

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

C.R.R. 3672 of 2022

***Mrinmoy Khamaru
Vs.
Suyata Khamaru.***

For the petitioner : Mr. Sachit Talukdar, Adv.

Heard on : 29.03.2023

Judgment On : 29.03.2023.

Bibek Chaudhuri, J.

Order dated 24th August, 2022 passed by the learned Additional Sessions Judge, Fast Track, 2nd Court, Hooghly in connection with Criminal Motion No.62 of 2022 thereby upholding the order dated 26th April, 2022 passed by the learned Judicial Magistrate, 5th Court, Hooghly in connection with MC Case No.259 of 2020 wherein the petitioner was directed to pay a sum of Rs.4,000/- per month as interim maintenance towards his minor daughter from the date of application is under challenge at the instance of the petitioner/father of the child.

It is not in dispute that the petitioner and the opposite party are mutually separated. In their wedlock, a girl child was born who is

now aged about 7 years. The petitioner filed an application under the Guardians and Wards Act in the year 2020 which was registered as Act VIII Case No.03 of 2020 and vide order dated 8th June, 2020 the said Misc. Case under the Guardians and Wards Act was allowed ex-parte directing the opposite party/wife/mother to hand over custody of the child in favour of the petitioner/father without any delay, failing which petitioner will be at liberty to execute this order.

It is submitted by the learned Advocate for the petitioner while assailing the order impugned that in spite of the direction being passed in the proceeding under the Guardians and Wards Act directing the opposite party to give custody of the child in favour of the petitioner, the opposite party/mother has not handed over the custody of the said child to her father. The father has filed an execution proceeding.

It is contended on behalf of the petitioner that as soon as a final order under the Guardians and Wards Act is passed, the petitioner is not under legal obligation to pay any maintenance for the child till the child is handed over to the custody of the father.

In support of his contention, he refers to a decision of a Coordinate Bench of this Court reported in **2005(3) CHN 534:- *Sushil Mondal Vs. Shibdas Patra @ Shibu Vs. Shibdas Patra @ Shibu.***

The factual aspect of the above-mentioned report is little different from the facts of this case. Factual aspect of the case is that the grandfather filed an application under Section 125 of the Code of Criminal Procedure praying for maintenance for that grand child who was staying under his custody after the death of her mother. Simultaneously, the father of the child filed an application praying for custody of the child under the Guardians and Wards Act. During the pendency of Misc. Case under Guardians and Wards Act, the Court below passed an order of maintenance. This order was challenged by the petitioner/father.

A Co-ordinate Bench observed as hereunder:-

"A father cannot refuse to maintain his child simply on the logic that he has filed an application in Civil Court praying for custody of his child. If the father wants custody of the child, he must enforce his right in a Civil Court and so long the Civil Court does not give any finding regarding custody of the child, the father cannot refuse maintenance for the child."

It is submitted by the learned Advocate for the petitioner that in the instant case, the learned District Judge, Hooghly passed final order of custody of the child in favour of the petitioner. Therefore, accepting the ratio of the above-mentioned report, the father is no more under obligation to pay maintenance for his minor child.

My reading of Paragraph 7 of the above-mentioned report is different from the reading of the learned Advocate for the petitioner. What is stated in *Sushil Mondal* (supra) is that a father cannot refuse to maintain his child so long he is under the custody of another person.

In the instant case, an ex-parte order was passed directing the opposite party to hand over the child. The opposite party being the mother refused to carry out the said order and the said order is put into execution. The execution case is in progress. At this stage the father is under obligation to pay maintenance for the development, education and other bare needs of the child.

In view of such circumstances, I do not find any merit in the instant revision.

Accordingly, the instant revision is dismissed.

(Bibek Chaudhuri, J.)

**Mithun De/
A.R. (Ct).
SI No.09.
D/L.**