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C.O. 1655 of 2022

Mr. Jose Antonio Zalba Diez Del Corral
@ Jose Antonio Zalba
Vs
Mrs. Sucharita Mahapatra

Mr. Jose Antonio Zalba Diez Del Corral
... petitioner-in-person.

Mr. Ishan Saha,
Mr. Ashis Kumar Mukherjee,
Mr. Sourabh Prosad, ... for the opposite party.

The subject matter of challenged in this revisional application is against the order, dated 19th May, 2022 passed by the learned Additional District Judge, 10th Court, Alipore in ACT VIII Case No. 88 of 2017, granting stay of Act VIII proceeding.

Mr. Jose Antonio Zalba Diez Del Corral, appearing in person expresses his deep concern about the violations of the mental right of the children, presently under the custody of the opposite party/mother.

Upon emphasizing the convention of the rights of the child, International Convention and Norms framed for the protection of the child rights, together with the preamble mentioned in the POCSO Act, Mr. Antonio submits that serving of best interest and well being of the child is regarded as being of paramount importance at every stage to ensure the healthy

physical, emotional, intellectual and social development of the child.

Upon making such submission, Mr. Antonio proposes that the Court below while conducting the trial of the ACT VIII proceeding, is always obliged to consider all such aspects, as mentioned in the International Convention for the protection of the child rights as well as the preamble of the POCSO Act to ensure healthy physical, emotional, intellectual and social development of the child.

The only contention thus expressed by the petitioner is that at every stage of the proceedings, and that too in connection with disposal of all other interlocutory applications filed by the petitioner, this aspect could not be taken care of, giving a sympathetic approach to the case made out by the opposite party/wife.

Per contra, Mr. Ishan Saha, learned advocate appearing for the opposite party/wife submits that he does not advocate for stay of the Act VIII proceeding, and proposes rather for expeditious disposal of the Act VIII proceeding, upon collection of the evidence by the Court below, upon lifting the stay already granted by the Court below.

Learned advocate for the opposite party is thus kind enough to submit that Act VIII proceeding may be revived forthwith, so that the main issue involved

in the Act VIII proceeding may be addressed to by the Court in an expeditious manner.

Learned advocate for the opposite party, however, denied the submission of petitioner that there has been violation of any child rights, including mental right of child.

Having considered the submission of both sides, it appears that the prime concern of petitioner is to ensure proper well being of the children, presently in the custody of the opposite party.

The fundamental apprehension of the petitioner is against violation of mental rights of children, as emphasized in International Convention and in particular in the preamble of the POCSO Act, and that is proposed to be ensured by the Court below at every stage of disposal of interlocutory applications, filed in connection with Act VIII proceeding, by any of the parties to this case.

Upon perusal of the impugned order, it appears that by order dated 13th April, 2022 petitioner was directed to pay costs of Rs.10,000/- (Ten thousand) to DLSA. Since the order dated 13th April, 2022 granting cost of Rs.10,000/- is not under challenge in this case, this court is of the view that no order to that effect is necessary at the moment.

When the opposite party is agreeable to the expeditious disposal of pending Act VIII proceeding,

there is hardly any scope left open for any further elaboration.

The revisional application is thus disposed of upon setting aside the impugned order dated 19th May, 2022 passed in Act VIII Case No. 88 of 2017 of learned Additional District Judge, 10th Court, Alipore. The stay granted is hereby lifted with a direction upon the court below to go ahead with the existing proceeding with an aim to ensure logical conclusion of the proceeding in an expeditious manner.

It is, however, clarified that while disposing of interlocutory applications, filed by any of the parties to this case, the court below must always keep in mind that the court has to subserve the best interest for the well being of the children, being of paramount importance, at every stage to ensure healthy physical, emotional, intellectual and social development of the child.

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

This order is relatable to the order impugned order No. 125 dated 19th May, 2022.

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

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Subhasis Dasgupta, J)