

26 08.06.2022

gd/ssd

MAT 1177 OF 2021
IA NO: CAN/1/2021

SMT. JOYSHREE PANDA
VS
THE STATE OF WEST BENGAL AND ORS.

Mr. Debasis Kar,
Mr. Subhojit Chowdhury,
Mr. Husen Mustafi,
Mr. Arka Tilak Bhadra
..for the Appellant.

Mr. N.C. Bihani,
Ms. P.B. Bihani
..for the State.

Mr. Swapan Kumar Nandi
..for the Respondent No.4.

This appeal is at the instance of the writ petitioner questioning the order of the learned Single Judge dated 4th October, 2021 whereby WPA 7836 of 2021 has been dismissed with the exemplary costs of Rs.11,000/-.

The appellant is the sister of the respondent no.4 and she had filed the writ petition raising the grievance that her parents are residing with the respondent no.4 and that the respondent no.4 is not permitting the appellant to visit her ailing parents and that the appellant believes that her parents are not properly treated. In this factual background, the prayer was

made in the writ petition to provide adequate protection by the official respondents at the time of her visit to the parents.

At the time of hearing before the learned Single Judge, father of the appellant had personally appeared and had stated that he and his wife were safe and were being taken care of by the respondent no.4. It was also stated by the father of the appellant that the appellant was demanding share in the property. Taking note of father's statement, the learned Single Judge has dismissed the writ petition.

The submission of learned counsel for the appellant is that the appellant is only seeking limited relief of police protection to visit her father on account of the mis-treatment which is being extending by the respondent no.4 to the father and that the father was under the influence of the respondent no.4 when he appeared in the Court.

The above submission has been disputed by the learned counsel for the respondent no.4 by submitting that the respondent no.4 is properly treating his parents.

Learned counsel for the State has also disputed the above submission and submitted that the report was submitted before the learned Single Judge which made a reference to the statement of the father of the

appellant that the appellant and the respondent no.4 are loggerhead in respect of the property and the father and his wife did not want to get involve into this.

Having heard the learned counsel for the parties and perusal of the record, we find that the learned Single Judge has not committed any error in proceeding on the basis of the statement made by the father before the Court. There is no material to show that father of the appellant had made the statement in the Court under any influence. Even otherwise that disputed fact cannot be decided in exercise of the writ jurisdiction. Considering the rival contention of the counsel for the appellant and the respondent no.4, we find that no error has been committed by the learned Single Judge in dismissing the writ petition.

However, we are of the opinion it being a family dispute, there was no case made out for imposing the exemplary costs.

Learned counsel for the State as also the respondent no.4 have fairly stated that they do not want to advance any argument in respect of the imposition of costs.

Hence, we delete the direction of the learned Single Judge in respect of imposition of costs of Rs.11,000/. We find no ground to interfere in the remaining order of learned Single Judge.

We dismiss the present appeal with the aforesaid modification in the order of learned Single Judge.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)