

05.10.2023
Court No. 19
Item no.18
CP

C.O. 3282 of 2023

Sajal Roy
Vs.
Moumi Roy

Mr. Probal Mukherjee, Sr. Advocate
Ms. Bhagyashree Kanjilal

... for the Petitioner.

Mr. Uday Sankar Chattopadhyay
Mr. Suman Sankar Chatterjee
Mr. Rajashree Tah
Ms. Trisha Rakshit

... for the Opposite Party.

The revisional application arises out of an order dated August 24, 2023, passed by the learned District Judge, Purba Bardhaman in Act VIII Case No. 40 of 2021.

The application for visitation filed by the mother was allowed on the following terms:

- a) The minor shall be produced by the father on every Saturday at 10 am at the house of the mother.
- b) The son will remain in the custody of the mother till 7 pm of Sunday, i.e., the following day.
- c) The father shall bear the cost of the journey and other expenses.

Mr. Mukherjee, learned senior advocate, has challenged the said order on the ground that overnight stay of a six years old boy would not be a healthy arrangement as the child was living with the father since 2021. The welfare of the child ought to have been taken into consideration by the learned court below. The learned court below also ought to have assigned reasons upon interacting with the child as to whether the child would be comfortable to stay overnight at the mother's residence.

The learned court below considered the need for bonding between the child and the mother. The emotional set back of the child on account of deprivation of maternal care was also discussed. Such were general observations, but ability of the child to stay away at night was not considered. The learned court below did not form any opinion as to whether the child would be able to live away from his house overnight, in an unknown surrounding.

It appears that there are criminal proceedings pending against the father. A revisional application out of the proceeding being CRR No. 2213 of 2021 is also pending before this court. An interim arrangement was made by the learned court till further orders in the Act VIII Case. Thereafter, the order impugned was passed.

Mr. Chattopadhyay, learned advocate for the opposite party, submits that the order reflects in great detail how the learned court below had thought it necessary that a bonding of the child with the mother was required for the welfare of the child and further interaction with the child would not be necessary. The learned court below had relied on several articles and literature on such point and arrived at the conclusion that overnight stay was beneficial for the child.

This court is of the view that the matter should be remanded for determination of the only issue as to whether the child would be comfortable to spend the night at the mother's place. An exclusive interaction with the child shall be done by the learned court below.

It is expected that the said issue shall be once again decided and a reasoned order shall be passed upon hearing the parties. Such decision shall be taken within one month from reopening of the court after the puja vacation.

The order impugned is set aside and the following arrangement is being made:-

- a) Priyanshu will be reached to the mother's place every Saturday and Sunday at 10 am by the father and picked up at 7 pm.

b) The child will spend the night at the father's place.

This arrangement shall continue till the issue is decided by the learned court below. This order is passed only because this court does not find that the learned court had interacted with the child to assess, whether the child would be comfortable to stay overnight, with the mother. If the learned court interacts, the learned court will also understand whether there has been any tutoring by the father.

The revisional application is accordingly disposed of.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)