

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

(Appellate Side)

MAT 1008 of 2022
with
IA NO.: CAN 1 of 2022

(Through Video Conference)

Reserved on : 03.08.2022

Pronounced on: 25.08.2022

Susmita Pal

...Appellant

-Vs-

The State of West Bengal & Ors.

...Respondents

Present:-

Mr. Atarup Banerjee
Mr. Arindam Sen,
Mr. Pallab Kumar Mitra,
Mr. Saurav Basu,
Mr. Samit Bhanja,
Ms. Shreoshee Roy Chowdhury, Advocates

...for the Appellant

Mr. Ambar Nath Banerji, Advocate

... for the Respondent No. 7

Mr. Prisanka Ganguly, Advocate

... for the State and Child Welfare Committee

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE

THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Rajarshi Bharadwaj, J:

1. This appeal is at the instance of the Writ petitioner challenging the order of the Learned Single Judge dated 30.06.2022, whereby W.P.A. No. 10362 of 2022 (Susmita Pal -Vs-The State of West Bengal & Ors.) has been disposed of with certain directions.
2. The facts of the case are that the petitioner herein the wife and the private respondent no.7 herein the husband registered their marriage on 25.07.2011 at Andaman and Nicobar Islands. Thereafter solemnized their marriage on 24.02.2012 at Chandannagar, Hooghly, West Bengal. On 06.01.2015 the petitioner gave birth to a female child born in the wedlock in G B Panth Hospital at Port Blair.
3. The petitioner in the year 2015 obtained a job at a private Airline. Thus, shifted from her matrimonial house along with her minor daughter to Brijgunj where her parents resided. Thereafter, during the petitioner's job at the private Airline, the petitioner left for Chennai leaving the minor daughter in Brijgunj with the petitioner's parents.
4. On 13.11.2018 a mutual agreement was executed by and between private respondent no.7 and petitioner wherein it was stated that both the parties were living separately and filed an application for mutual divorce, which is pending before the Family Court at Port Blair. It was further held that respondent no.7 would have full custody of the child and that neither the petitioner can claim for the custody of the child in future nor disturb the respondent no.7 or his parents owing to the custody of the child and that the private respondent no.7 shall take proper care of the minor child.
5. On 02.06.2022 the petitioner lodged an FIR against the respondent no.7 and his parents after coming to know from the relatives that the minor child was going through physical and mental torture. Having no other alternative the petitioner was constrained to come to West Bengal and lodge a complaint before the Habra Police station indicating her grievances. Having received the said complaint the Officer-in-Charge of the Habra Police Station duly deputed

the Sub-Inspector of police with force for recovery of the child. The child was staying with the respondent's no.7 parents during that time and would have shifted to Port Blair before the resumption of her school on 21st June, 2022.

6. The Investigating officer after the recovery of the child handed over the child to the petitioner and issued notice indicating to produce the minor child before the Child Welfare Committee (CWC), Barasat herein respondent no.2. On appearing before the Chairperson of CWC it was felt by the Chairperson that the child's willingness to stay with the petitioner was echoing the petitioner's words. However, the Social Investigation Report suggested that the home of the father of the minor child, was more conducive for the child compared to the petitioner's home. Thus, on 08.06.2022 an order was passed by the Chairperson indicating that the minor child should to be placed in Sukanya Home for care and protection on temporary shelter. On being dissatisfied by the illegalities on the part of the respondent authorities the petitioner moved to this Hon'ble Court. However, the Learned Single Judge in its order observed that the petitioner as well as the private respondent no.7 will not be able to provide a secured environment to the child owing to which extended the stay of the minor child at child Care Institution (CCI) for another six weeks.

7. Thus, being aggrieved and dissatisfied with the order of the Learned Single Judge for extending the stay of the child in the child Care Institution (CCI) for another six weeks the instant appeal has been filed before this Court.

8. The Learned counsel for the appellant/writ petitioner submits that section 29 of the Juvenile Justice (Care and Protection of Children) Act, 2006 lay out the powers of the CWC. The power of the committee is to take care, provide protection, give treatment and for rehabilitation of any child in need. However in no way does it indicate that the CWC has got the authority to take out the child from the parental guidance. Thus, the CWC while executing its

owers specified in the Act duly exceeded its jurisdiction. Furthermore, the Learned Single Judge should have given The Guardian and Wards Act, 1890 the paramount consideration and that an Act in force cannot be diluted by another Act.

9. In addition it is submitted by the counsel that the appellant approached the Hon'ble Court in order to get her minor child who is under the supervision of the Child Welfare Committee and not the private respondent no.7. It was further submitted that on the grounds of urgency of resumption of school of the minor child on 21st June, 2022, the Hon'ble Court may grant the custody of the child to the appellant.

10. Learned counsel for the private respondent no.7 submitted that a mutual agreement was executed by and between the appellant and the private respondent no.7 on 13th November 2018 without any force or compulsion and in presence of various witnesses stating that the custody of the child shall be solely given to the private respondent no.7 and the appellant shall not disturb the private respondent no.7 and his parents in the near future. The appellant has a close relation with one Mayur Singh Manchal and on disclosures of such matter the petitioner asked for mutual divorce from the private respondent no.7. However, when the said person with whom the appellant had a close relation got married to one Preeti, the appellant filed an application for the custody of the child, being Misc. Judicial Case No. 9 of 2019 as well as refused to appear in the matrimonial proceedings pending before the Family Court at Port Blair, in turn, filed an application for restitution of conjugal rights claiming maintenance pendent lite and subsequently filed an FIR against the respondent no.7 and his parents on the grounds that the child was being physically and mentally tortured. It has been contended by the counsel for the private respondent no.7 that scolding a child by parents for any unjust act is not a torture; however is a mode of learning for future.

11. Having heard the submission of both the parties and after persuing the records as well as the report of District Child Protection Unit (South Andaman) and Social Investigation Report for child in need of care and protection, this Court is of the view that this Court will not go into the merits of the case regarding the guardianship of the minor child. Regarding custody of a minor child, the High Court is qualified in issuing writ only in case where the detention of a minor is by a person who is not entitled to his/her legal custody. The appellant should have approached a competent court for the adjudication of custody of her minor daughter. However, in the best interest of the minor child, an extension of two months shall be provided to CWC for holding the child's custody for care and protection.

12. With the above observations, the appeal is dismissed. All pending applications are also accordingly disposed of.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata

25.08.2022

PA(BS)