

10.08.2022
Item No.1
Ct. No.7
CHC
(disposed of)

C.O.1069 of 2022

Sri Surajit Sengupta
Vs.
Smt. Suparna Sengupta

Mr. Swarup Banerjee,
Mr. Arindom Chatterjee
...for the petitioner

Mr. Anujit Mookherji
...for the opposite party

Affidavit-of-service furnished by the petitioner be taken on record.

The subject-matter of challenge in this revisional application is against the order dated 27th January, 2022, passed by learned District Judge, Hooghly, at Chinsurah, in Act VIII Case No.34 of 2021, declining to ensure visitation right of petitioner/father against his son, even as an interim measure, pending decision of the Act VIII Case.

Mr. Banerjee, learned advocate appearing for the petitioner/husband submits that petitioner is a cancer patient, and the wishes of the petitioner/father as regards visitation right for his son could not be appropriately appreciated by the court below in context with the averments disclosed in the pleadings of Act VIII case, while proposing for interim visitation right, and further the court below has simply has given

precedence to the wish expressed by the child, without addressing the other facts disclosed in the application.

It is also submitted by Mr. Banerjee that when the son was produced before the court in order to ascertain his wish, he was produced from the custody of his mother, and the possibility of being tutored in such case cannot be ignored. The court below, while declining to ensure visitation right of the father/petitioner, has also not gone into that aspect.

As per submission disclosed by learned advocate for the petitioner, the son has now been put up in a residential school of Ramkrishna Mission at Asansol, where he is pursuing study in Class VI, as a permanent boarder of that Mission. Consent of the father even was not obtained, while putting up the son at Ramkrishna Mission, Asansol, learned advocate for the petitioner argues.

Per contra, Mr. Anujit Mookherji, learned advocate appearing for the opposite party/wife submits that when the court below has already ascertained the wish of the son/child regarding the proposed visitation right of his father, there is no further scope to consider the visitation right favourable to the purpose of the petitioner.

Denying the submission of the learned advocate for the petitioner, Mr. Mookherji for the opposite party submits that psychological capability of the son to

meet his father physically would be at a stake, in the event of the petitioner/father being allowed to have visitation right for his son, at least for interregnum period. More so, the son having now been put up in hostel at Ramkrishna Mission, Asansol, his study would be seriously disturbed, Mr. Mookherji replies.

Having considered the submission of both sides, it appears that for the petitioner/father, who is having cancer for sometime past to the knowledge of opposite party the court below by the order impugned has declined to ensure visitation right of petitioner/father giving highest importance to the wish expressed by the child, what was ascertained from the child during a question answer session, held by the court below, prior to making decision of interim visitation right of the petitioner/father. The opposite party has not denied that the petitioner/father is having cancer for sometime past. Undenyingly, the son is now pursuing study staying in hostel at Ramkrishna Mission at Asansol. The son is a student of Class VI. When the prayer for visitation right was denied, admittedly the son was produced before court below from the maternal uncle's home, where son was then living with his mother and grand parents and maternal uncle.

Welfare of the child is definitely of paramount consideration in a case of this nature. But to ascertain the same, the facts presented and pressed

simultaneously have to be considered by the court below. There is nothing revealed in the order impugned that the facts presented and pressed in the pleadings of the Act VIII case have been appropriately considered by the court below, and after consideration of same, the prayer for interim visitation right was denied, even for temporary period of time. Though, the son pursuing study in Class VI expressed his desire declining to meet with his father, in answer to question being put by the court below, but the question of alleged tutoring of such son cannot be totally eliminated particularly, when the son was produced from maternal uncle's home. Ascertainment of independent wish of son, against whom visitation right of father has been proposed, while endeavouring to ensure welfare of child, is thus very significant.

When the petitioner is suffering from cancer, though he is attending his office, but his wish to have visitation right, pending decision of Act VIII Case, should be considered afresh in context with the facts presented and pressed in the pleadings. More so, while ascertaining independent wish of the child in an effort to ensure welfare of the child, if the son is produced once again in the court below, being accompanied by responsible teacher of such mission, at the expenses to be borne by the petitioner, on a date to be suitably fixed by the court below, that will facilitate the court

below to take appropriate decision in connection with a prayer for visitation right. While hearing afresh of visitation right, the facts presented by the petitioner, as disclosed in the pleadings, relatable to the prayer for visitation right may also be considered. The objections, if there be any, raised by the opposite party/mother will also be taken into account and the court below would resolve the same in accordance with the law giving independent reasons therefor.

For the reasons as mentioned hereinabove, the impugned order dated 27th January, 2022 by learned District Judge, Hooghly, at Chinsurah in Act VIII Case No.34 of 2021, is set aside with a direction upon the court below to fix a suitable date subject to his convenience, for hearing afresh of prayer for interim visitation right of petitioner/father, preferably within a period of three (03) weeks from the date of communication of this order.

Petitioner is directed to deposit all necessary and incidental expenses for to and fro journey of his son along with a teacher of Ramkrishna Mission, Asansol for the purpose by depositing Rs.7,000/- (Rupees Seven Thousand) within a week from date of communication of this order to the court below.

The amount so deposited in the court below by the petitioner may be spent to defray the to and fro expenses of the child along with his escort/teacher.

This would not, however, prevent the mother/opposite party to remain present on the date so scheduled before the court below at the time of production of the child. After the purpose, as disclosed hereinabove, is over, the son so produced from the hostel, may be returned either to the hostel, from where he is produced, or depending upon the availability of holidays of such Mission, he may be permitted to stay in his maternal uncle's house during the intervening holidays, if any, depending upon the circumstances.

Parties are directed make communication of this order to the court below.

With this observation/direction, the revisional application stands disposed of.

Send copy of this order to the Principal/Head of the Institution of Ramkrishna Mission, Asansol, forthwith by learned Registrar (Administration) L. & O.M., of this Court asking him to cooperate arranging a suitable teacher of his School to accompany the son pursuing study in his institution, on the date to be scheduled by the court below.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)

