

WPA(H) 63 of 2023

**Dr. Bijay Chowdhury
Vs.
State of West Bengal & Ors.**

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

Mr. Kamal Ganguly
... For the Respondent no. 8

Mr. Debabrata Chatterjee
Ms. Amrita Panja Moullick
... For the State

1. The girl child is presently in the custody of the mother. The father is the applicant here. It is not in dispute that in the proceeding initiated under Section 12 of the Guardian and Wards Act, 1890 an order was passed by the learned Additional District Judge, 1st Court, Burdwan reads as follows:-

“i) The custody of the minor child Debarati Chowdhury be with the petitioner/father till she attains the age of majority as per Majority Act, 1875.

ii) Petitioner, being the only earning member of the parents of the minor child shall meet all the expenses of the child towards her education, health-care, food and clothing as per order and other incidental costs thereto.”

2. The order was passed ex parte. Learned trial court was satisfied with the attended service being

made upon the wife and was of the view that in spite of notice the wife was not represented.

3. The petitioner filed this application for non-compliance of the order dated 17th November, 2021. In view of Section 45 of the Guardian and Wards Act, 1890 provides efficacious remedy for violation of any order passed in the custody proceeding. We are not inclined to receive and adjudicate this petition. However, since the order of custody has not been challenged and still in force, we direct the private respondent to produce the girl child in the office of the Secretary, DLSA, Purba Burdwan on 24th and 25th December, 2023 at 11 a.m in the morning. The child should be allowed to stay with the father for a minimum period of four hours and shall be returned to the mother in the same place preferably by 4.30p.m.

4. The Member Secretary, High Court Legal Services Committee shall communicate this order to the Chairperson and Secretary DLSA Puraba Burdwan for information and doing the needful.

5. It would be open for the petitioner to apply before the learned Additional District Judge, 1st Court, Burdwan for enforcement of the order in terms of Section 45 of the Guardian and Wards Act, 1890.

6. We request the learned Additional District Judge, 1st Court, Burdwan to dispose of the custody matter finally as expeditiously as possible without granting any adjournment to either of the parties.

7. WPA(H) 63 of 2023 is accordingly disposed of.

8. However, there shall be no order as to costs.

9. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)

