

16.06.2022

Court No.32
rpan/50

WPA (H) 34 of 2022
Pradip Dey
- Versus -
The State of West Bengal & Others

Mr. Somnath Mukherjee
... for the Petitioner.
Mr. Debabrata Chatterjee
Mr. Simanta Kabir
... for the State.

Mr. Mukherjee, learned advocate appearing for the petitioner submits that the petitioner married the respondent no.9 on 20th February, 2003 and from such matrimonial relationship a male child was born on 12th April, 2007. The said respondent no.9 left her matrimonial house along with the child on 23rd September, 2009. Subsequent thereto, the petitioner filed an application for restitution of conjugal rights and such application was disposed of on 26th February, 2015. The respondent no.9, however, did not comply with the said order.

Mr. Mukherjee further submits that though the petitioner's matrimonial relationship with the respondent no.9 is still subsisting, the said respondent is now residing with another person, abandoning the minor child. The said respondent no.9 also filed a divorce suit, being Mat Suit no.87 of 2019 before the learned Additional District Judge, 5th Court, Barasat, North 24-Parganas. The said suit was, however, dismissed by an order dated 8th December, 2021. In view thereof and as

welfare of the child is of paramount importance, the petitioner should be handed over the custody of the child.

Mr. Kabir, learned advocate appearing for the State submits that on the basis of a complaint lodged by the petitioner on 10th April, 2022 an enquiry was conducted. In course of such enquiry, it was found that the minor child is residing with his maternal grand parents at Nabapally Nowbhangra, P.S. – Bidhannagar (South), Kolkata – 700105. The child is residing with his maternal grand parents for more than 12 years and is studying at class – IX at Sukanta Nagar Vidyaniketan. The Child Welfare Officer also visited the child's maternal grand parents' house. The child was examined by the said officer and he submitted that he was residing with his maternal grand parents and is not facing any difficulty. Let the documents, as produced, be kept on record.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

A writ in the nature of *habeas corpus* is a prerogative writ by virtue of which the causes and validity of detention of a person are investigated by a summary procedure. It appears that the respondent no.9 left her matrimonial house along with her child way back in the year 2009. No complaint was lodged by the petitioner at the said juncture. There is a matrimonial dispute between the parties. The petitioner has, in fact, sought

for custody of the child. In child custody matters, the ordinary remedy lies under the Hindu Minority and Guardianship Act or the Guardians and Wards Act, as the case may be. Such issue of custody involves disputed questions of fact and requires a detailed enquiry. It is not a case that the child is missing. He is residing in his maternal grand parents' house at Nabapally Nowbhangra, P.S. – Bidhannagar (South), Kolkata – 700105.

We are afraid that the exercise of the power of writ in the nature of *habeas corpus* would perhaps not be feasible in the fact situation of the instant case and as such, no interference is called for in the present writ petition.

Nothing in this order shall, however, prevent the petitioner from initiating appropriate proceedings before any other court or in any forum seeking relief, in accordance with law.

With the above observations the *habeas corpus* petition, being WPA (H) 34 of 2022 is disposed of.

There shall, however, 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.

(Raja Basu Chowdhury, J.) (Tapabrata Chakraborty, J.)