

28.4.2023
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Ct. no. 652
sb

CO 1201 of 2018

**Sanjib Seal & Sanjib Shill
Vs.
Seuli Seal & Anr.**

Mr. Indranath Mukherjee
Mr. Subir Banerjee
Mr. Sandip Bandyopadhyaya
Ms. Ruxmini Basu ...for the petitioner

Mr. Abhra Mukherjee
Mr. Souradeep Dutta
Mr. S.K. Mondal ...for the opposite parties

This is an application under Article 227 of the Constitution of India against a judgment dated 31st July, 2017 passed in Misc. Judicial case no. 15 of 2015 whereby and whereunder the court below was pleased to dismiss the application filed under Section 12 of the Guardian and Wards Act, 1890.

The petitioner contended that the petitioner filed aforesaid application under Section 12 of the Guardian and Wards Act, 1890 against the opposite parties and to ask the opposite parties to produce the child before the court below and after hearing to pass an order of interim custody of the child in favour of the petitioner for a period. It is submitted that the learned court below whimsically and without applying Judicial mind passed the impugned judgment and order dated 31st July, 2017, by not considering the two points of the petitioner that

the opposite party has illicit relationship with another person and secondly that the petitioner being father, has been deprived to see his only son for a considerable period of time. Learned court below ought to have appreciated that visitation right of the petitioner cannot be denied because of acrimonious matrimonial drive by the opposite party. Accordingly, the petitioner has prayed for setting aside the aforesaid order.

Learned counsel for the opposite party submits that the court below has specifically observed that from the petition of the petitioner, there is no allegation as regards the education, health, shelter and atmosphere of the said minor. On the contrary he has levelled two allegations out of which one is that opposite party has illicit relationship with another person and that he being the father has been deprived to visit his son. According to the court below as regards first point, the petitioner has proved nothing and as regards second point, admittedly the petitioner is the father of the minor and accordingly, he held if the child is in good condition in every respect with his mother, there appears no necessity to disturb the life of the minor by allowing the petition for interim custody specially in a case where the petitioner has not filed any application with a prayer for appointing him a guardian or any application praying for custody of the minor.

I have gone through contents of the application filed under section 12 by the petitioner. Learned court below

was not correct in observing that petitioner has not prayed for custody of the child. In fact contents of the said application clearly reveals that petitioner being father and natural guardian of the child is very much eger to visit the child. Section 12 of the Guardians & Wards Act 1890 authorises the court to make interlocutory order for production of minor interim custody and interim protection of person and property. In this context observation of the court below that the child is comfortable with the mother, so there is no necessity to disturb the minor and thereby to deprive the natural guardian/father even from his prayer for visitation, is perverse and vitiates the entire order.

In view of above, the order dated 31st July, 2017 passed in Misc. Judicial case no. 15 of 2015 is hereby set aside. The court below is directed to hear both the parties afresh in respect of said prayer and to pass order afresh within a period of eight weeks from the date of communication of the order

C.O. 1201 of 2018 is thus disposed of. I made it clear that I have not gone into the merits of the contention made in the petition.

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

(Ajoy Kumar Mukherjee, J.)