

20.12.2022
Item No.6
Ct. No.7
CHC

C.O. 3709 of 2022

Sri Tanmoy Banerjee
Vs.
Smt. Shirine Banerjee

Mr. Asit Baran Raut,
Mr. Tuhin Subhra Raut,
Ms. Ishita Raut,
Mr. Jyotirmoy Banerjee
...for the petitioner

Ms. Aditi Kumar
...for the opposite party

Affidavit-of-service furnished by the petitioner be
taken on record.

Subject-matter of challenge in this case is against
the order dated 1st December, 2022, passed by learned
Additional District Judge, Fast Track Court-III,
Barrackpore, North 24 Parganas, in Misc. Case No.29
of 2022, declining to grant company of the minor son
with petitioner/father from the custody of the opposite
party/mother.

Mr. Raut, learned advocate appearing for the
petitioner submits that the date of birth of the minor
son fell on 9th December, 2022, and that could not be
celebrated by the father/petitioner on the simple score
that the son is presently pursuing study at
Bhubaneswar in Class-IV of St. Xavier's International
High School, Patia, Bhubaneswar.

Adverting to paragraph-‘11’ of the relevant application, under Section 151 C.P.C. filed by the petitioner before the court below, Mr. Raut submits that the father/petitioner not only proposed for taking the custody of the minor son on the day of birthday of his son, but also prayed for taking custody of the minor son during ensuing Christmas period, as previously spent in the last year, while in Kolkata.

It is further submitted by Mr. Raut that such significant aspect could not be duly appreciated by the court below while making rejection of the company of a son, as proposed by the petitioner/father.

It is also disclosed by Mr. Raut that there are multiple litigations pending between the petitioner and the opposite party/wife, and in the court below there are litigations pending under Section 125 Cr.P.C., and a proceeding under D.V. Act.

It is further submitted that two dates i.e. on 26th December and 27th December, 2022 are fixed for decision of interim maintenance proposed by the wife in connection with abovereferred pending litigations in the court below.

It is thus innocuously proposed by Mr. Raut that custody of the child may be handed over to petitioner/father for few days during ensuing

Christmas Vacation from the mother for the welfare of the child.

Per contra, Ms. Aditi Kumar, learned advocate appearing for the opposite party/wife at the very threshold submits that such prayer, as made before this Court, has not been pressed drawing attention of the court below, and as such the same may not be allowed upon revisiting the same without being duly addressed by the court below, due to the failure of the petitioner.

Regarding the dates fixed for hearing of maintenance matter in connection with proceedings under Section 125 Cr.P.C. as well as D. V. Act, it is submitted by learned advocate for the opposite party that the opposite party/wife has no travel plan to come to Kolkata as she is engaged in her organization as 'Admission Counsellor' of an institution.

It is thus submitted that the opposite party/wife may not be available in Kolkata for her preoccupation in service.

Upon perusal of the impugned order, it appears that the court below has declined to give company of the minor son to the custody of the petitioner/father on the day of birthday of the son, because of the non commencement of the Christmas Vacation of the school where the son is presently pursuing his study.

Paragraph- '11' of the instant application under Section 151 C.P.C. is relatable to the prayer for custody of the minor child to father from the wife/mother during ensuing Christmas Vacation, which has not been gone into by the court below.

Welfare of the child is of paramount consideration. The father/petitioner in spite of his available opportunity could not make himself present at Bhubaneswar to give his company at least for some time in school even during recess period of the school. However, spending quality time of a son with his biological father, for a while irrespective of matrimonial differences of his parents during ensuing Christmas Vacation will at least contribute something towards securing welfare of the child.

When date has already been fixed before the court below, which is said to have been scheduled on 26th and 27th of December of this year, if the son is permitted to spend some quality time with his father at least for ninety (90) minute, on 25th December of this year, at Eco Park, Newtown, Gate No.2, that will not cause any prejudice to either of the parties to this case.

The opposite party/mother is thus directed to cause production of the child on 25th December, 2022 at 1 p.m. at least for ninety (90) minutes for the purpose mentioned at the site/venue disclosed

hereinabove, subject to all expenses being borne by the petitioner/father including to and fro journey from the place, where the opposite party/mother would stay in Kolkata.

An intimation well in advance for the purpose may be exchanged between the learned advocates representing the parties.

Sincerest cooperatoion by the parties may be ensured, while the petitioner/father would spend his time with his son at the cite and time as mentioned hereinabove.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)