kallol Mondal, an Advocate and a certified Mediator to submit a report on the on the following points:

- i) *the children must be produced by the petitioner no.1 before the learned Mediator.*
- ii) *Whether the children have been handed over to the mother in course of the meeting.*
- iii) *If they are not handed over, the reasons of not being handed over.*
- iv) *Mr. Mondal would be assisted by Mrs. Aparna Banerjee, learned advocate who would be present at the time and place fixed by Mr. Mondal.*

The learned Trial Judge was of the view that, in view of the aforesaid order, the appellant is required to be restrained from taking forceful custody of the her three children without due process of law till 4th February, 2022. The interim order was extended till 7th March, 2022.

Mr. Siddhartha Banerjee, learned Counsel appearing on behalf of the appellant submits that the interim order was further extended till 19th April, 2022 and the matter is made returnable on 12th April, 2022. Mr. Banerjee, in all fairness, has referred to the subsequent order passed by the learned Single Judge in the criminal revision dated 7th February, 2022, in which, upon consideration of the report filed by Mr. Kallol Mondal, the following direction was passed:

“On perusal of the order passed by the learned District Judge, I am of the opinion that there would be no deviation from the order, if this Court directs the opposite party viz., Isra Bano to visit her three children between 5 p.m. to 7 p.m. on Wednesdays and Saturdays in each and every week at 67A, Diamond Harbour Road, Khidirpore, Ekbalpur-police station, Kolkata-700023.

At the time of such visitation, Mr. Aniruddha Bhattacharyya, learned advocate for the opposite party would be present along with the opposite party and Ms. Aparna Basu Chowdhury, learned advocate for the petitioners would also be present at the address mentioned above.

Both the learned advocates, so present, would submit their reports which would be on each and every day's findings after a period of two months when the matter would appear in the list.”

The learned Trial Judge, in our view, could not have disregarded the order of 16th December, 2021 as it touches upon and concerning the custody of the three minor children. The order dated 16th December, 2021 and the order dated 7th February, 2022 have been accepted by the parties.

In view of the aforesaid, we do not find any reason to interfere with the order passed by the learned Trial Judge.

Since the larger issue of guardianship and custody of three children are pending before the learned Trial Judge, we request the learned Trial Judge to dispose of the pending application on merits as expeditiously as possible without granting any unnecessary adjournment to either of the parties unless it is unavoidable.

Mr. Banerjee further submits that the appellant is feeling uncomfortable in her in-law's place during visitation.

We do not find that till date, the appellant has raised any such issue or filed any application for modification of the order dated 7th February, 2022.

The appeal being FMA 352 of 2022 and the application being CAN 1 of 2022 are, accordingly disposed of. However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)