

Form No. J (1)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

Present:

The Hon'ble Justice Biswajit Basu.

C.O. 1743 of 2022

SOMA DEYATI
VS.
MRINAL DEYATI

For the petitioner:

Mrs. Indranath Mukherjee,
Md. Manuwar Ali.

For the respondent:

Mr. Probal Mukherjee, Sr. Adv.,
Mr. Supriyo Das,
Mr. Siddhartha Paul.

For Dr. Indrani Dutta

Mr. Partha Pratim Roy,
Mr. Dyutiman Banerjee.

Heard on : 03.08.2022, 16.08.2022, 30.08.2022

Judgment on : **06.09.2022**

Biswajit Basu, J.:

1. An affidavit filed on behalf of the opposite party and reply thereto filed by the petitioner be kept with the record. The parties are husband and wife, due to matrimonial discord, they are at present, living separately. They have a son in their wedlock who is in the custody of the mother, the petitioner herein. The said son of the parties was a student of the Asian International School, Howrah (AIS in short).

2. The father, the opposite party herein, has initiated a proceeding under the Guardians and Wards Act, 1890 for the custody of his said minor son which is pending before the Court of Additional District Judge, Fast Track-I, District- Howrah being Misc. Case No. 142 of 2021. The Order no.11 dated May 11, 2022 passed in the said Misc. case is under challenge in the present application under Article 227 of the Constitution of India.

3. In the said Misc. Case, the father, on April 26, 2022 filed an application alleging that offline class of the child had commenced on and from April 07, 2022 but the mother is not sending the child to the school without any valid reason and prayed immediate action so that the son is not deprived of his right to education. The mother, on the said date prayed for adjournment of hearing of the said application, the learned Trial Judge although deferred the hearing of the said application to May 21, 2022 but considering the urgency of the matter, passed the following interim order on the said application:

“However, since school attendance and attendance in extra-curricular activity classes are vital aspects for the overall development of the child and intricately connected with the annual performance of the child, I deem it necessary to issue certain interim directions. Accordingly, the O.P. Soma Deyati is directed to ensure regular attendance of the minor in his academic classes at school, as well as in his extra-curricular classes such as painting classes, Guitar classes, football and cricket classes, unless prevented by any sickness of the child.”

4. The father, on May 06, 2022 filed an application complaining that the mother, in violation of the aforesaid order, is not sending the child to the school. The mother filed written objection to the said application wherein she alleged that the father, on March 26, 2022 was present in the parent-teacher meeting at AIS and used foul languages against her in front of other

students and their guardians. The son became terribly shocked and embarrassed when the said incident was conveyed to him by his friends and refused to attend AIS anymore. In the said written objection, the mother, however, disclosed that she has admitted the child to a new school.

5. The learned Trial Judge by the order impugned has disposed of the said application of the father dated May 06, 2022 with the following directions:

“(1) The OP shall get the minor Ayush Deyati re-admitted/continued in the same school, i.e. Asian International School Howrah, ensuring that no loss of academic year is caused to him. The petitioner will ensure that all procedural formalities for such re-admission/continuation, including payment of fees for the said purpose, are done at his end. The school authorities of Asian International School Howrah are requested to accommodate both the petitioner Mrinal Deyati and OP Soma Deyati in connection with the procedural formalities for such re-admission/continuation, including filing up of forms, etc.

(2) The petitioner shall have the right to know the academic developments and problems of the child in respect of his day-to-day schooling from the authorities of Asian International School, Howrah, but shall not, without the leave of the Court, issue any directions in respect of the child, to the school authorities.

(3) Every consultation with a child psychologist, in respect of the minor henceforth, shall be done with the participation of the petitioner upon due prior intimation so as to enable him to attend the same.

(4) As it appears that the minor at present, is under a considerable degree of reluctance to communicate with the petitioner, the petitioner is directed not to show any aggressive behaviour or insistence to communicate with the child against his wishes, on any occasion when he may come across the child in course of implementation of the above order.

(5) Subject to the willingness and preference of the child, and subject to availability of time, the OP shall make all endeavour to resume to resume the extra-curricular activities of the child such as his music and sports classes.”

6. The learned advocate for the petitioner submits that the father caused embarrassment to the son by using abusive languages against the mother

on the date of parent-teacher meeting in the said school in front of the friends of his son and their guardians, resulting in son's reluctance to attend AIS anymore. He further submits that the child had reported to the mother that he is unable to cope with the standard and pressure of the curricula at AIS and it is very stressful for the child to continue with his extra-curricular activities at places far away from home, the mother under such circumstances, had no other alternative but to remove her son from AIS and admit him again in Class VI at St. Xavier's Public School, a reputed English Medium school at Howrah, near to the place of residence of the minor and to discontinue with the extra-curricular activities of the child.

7. The learned advocate for the petitioner next contends that the child has expressed his discomfort in meeting the father which the learned Trial Judge has recorded in the order dated February 07, 2022. He also refers to the photocopy of the alleged history of neurological treatment of the father to contend that the father has extra-marital relationship, therefore, according to him, the mother is in a better position than the father to address the issues concerning the welfare and well-being of the child.

8. The learned senior counsel for the father on the other hand, submits that when the child in his previous school did well and was successfully promoted to Class VII, there is no earthly reason to admit the child in Class VI again in a new school. He refers to the mark-sheet of the child for the academic session 2021-2022 and submits that his result in all subjects improved from Term I to Term II, his attendance in AIS for the said academic session was 98.4%, therefore, according to him the allegation of the mother

that the child is not capable to cope with the standard and pressure of the curricula at AIS is absolutely a cock and bull story, woven to fulfil the evil design to erase the presence of the father from the mind of the child. He emphatically denies that his client ever used any offensive language against the mother on the parent teacher meeting on March 26, 2022 as alleged. In conclusion, he submits that the mother's action to remove the child from AIS where he read since childhood and to admit him in a new school, that too in the same class from which he has been already passed out, is highly detrimental to the welfare and wellbeing of the child.

Heard learned advocate for the parties, perused the materials on record.

9. The child was a student in AIS since LKG. On scrutiny of his mark-sheet of term-end examination of 2021-2022, it appears that he was successfully promoted to Class VII, obtaining Grade B1 (80%) in most of the subjects and Grade A2 (90%) in some subjects, in fact his result in Term II is better than Term I, his attendance in the last academic session was 98.4%, such result of the child, on the face of it, falsifies the claim of the mother that the child is not capable to cope with the standard and pressure of the curricula at AIS, the learned Trial Judge, therefore has rightly disbelieved the mother's said explanation for removing the child from AIS and to admit him in a new school in Class VI again.

10. The mother and the child were admittedly absent on the date of parent teacher meeting scheduled on March 26, 2022, the allegation that the father used foul languages against the mother in front of other students

and their guardians, which were subsequently conveyed to the child causing him embarrassment and trauma for which the child did not want to face his friends at AIS anymore and that the mother had to remove the child from the said school, is completely unbelievable as the learned Trial Judge after interacting with the child, found that his friends of AIS are still maintaining contact with him, besides, those allegations being hearsay, there is hardly any scope to consider the same.

11. The record further reveals that the child was admitted in the new school, St. Xavier's Public School, Howrah on April 07, 2022 but the mother applied to AIS for transfer certificate of the child only on April 21, 2022, therefore, the child was admitted in his present school without any transfer certificate from his previous school. The mother is claiming that St. Xavier's Public School is a good, reputed school of the District Howrah but the standard of the said school comes under doubt when it allows admission of a student without transfer certificate being obtained from the previous school.

12. A document, allegedly the history of the neurological treatment of the father has been annexed with the revisional application to substantiate the allegation that the father has extra-marital affair, the said allegation has no relevance for a decision on the issue involved in the present revisional application, more so, the name of the mother has been recorded in the said document as informant. The discomfort once expressed by the child before the learned Trial Judge in meeting his father during the course of another stage of the proceeding is also a completely irrelevant consideration in the

present matter. The attempt of the mother to raise such issues here, on the face of it, is not bona fide. It is very unfortunate that the mother, by her actions, has stirred up an extremely complex situation in the track of her child's education, the parents must remember that *the children are not mere chattels: nor are they mere play-things for their parents* (See **ROSY JACOB vs. JACOB A. CHAKRAMAKKAL** reported in **AIR 1973 SC 2090** at paragraph 14).

13. A certificate of one consultant clinical psychologist namely Dr. Indrani Dutta attached with NH Narayana Superspeciality Hospital, Howrah has been annexed with the revisional application to impress upon this Court that the child is not fit to study in Class VII in his earlier school and he should be allowed to continue in his present school in Class VI. This Court doubted, whether a child psychologist is competent to give such opinion, as such, the said child psychologist was directed to be personally present before this Court, in pursuance whereof she appeared before this Court personally on July 11, 2022 when she was directed to file an affidavit to justify her said advice. However, on July 20, 2022 Mr. Partha Pratim Roy, learned advocate appeared on behalf of the said child psychologist and submitted that his client never intended to opine that the child should be put in Class-VI again, she issued that certificate after interviewing the child and on the basis of the information received from the mother. This Court reposed confidence on Mr. Roy to talk to the parties to resolve the issues amicably so that the child could be put into his right track of education, but

all efforts of Mr. Roy failed, he however, submits today that his client will be more cautious in issuing such kind of certificates in future.

14. In view of such submission of Mr. Roy and to avoid birth of a new zone of dispute between the parties, this Court did not insist upon filing of the affidavit by Dr. Dutta, as directed earlier. The learned Trial Judge, in the order impugned, has recorded that on interaction, the child was found to be echoing allegation of the mother which prima facie, is an indication that the child has been tutored, the mother should realise that for the balanced upbringing of the child, the participation of the father is as much required as the mother, however, if good sense does not prevail upon the parties, the Court cannot be a mere fence-sitter to watch and allow one party having advantage of the custody, to use the minor as pawn in the nasty matrimonial war with the other party.

The order impugned is well thought out and well reasoned, this Court does not find any reason to interfere with such order. The mother is directed to comply with the directions of the order impugned so that child can resume his education without any further waste of time.

C.O. 1743 of 2022 is dismissed. There shall however, be no order as to costs.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(BISWAJIT BASU, J.)