

S/L 11
24.4.2023
Court No.652

CO 1634 of 2021
With
CAN 2 of 2022
With
CAN 3 of 2023

Kriti Singhanian
Vs.
Arjun Mukherjee

Mr. Anirudha Chatterjee, Adv
Mr. Chayan Gupta, Adv
Mr. Rittick Chowdhury, Adv
Mr. Shoham Sanyal, Adv

...for the Petitioners.

Mr. Soumitra Deb

...for the opposite party

Being aggrieved by a portion of the order dated 18th August 2021 passed by ADJ 11th Court at Alipore in Act VIII case no. 95 of 2015, present application under Article 227 of the constitution of India has been preferred. Petitioner contended that the said proceeding has been initiated for guardianship and custody of a minor son of the parties who was born on 21st August, 2010, due to wedlock between the parties. The petitioner herein is the mother and the opposite party is the father of the said minor child. The petitioner in order to provide proper welfare, upbringing to her minor son took out an application and the court below by its order dated 27.04.2016 was pleased to direct that the custody of the child shall remain with the mother from Thursday afternoon till lunch hours on Sunday i.e. after 2 P.M the father would get the custody of the minor. The petitioner submits that while such arrangement about custody of child

was continuing in terms of the of the court's order, on 8th November 2020 the said child refused to go to his father's custody stating he is not comfortable in his father's residence due to presence of stranger in his father's residence and due to inappropriate behaviour he had to witness. The petitioner accordingly filed an application for recording of fact and also filed another application for modification of the aforesaid order in connection with the custody. Thereafter the opposite party immediately took out an application for police aid for implementation of the aforesaid order dated 27th April, 2016. Upon hearing of the said application the court below was pleased to pass the order on 29th January, 2021 for interim custody of minor child which shall remain with the father after school hour of Friday to Monday and thereafter he will have to handover minor child to his mother and the mothers shall have a custody after school hour of Monday till after the school hours on Friday. The petitioner submits that she had duly complied the said order dated 29th January, 2021. Subsequently petitioner took out an application for modification of order dated 29th January 2021, pleading various behavioral and circumstantial changes. The petitioner alleged that the opposite party is practicing brain washing parental alienation and manipulation technique on the innocent child to lure him towards his father and such act is detrimental to his growth and welfare. The opposite party has no interest to see the welfare and well being of the child and is only interested in satisfying his personal ego against

the petitioner /wife for which he is using the child as a pawn. In fact the opposite party is exercising sole custody rights on the child by force and deceit. He has discontinued his regular tuition, stopped the child from attending any psychological counseling sessions and has not bothered to inform the petitioner/mother about any updates on the welfare of the child.

The petitioner was constrained to take out an application under section 151 of the code for compliance of the order dated 29th January, 2021. On 7th June, 2021 the court below was pleased to take up the said application and was pleased to note in open court that the opposite party has deliberately violated and/or willfully neglected to comply the order dated 29th January, 2021 and afforded another opportunity to be present before the learned court below without appreciating the urgency of the proceeding. As learned court below has erred by failing to appreciate that despite specific order directing the mother to get custody of the child for four days in a week, the father has by force restrained the child to be in the custody of the mother and thus ought to have been obeyed the order permitting the mother to have the custody of the child for four days.

The petitioner herein being aggrieved by that order dated 7th June, 2021 preferred a revisional application before this court being C.O. 1188 of 2021 and while disposing the said revisional application this court directed the opposite party to arrange to give custody of the minor child to the petitioner mother preferably within 17th June, 2021. Despite

the communication of the said order, opposite party has not arranged or given custody of the minor child to the petitioner by 17th June, 2021. Thereafter the petitioner took out application under the contempt of the Courts Act 1971, which is pending for disposal. During pendency of the said contempt application the court below vide order dated 28th June, 2021 was pleased to direct the opposite party/father to give custody of the minor child to the petitioner by 3.p.m. on 2nd July, 2021. The petitioner immediately communicated said order to the opposite party but despite communication of the said order the opposite party has not given custody of the minor child to the petitioner on 2nd July, 2021.

On 18th August learned counsel took up the application being Act VIII case No 95 of 2015 and by an order dated 18th August, 2021 was pleased to direct the opposite party to send the child to the petitioner and the officer-in-charge, Kasba and Haridevpur, P.S. were directed to assist in every manner in giving custody of the child to the mother/petitioner. But in the impugned order dated 18th August, 2021 the court made following observation:-“ in this case from the available materials on record it is difficult to come to a positive conclusion with reasonable certainty that due to intentional fault on the part of the father the child could not be sent to his mother. Thus when such primary remedy is till available to the petitioner in case of non-implementation of an order, it cannot be understood why punitive action will be taken. Punishment can be awarded when mischief/act is committed.”

Mr. Aniruddha Chatterjee learned counsel appearing on behalf of the petitioner submits that the learned court has erred by not coming into conclusion that the child could not be sent to his mother due to intentional fault on the part of the father. He has erred by coming into conclusion that primary remedy still available to the petitioner despite being aware of the wilful deliberate violations of the orders passed by this court as well as by the Trial court. The court below has erred by failing to punish or pass any order of punitive action for the repeated deliberate acts of violation of the orders by the opposite party. Accordingly the petitioner has contended that the portion of the order as indicated above is liable to set aside.

Mr. Deb learned counsel appearing on behalf of the opposite party pointed out the report of special officer appointed by this court by its order dated 28th September 2021 and he contended that in the last but one paragraph in the said report special officer has pointed out that on 31st October, 2021 he had gone to the concerned flat i.e the room of the child and on being asked, the child replied that he does not want to meet his mother. It was further reported by special officer that the opposite party on that day told the child to meet the petitioner but the child did not change his mind. He also reported that the opposite party volunteered and went to the room of the child to convince him to meet the petitioner but the effort of the opposite party went in vain.

In the above backdrop both the parties further submitted that the petitioner/mother now started staying abroad for last 3 to 4 months. Accordingly an application being CAN 3 of 2023 has been filed by the petitioner herein for a direction upon the opposite party to render all possible assistance to ensure that the child can meet the mother at Sweden during summer vacation and by another connected application being CAN 2 of 2022 the opposite party herein has prayed for modification of the order passed on 21.09.2021 by this court in this application by which this court was pleased to restrain opposite party from removing the child from the jurisdiction of the learned District Judge at Alipore South 24 Parganas until further order.

Having considered the facts and circumstances of the case it appears that subject matter of the present revisional application is the aforesaid relevant portion of the impugned order which aggrieved the petitioner and which relates to observation of the court below that it is difficult to come to a conclusion with the reasonable certainty that due to intentional fault on the part of the father, the child could not be send to his mother and when primary remedy still available to the petitioner in case of non-implementation of the order, it cannot be understood why the punitive action will be taken and punishment can be awarded when mischief/act is committed.

In view of admitted position that the petitioner presently started residing abroad, such observation of the court below might have become redundant in the present

context. However, in view of the connected applications filed by the both the parties, C.O. 1634 of 2021 and it's connected applications are hereby disposed of with the observation that the petitioner herein will be at liberty to make the self same prayer seeking direction upon the opposite part to render all possible assistance to ensure that the child can visit his mother at Sweden during summer vacation or at any other convenient time and in the event of filing such application the court below will dispose of such application at the earliest in accordance with law. Furthermore if it appeared to the opposite party/father that the child is required to move outside the jurisdiction of learned District Judge, Alipore South 24 parganas interms of any order or otherwise, he will seek permission from the court below after giving whereabouts of the place where the child goes and court below on receiving such application will dispose of the same in accordance with law at the earliest keeping in mind that welfare of the child shall in all cases be the paramount consideration.

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

(Ajoy Kumar Mukherjee, J.)