

21.3.2023
25
Ct. no. 652
sb

C.O. 1228 of 2020
With
CAN 1 of 2020
With
CAN 2 of 2021

Sri Prasanta Paul
Vs.
Smt. Indrani Paul (Dey)

Mr. Bratin Kumar Dey ...for the petitioner

Mr. Sankar Banerjee ...for the Opposite party

This is an application under Article 227 of the Constitution of India challenging the order no. 16 dated 15.2.2020 passed by the learned Additional District Judge, 5th Court, South 24 parganas in Misc. case no. 144 of 2017.

The husband/petitioner herein has sought for interim custody of the two wards who were aged about 8 years and 7 years at the relevant point of time, and who are in the custody of their mother i.e. opposite party herein. Learned court below after hearing both the parties, was pleased to reject the husband/petitioner's prayer for interim custody and fixed the date for hearing of the case.

The petitioner herein aggrieved by that order, contended that the court below has committed gross error in rejecting the prayer of the petitioner for interim custody of the minors and the court below solely relying

upon the expression of the minors about their unwillingness to leave the company of their mother has passed the impugned order. He further submits that the mother is an working lady and it is not possible for her to take all sorts of care for the minors and court below has overlooked the same. He further submits that the petitioners herein is an engineer and he has deep concern about the education and upbringing of his children. The court below ought not to have considered the statements of the minors who were aged about eight years and seven years as they are not old enough to form an intelligent preference. The court below ought to have considered that in matters of custody, the settled principle of law is that welfare of the children should be the paramount consideration and he should have considered that the petitioner is continuing all his duties and liabilities towards his minors and despite repeated requests, the opposite party did not allow them to talk with the petitioner through mobile phone. Furthermore, the petitioner has means and abilities to maintain the minors and their school situates only at a distance of 14 kilometres from the house of the opposite party. Accordingly, he has prayed for passing appropriate order after setting aside the order impugned.

Learned counsel for the opposite party raised objection and by filing affidavit-in-opposition, opposite party/wife has also made certain allegations against the

husband/petitioner and she contended that she has admitted the wards in the school. They are engaged in extracurricular activities and they are under her medical attention round the clock and she is very much vigilant about their mental and physical health. She is most caring, loving, feelingful and dedicated mother. Accordingly, she submits that the court below has rightly rejected the prayer for interim custody made by the petitioner herein and the order impugned does not call for interference.

I have gone through the order impugned. It appears that the court below has observed that the minor son and the daughter aged about eight years and seven years at the relevant time, are residing with their mother and during conversation, minors expressed their unwillingness to leave the company of their mother and it has also come out during conversation that they are studying in school and they are taking lessons regularly from their mother and they are also involved various extracurricular activities and as such the court below came to the conclusion that there is no doubt that the minors are getting proper guidance, congenial atmosphere and they are happy with the present condition living with their mother and they are not willing to go under the custody of their father.

Section 12 of the Act of 1890 makes provision for interim relief which has been sought for by the petitioner

and the court's paramount consideration would always be the welfare of the minors. From the facts and circumstances of the case and from averments made herein, apparently at this stage there is hardly any material to say that the minors are not being brought up according to expectations. Accordingly, I find nothing to interfere with the observations of the trial court as made above. It appears that the court below has passed the order directing the opposite party herein/mother to comply the visitation order passed by the said court on 9.1.2018. Opposite party/mother and the father are to comply the same. However, this order will not preclude the petitioner/father to make any further prayer for modification and/or alteration of the aforesaid visitation order, before the court below and in the event of filing, such application for modification and/or alteration of visitation order by any of the parties in the interest of welfare of the minors, the court below will dispose of the said application in accordance with law.

Accordingly, C.O. 1228 of 2020 is dismissed.

Pending applications, if any, are also disposed of.

Urgent photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)