

20.07.2023
Court No.19
Items 8-9
CP

C.O. No. 3331 of 2022
Smt. Soma Dey @ Soma Dey (Kundu
Chowdhury)
Vs.
Sri Suman Dey

with

C.O. No. 3341 of 2022
Smt. Soma Dey (Kundu Chowdhury)
Vs.
Sri Suman Dey

Mr. Nilanjan Bhattacharya
Mr. Abhilash Chatterjee

...for the Petitioner.

Mr. Dev Kumar Sharma
Mr. Dibyajit Das

....for the opposite party.

Both the revisional applications arise out of the same proceedings and hence, are taken up analogously.

C.O. 3331 of 2022 is an application challenging the order dated November 4, 2022, passed by the learned Additional District Judge, Fast Track Court-II, Howrah in Misc. Case No. 188 of 2021.

C.O. 3341 of 2022 is an application challenging the order dated November 7, 2022, passed by the learned Additional District Judge, Fast Track 2nd Court, Howrah in Misc. Case No. 188 of 2021.

By the order dated November 4, 2022, the learned court directed that the minor son be returned to the father within 10.30 am of November 5, 2022 without fail. Further, the child was directed to spend 2nd and 4th Saturday with the mother since the morning. As this order was not complied with, the opposite party/father approached the court once again for implementation of the order.

By the order dated November 7, 2022, the learned court directed the IC, Domjur Police Station to execute the order dated November 4, 2022, if necessary with the help of a lady police force to ensure the child's custody is restored to the father. The learned court proceeded on the basis of an assumption that the child could have been tutored by the mother and, hence, had expressed his unwillingness to go to the father during the interview the court had with the child.

In my view, such assumption may not have been totally correct or may have been correct, but it was only an assumption not based on any evidence. Thus, the premise on which a mandatory order was passed by restoring the custody of the child to the father and implementation of such order with the help of police, is not appreciated. Keeping in view the physical ailment of the child and the trauma the child might face if the police force receives him from

the house of the mother and takes him to the father's house.

Unfortunately, in this tussle between the father and the mother, the desire or the mental condition of the child was completely ignored.

The court appreciates the fact that the child was living with the father, was going to a school close to the residence of the father for many years and was used to such school. However, there are documents and medical reports of the child from AIIMS, Bhubaneswar, which indicate that the child is also suffering from mental trauma and anxiety and is not willing to reside with the father.

This court is not an expert on the issue of mental health of the child. The main application for custody is still pending, which should be disposed of.

The learned advocate for the father requests the court to interview the child once again, but this court is of the view that considering the physical and mental condition of the child and the fact that he has already been interviewed by the learned court below when he had expressed that did not want to go to the father, a further interview would only disturb the child even more.

The mother submits that the child is going to a proper school, namely, St. Xavier's School, Howrah and his progress report has been good.

It is submitted on behalf of the father that the present visitation arrangements are not comfortable and the father does not get any exclusive time with the son. It is further submitted that CCTV cameras and mobile phones are kept in order to monitor and record the meetings. This practice should be stopped immediately.

The mother is cautioned that such behaviour should immediately stop and the meetings between the father and the son should be cordial, enjoyable and entertainable for the child. Visitation of parents is given so that the bond between the parents and the child is not lost in the midst of the acrimonious battles between the parents.

Unfortunately, the child has no control over these issues. The biggest sufferer in the entire affair is unfortunately the child. Soon, the child shall attain majority and will have the independence to decide which parent he would like to stay with, but in the interim period the bonding with both mother and the father should be encouraged and the same is of grave importance.

The court does not want to uproot the child from his present place of residence as the medical reports indicate that the child is suffering from mental trauma.

Thus, the orders impugned are set aside.

However, the following arrangement is made till the custody application is decided mandatorily within six months from the date of communication of this order. Parties will be entitled to adduce the evidence. If medical reports are produced, the doctor may be summoned at the discretion of the court.

The mother and the learned advocate on record of the mother shall take the child to 'Avani Mall' at Howrah, on every Saturday and Sunday between 4 pm and 7 pm on and from Saturday 22nd July, 2023. The father and his advocate on record shall be present. The father shall be entitled to take the child along with him to the games zone within the mall, to restaurants in the mall and enjoy the time with the child without the presence of the mother or the learned advocates who shall wait during the visits at a different place inside the mall. The father will not be entitled to take the child outside the mall at any time.

This arrangement will continue for two months and the learned advocate shall file a report before the learned court below. Upon assessment of such report, the learned court below may pass further orders by which the child may be allowed to spend some weekends at the father's residence till the custody application is decided.

The father is entitled to make such prayer before the court below. All parties are to cooperate. The learned advocates are to act as facilitators in this process of visitation and not as adversaries.

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.)