

11.07.2023
rpan/04

WPA (H) 19 of 2021
Snehashis Sarkar
– Versus –
The State of West Bengal & Others

Mr. Ovik Sengupta,
Mr. Biplob Das,
Mr. Vijay Verma
... for the Petitioner.
Mr. Sabir Ahmed,
Mr. Simanta Kabir
... for the State.
Mr. Raj Mohan Chatteraj,
Ms. Laila Khatun,
Mr. Sourav Mondal
... for the Respondent no.4

Affidavit-of-service filed by the petitioner be kept on record.

During infancy and impressionable age the care and warmth of parents are required for the welfare of the child. However, in the instant case two educated persons have failed to discharge their mutual obligations and are not even agreeable to set right their broken home for the sake of their child.

The present *habeas corpus* petition has been preferred stating *inter alia* that the petitioner, namely, Snehashis Sarkar (in short, Snehashis) married the respondent no.4, namely, Anindita Chowdhury (in short, Anindita) on 15th September, 2013. They were blessed with a male child namely, Iman Debashis (in short, Iman) on 21st July, 2015. Iman was admitted at Delhi Public School Ruby Park, Junior School and

while he was studying there, matrimonial disputes cropped up between Snehashis and Anindita and Anindita left her matrimonial house on 17th January, 2020 along with Iman and Snehashis was kept uninformed about their whereabouts. Such fact was reported to the local police station. However, the police authorities did not take appropriate steps. Aggrieved thereby, Snehashis was constrained to prefer a *habeas corpus* petition being WP No. 4817(W) of 2020 and the same was dismissed on technical grounds by an order dated 24th November, 2020. Snehashis again submitted repeated representations to the police authorities with a prayer to recover his son but in vain. Aggrieved thereby, Snehashis preferred the present writ petition.

Mr. Sengupta, learned advocate appearing for the petitioner submits that Snehashis is the natural guardian of the child and he has the financial competence to maintain his child. Safety and welfare of Iman can be assured only if his custody is given to Snehashis. Iman is presently more than 7 years of age and as such Anindita does not have any preferential right to claim custody. There are clinching materials to show that the welfare of Iman children is at peril. Iman's quality of life is bound to improve if Snehashis is granted custody. In view thereof, necessary

directions be issued to hand over Iman's custody to him.

Mr. Chattoraj, learned advocate appearing for the Anindita, however, disputes the contention of Mr. Sengupta and submits that the present *habeas corpus* petition has been preferred suppressing material facts. Prior to filing of the present petition, the petitioner filed a *habeas corpus* petition earlier, being WPA 4817 of 2020 and the same was dismissed on merits. Before the earlier *habeas corpus* petition was filed, Anindita filed an application under the Guardians and Wards Act (in short, the said Act). In the said proceedings Snehashis has filed an application under Section 12 of the said Act and challenging certain orders passed by the learned Court below, Anindita has also preferred a revisional application, being C.O. No.1319 of 2022 and the same is still pending. The child is with the mother and such custody cannot be construed to be an illegal one.

In reply, Mr. Sengupta denies the allegation of suppression of material facts and submits that in the Misc. Case no.136 of 2020, an order was passed granting interim custody of Iman to Snehashis. The said order has been flagrantly violated by Anindita and in spite of repeated directions of the learned Court below Anindita is not allowing Snehashis to meet with

Iman and in view of such conduct, interference is called for in the present *habeas corpus* petition.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

It is well-settled that for determination of the issue of custody of children, it is not the right of the parties but welfare of the children which is of determinative significance. In child custody matters, ordinary remedy lies only under the said Act. There are significant differences between the enquiry under Act VIII and the exercise of powers by a Writ Court which is summary in nature. The allegations and the counter allegations levelled by the parties can always be examined with reference to evidence before the learned Court below in the pending guardianship proceedings.

Applying such proposition of law to the facts of the present case and as the guardianship application is pending disposal before the competent forum, no further interference is called for in the present *habeas corpus* petition.

Answering our query, Mr. Chatteraj informs this Court that Anindita and Iman are presently residing at Flat No. A16, 3rd Floor, Palaniswamy Apartment, Alwarpet, Chennai – 600004 and submits that they would be continuing to reside at the said address and

Iman would not be removed from the said address without leave of the learned Court below.

Needless to observe, in the event of violation of any order passed by the learned Court below, the petitioner would be at liberty to avail the remedies, as provided and in accordance with law.

The *habeas corpus* petition, being WPA (H) 19 of 2021 is, accordingly, disposed of.

There shall, however, be no order as to costs.

The rule issued earlier stands discharged.

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

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)