

In the High Court at Calcutta
(Civil Revisional Jurisdiction)
Appellate side

S/L No. 11
15.05.2023
Ct-237
(RD)

C.O. 379 of 2023

**Smt. Sarmistha Sengupta
Vs.
Subhashis Dasgupta**

Mr. Biswajit Sau, Adv.
Mrs. Sukla Das Chandra, Adv.
Mr. Sohhom Sau, Adv.

.... For the petitioner

Mr. Saptansu Basu, Sr. Adv.
Mr. Ayan Banerjee, Adv
Ms. Debjani Sengupta, Adv.
... For the opposite party

This Revision Application assailed the order dated 13.1.2023 passed by Leaned Additional District Judge, 1st Court, Sealdah in connection with Misc. Case No. 9 of 2022 arose out of Mat Suit No. 430 of 2021.

By the impugned order Learned Judge promulgated directions upon the party to follow the guidelines prepared by the leaned judge himself, with regard to visitation right of the opposite party/husband, keeping an eye to the modalities furnished by the parties to this revision application as well as order dated 23.09.2022 passed by the Hon'ble Court in CO no. 2971 of 2022.

Learned advocate, Mr. Biswajit Sau, appearing on behalf of the petitioner particularly assailed guideline no. 1 & 4 promulgated by the Learned Trial Judge.

Mr. Sau contended that according to petition of the opposite party seeking visitation right has prayed for

meeting with child on every Sunday for at least two (2) hours. But, the learned trial judge allowed the time of meeting for at least 4 hours.

Mr. Sau next contended that guideline 4 was nowhere incorporated in the pleading and therefore this direction (guideline no. 4) cannot be promulgated. Mr. Sau has argued that there was no reason to pass any direction for meeting during summer vacation, Puja vacation or winter vacation and submitted that reason is the heartbeat of every conclusion by referring the case of ***Steel Authority of India Ltd. Vs. Sales Tax Officer, Rourkela, I circle and others*** reported in (2008) 9 Supreme Court Cases 407.

Mr. Sau has further relied on an unreported decision of Hon'ble Apex Court in Civil Appeal nos. 5798-5799 of 2008 (***Bachhaz Nahar vs. Nilima Mondal and another***).

Ld. Senior Advocate, Mr. Saptansu Basu, appearing on behalf of the opposite party, per contra, has submitted that order impugned only dealt with visitation right of the Opposite party/husband and on that issue welfare of the child is a prime factor.

Accordingly, Mr. Basu supported the order impugned passed the Learned Additional District Judge, 1st Court, Sealdah.

I am agreeable with Mr. Basu on the point that adjudication of either visitation right or custody of the child should be made in terms of welfare of the child

which is undoubtedly a prime factor and Right of a child to meet with his father cannot be denied at any cost.

On the impugned order, I find that learned Judge not only considered the order of this Hon'ble Court passed on 23.09.2022 in CO No. 2971 but also interacted with parties in the open Court with a view to secure future of the minor child and finally considering the modalities furnished by the parties, promulgated the guidelines.

Fact of the cases of ***Steel Authority of the India Ltd.*** (supra) and ***Bachhaz Nahar*** (supra) is not at all identical with the fact and issue raised in this revision application. The right of visitation shall have to be ascertained in terms of welfare of the child and right of the child.

In respect of guideline 1, opposite party/husband, in terms of prayer, will meet the minor child at the resident of the petitioner/ wife on each and every Sunday for at least two (2) hours (instead of 4 hours) subject to time fixed by both the parties through communication in any ways.

With regard to guideline no. 4 opposite party/husband will meet his minor child once in a week for a span of two (2) hours, in addition to the schedule meeting of every Sunday in terms of guideline no. 1, during long vacation viz. summer vacation, Puja vacation & winter vacation and time of meeting will be fixed by both the parties through communication in any ways.

I do not find any other infirmity or illegality in other

guidelines promulgated by the Learned Judge. The order impugned is modified to the above extend only.

With the aforesaid observation the instant Revision Application being CO 379 of 2023 stands disposed off.

All parties are directed to act on a server copy of this order downloaded from the official website of this Court.

(Bibhas Ranjan De)