

01.08.2022
Item No.25
Ct. No.7
CHC
(disposed of)

C.O.1611 of 2022

Dinmay Rawat
Vs.
Poonam Rawat

Mr. Debanik Banerjee,
Ms. Sutopa Dutta,
Mr. Anirban Roy Chowdhury,
Mr. Steven S. Biswas
...for the petitioner

Mr. Sundar Gopal Bhattacharyya
...for the opposite party

The subject-matter of challenge in this application under Article 227 of the Constitution of India is against an order dated 18th May, 2022, passed by learned Additional District Judge, 10th Court, at Alipore, South 24 Parganas, in Miscellaneous Case No.324 of 2021, arising out of Mat. Suit No.1162 of 2021, declining to grant interim visitation right of the petitioner/father.

Learned advocate appearing for the petitioner/husband submits that the interim visitation right has been denied by the court below thereby conditioning the petitioner/father to clear all dues pertaining to the deposit of school fees of the children, born out of the wedlock of the petitioner and the opposite party.

Learned advocate appearing for the petitioner further contends that the only consideration before the court below is to ensure the well being of the children.

The company of the father may be given in the form of extending the visitation right, which would contribute much to the welfare of children, learned advocate for the petitioner argues.

It is, thus contended by the petitioner/husband that visitation right of the petitioner/father is an independent one, which may not be preconditioned, and/or qualified by any way, whatsoever.

Per contra, Mr. Sundar Gopal Bhattacharyya, learned advocate appearing for the opposite party/wife submits that there has been huge due recoverable from the petitioner/husband, and that dues are relatable to nonpayment of the school fees.

It is, further contended by the learned advocate for the opposite party/wife that the payment of the school fee by father is an obligation of father, and the opposite party/mother being unable to deposit school fees, it is for the petitioner/father to liquidate the school fees of the children before claiming visitation right.

According to learned advocate appearing for the opposite party, there is nothing left in the impugned order to interfere with the same.

Having considered the submission of both sides, it appears that interim visitation right of the father/petitioner has been rejected by the court below for nonpayment of the school fees of children, in respect of whom visitation right has been proposed.

From the impugned order, it appears that the petitioner/father has expressed his inability or rather unwillingness to pay and deposit the school fees for the children, unless the children are with him.

The visitation right of the petitioner/father is an independent one, which neither can be qualified, nor conditioned by anything, the grant of which being dependant on the question i.e. if visitation right extended, will ensure welfare of child or not.

Some documents are produced by either of the parties to this case in respect of their claim and counter claim, as regards pending school fees. There is nothing revealed in the impugned order regarding outstanding amount of the school fees, still remaining unpaid by petitioner/father, which is required to be deposited by the petitioner/father in discharge of his obligation towards his children. The documents, thus filed by either of the parties to this case may be considered by the court below, while revisiting the prayer for visitation right of the petitioner/father.

The impugned order, is, thus set aside with a direction upon the court below to hear out the same afresh within eight (08) weeks from the date of communication of this order, providing scope to either of the parties to produce their respective documents, if not filed, so that the exact amount lying due towards the school fees for the children may be ascertained,

and dispose of prayer for interim visitation right of petitioner in accordance with the law.

Since, learned advocate appearing for the petitioner assures this Court that the petitioner/husband is willing to pay the school fees in discharge of his obligation towards his children, this would not prevent the court below to consider that aspect, while revisiting the prayer for interim visitation right. If there be any huge amount lying due towards the school fees of the children, the same may be considered directing the petitioner/father to liquidate the same by two or three installments, if at all needed for the school fees of children being deposited somehow by the opposite party/mother in the meantime.

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

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.)