

27.06.2023
Sl. No.40(DL)
srm

C.O. No. 1738 of 2023

Sri Tirtharaj Sarkar

Versus

Sri Biswanath Brahma

Mr. Ranjan Kali,
Ms. Mitul Chakraborty

...for the Petitioner.

Mr. Dhananjay Banerjee,
Ms. Oindrila Ghosh

...for the Opposite Party.

This revisional application has been filed challenging an order dated March 6, 2023 passed in Misc. Case No.244 of 2022 by the learned Additional District, 8th Court at Barasat.

By the order impugned, the application for interim custody of a minor child of four years was rejected. The child who was living with his maternal grandparents, was produced before the court. The learned court below interacted with the child and asked the child whether he would agree to go with his father or wished to stay with his maternal grandparents. The child pointed his finger towards his maternal grandparents and stated that he was not willing to go with the father. Upon such interaction, the learned court below thought it fit to dispose of the application for interim custody by

allowing the petitioner/father of the minor child to visit the house of the maternal grandparents every Sunday after 4.00 pm but positively before 6.00 pm. The opposite party was directed to give an opportunity to the petitioner to interact with the child. Necessary arrangements were directed to be made. The petitioner was also asked not to exert any force.

This Court is of the view that a minor child of four years, who was admittedly living with his maternal grandparents since his mother was suffering from cancer and ultimately succumbed to the illness, indicated and demonstrated preference to stay with the said grandparents. It was not completely illegal on the part of the learned court below to allow the child to remain with the grandparents, till the custody matter was decided.

It is not in doubt that the father is the natural guardian and has a right to have his child subject to satisfaction of other conditions and welfare of the child. However, at the interim stage, the court deemed it fit not to dislodge the child from his comfort zone. The court allowed interaction and bonding of the child with the father.

The Court agrees with Mr. Kali that some observations made against the father were not necessary. This Court is also of the view that in order to enable the child and father to bond

closely, the visitation which has been allowed by the learned court below should be more frequent. More so, the father should also be allowed to take the child for outings.

The order impugned is modified to the following extent. As both the father and the grandparents live in Agarpara, the father shall be at liberty to visit the child between 6.00 pm. to 7.00 p.m. every day. The opposite party shall make necessary arrangements for the visit. The father shall be allowed to take the child for outings between 4.00 pm to 6.00 pm. on Saturdays and Sundays. The maternal grandparents are at liberty to accompany the petitioner and the child during such outing, but they are restrained from causing any hindrance to such exercise.

The direction that the father should be normal and should not exert any pressure, is expunged from the order. However, it is made clear that all parties must cooperate with each other for the benefit of the child and the opposite party cannot restrain the father in any way during his visits and outings.

Parties shall file a report in the form of an affidavit, before the learned court below, as to how the arrangement was working.

This Court is of the view that the capability of the father and preferential right of the father to get custody of the child, over and above the maternal grandparents, as contended by Mr. Kali, will be decided on evidence at the final disposal of the custody application. Learned court below will proceed independently and the above observations made by this Court shall not influence the learned court below. The learned court below will also not be influenced by the order dated March 6, 2023 and consider all the parameters necessary to adjudicate the issue of custody of a minor boy, who is now living with his maternal grandparents, although his father lives in the same area.

The application for custody shall be decided within a period of four months from the next date fixed.

The revisional application is, thus, disposed of.

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

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)