

9.9.2022
32 & 33
Ct. no. 652
sb

**C.O. 1390 of 2021
with
C.O. 1391 of 2021**

**Soumok Basu
Vs.
Surela Basu (Chakraborty)**

Mr. Aniruddha Chatterjee
Ms. Sohini Bhattacharya ...for the petitioner

Mr. Siddhartha Lahiri ...for the opposite party

Affidavit of service filed by the petitioner, be kept with the record.

Being aggrieved by the order dated 9.4.2021 passed by the learned District Judge, FTC-3, Barasat in Misc. Case no. 20 of 2019, the present revisional application has been preferred.

By the impugned order dated 09.04.2021, learned court below disposed of two applications dated 17.12.2019 and 05.10.2020, both filed by the petitioner herein and the impugned order comprised of two parts. In the first part of the impugned order learned court below disposed of petitioner's petition dated 17.12.1990 against which C.O. 1390 of 2021 has been preferred by the petitioner herein and in the later part of the order learned court below disposed of petitioner's application dated 05.10.2020 against which C.O. 1391 of 2021 has been preferred. Since both C.O. 1390 of 2021 and C.O.

1391 of 2021 involves common question of law and fact and both the applications arose from same order dated 09.04.2021, both the aforesaid revisional applications are hereby disposed off with the following order.

Marriage between petitioner and opposite party herein was solemnized on 11.12.2009 and due to said wedlock, one male child was born on 07.09.2013. Subsequently matrimonial dispute cropped up between the parties and opposite party left her matrimonial home along with said male child on 18.02.2017. Opposite party herein subsequently filed Mat Suit No. 2358 of 2017 for dissolution of marriage and said suit has been decreed. Petitioner herein filed application under Act VIII of 1890 read with relevant provisions under Hindu Minority and guardianship Act, 1956, which is registered as aforesaid Misc. Case No. 20 of 2019 and now pending before learned Additional District Judge, 1st Track Court-3 at Barasat.

During pendency of said proceeding being Misc. Case No. 20 of 2019, learned Trial Court referred the matter for mediation and dispute between the parties regarding visitation right of minor child has been settled through mediation and as per amicable settlement, petitioner herein started to visit the minor child twice in every month (1st & 3rd Saturday) in the court premises for a period of one and half hour.

In the petition dated 17.12.2019, petitioner herein contended that court premises is not suitable place for minor child, so petitioner prayed for a direction to modify the order of learned mediator and thereby prayed for change of place to visit.

Learned Trial Court after hearing both side rejected said prayer as according to court reasons set forth in the petition for change of venue are very trifle and not at all tenable. However, at the time of hearing both the parties submit that at present since February 2022, petitioner is meeting physically with the child in every first and third Saturday of a month between 2p.m. to 4p.m. at the house of the opposite party herein/mother. Accordingly the issue relating to the petitioner's prayer for change of venue has become redundant.

Now in respect of later part of the impugned order dated 09.04.2021 by which present petitioner's petition dated 05.10.2021 was rejected by the court below and against which C.O. 1391 of 2021 has been preferred by the petitioner herein relates to petitioner's contention that during covid period, visitation with the child was made through virtually, when petitioner herein found that Whats App video stopped after 40 to 45 minutes and the child refused to talk or answer any of the questions in virtual visitation and even did not look towards the phone/device. Furthermore, teacher of child of the concerned school has stated to the petitioner

herein that the child is very much introvert and does not interact with any child and even does not speak with his teacher. The petitioner is worried about the upbringing of the child, so he has prayed for an order for appointment of an independent psychiatrist or counsellor for counselling of the child.

Learned Trial Court after contested hearing was pleased to reject petitioner's aforesaid petition dated 05.10.2020 with the following observation:-

"It is natural that a parent becomes worried about his or her child. From contention of both sides and even from the version of the petitioner/husband it is learnt that the minor child is excellent in his academic affairs. That indicates that development of his brain is being properly. At present the child is about 7 years old, that means he is quite tender aged. It appears that since the age of about 3 years the child has been detached from the petitioner, so it may be possible that there is lack of force in bond between the father and minor son and that may be the cause for such not responding to the petitioner's approach to the child while visiting through video conferencing. It may be that the child is not acquainted with the nature and procedure of video conferencing. So, having considered the age of the child, his academic performance and long time gap I am not inclined to hold that the behaviour of the child as contended by the petitioner/father is not normal or it requires any intervention of psychiatrist or counsellor at present."

From aforesaid observation , it is clear that trial court has dealt with a situation during virtual visitation. As per submission made by the parties the petitioner resumed meeting with the child physically since February, 2022. Mr. Aniruddha Chatterjee, learned counsel appearing on behalf of petitioner submits that though physical visitation resumed since February 2022, still, he has some more points to urge before the trial court to convince about the necessity for counselling of

the child by a trained psychologist and to obtain a report from counsellor/psychiatrist, which is very much required for adjudication of real controversy between the parties as to whether welfare of child is safe in mother's custody and whether such custody should continue and for which he seeks for a liberty to make fresh agitation before trial court. Such prayer appears to be innocuous.

Having considered the facts and circumstances of the case and also the submissions made by the parties, it appears that the observation made in the later part of impugned order dated 9.4.2021 was made taking into account of the situation which took place during video conferencing. Now the petitioner/father is of the view that problem still persists and as such liberty is given to the petitioner to make fresh application for agitating his grievance, which he experienced during resumption of physical visitation, on the next date before the trial court i.e. 15th September, 2022. In the event, such application is filed, the opposite party will be at liberty to file objection if any, within a period before Puja vacation. If such application is preferred, learned trial court will make every endeavour to dispose of the application and the case itself within 24th December, 2022.

Accordingly, both the applications being C.O. 1390 of 2021 and C.O. 1391 of 2021 are disposed of.

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

(Ajoy Kumar Mukherjee, J.)