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A.No.2360 of 2023

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in

O.P.No.633 of 2020

Reserved on 21.04.2023	Delivered on 27.04.2023
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K.KUMARESH BABU,J

The instant application has been filed by the mother seeking for a direction to handover custody of the applicant's minor daughter for a period of four weeks starting from 22.04.2023, pending disposal of the above Original Petition.

2. When the matter was taken up during forenoon session, after hearing the learned counsel appearing on either side, I had proposed to have interact with the minor child, who is aged about 15 years. During the lunch time, I had interacted with the child and the child had expressed her unwillingness to be with the mother during vacation and various reasons were put forth by the child. The reasons adduced by the child, who is aged about 15 years now, do not seem to be the reasons that were tutored by her father in whose custody, she is presently living.

3. When the matter was taken up during post lunch session and when I had expressed that the interaction with the child does not seem to be in



favour of the mother for the custody during summer vacation, the learned counsel appearing for the applicant/mother insisted that the mother should be given a custody of the minor child, by relying upon the judgment of the Hon'ble Apex Court in the case of *Sheoli Hati vs. Somnath Das* reported in *2019 7 SCC 490*; *Gaytri Bajaj vs. Jiten Bhalla* reported in *2012 12 SCC 478* and *Dr.Sathish Kumar vs. Dr.Helen Clarrisa* reported in *2018 2 MLJ 365*.

4. By relying upon the judgment in the case of *Gaytri Bajaj vs. Jiten Bhalla* (supra), particularly to paragraphs 6 and 8, the learned counsel would submit that it is the paramount welfare and interest of the child and not the rights of the parents should be a guiding factor for this Court in deciding the issue. Further, he would submit that the Hon'ble Supreme Court had observed that if the children are forcibly taken away by one of the parent, it will affect their mental condition and that they would be under the influence of the parents in custody, they are, which will affect the interest of the other parent. He would also submit that the mother in the present case should be given a custody for a limited period so that the child understands the love and affection of the mother.



5. By relying upon the judgment in the case of ***Sheoli Hati vs. Somnath Das*** (supra), as an interim measure the mother should be permitted to be with the child for a longer duration as it is only for the welfare of the child. He would particularly rely upon the aforesaid judgment wherein, the Hon'ble Apex Court had extracted the earlier judgment reported in the case of ***Thrity Hoshie Dolikuka vs. Hoshiam Shavaksha Dolikuka*** reported in ***(1982) 2 SCC 544*** and submitted that the bitter relationship between the parents would affect the thinking of the minor as the father with whom she is in custody would yield more influence on her.

6. Further, relying upon the Division Bench judgment of this Court in the case of ***Dr.Sathish Kumar vs. Dr.Helen Clarrisa*** (supra), would submit that the Court should also weigh the suitability based upon the parents credibility which could also involve the structure of the parents in the society at large.

7. In the instant case, he would submit that the child being a girl child, the mother would have more weightage to have custody, but however, the interim custody of the child is with the father, she would only seek for a temporary custody during the summer vacation, so that the mother could



build a good relationship with the child. The judgments relied upon by the learned counsel appearing for the mother would also pre-suppose that the Court have to weigh the interest of the child and not the rights of the parents. In the case of ***Gaytri Bajaj vs. Jiten Bhalla*** (supra) relied upon by the learned counsel for the applicant/mother, the Apex court has held that first the Court should be of help to build up to restore the relationship. For better appreciation the relevant paragraph of the judgment is extracted hereunder:-

*6. In the aforesaid facts and circumstances, we feel that if the children are forcibly taken away from the father and handed over to the mother, undoubtedly, it will affect their mental condition and it will not be desirable in the interest of their betterment and studies. **In such a situation, the better course would be that the mother should first be allowed to make initial contact with the children, build up relationship with them and gradually restore her position as their mother.***

8. It is true that the mind of the child in custody of one of the parents would be influenced by the version of the parent with whom the child is continuously residing. In the present case, the minor child is aged about 15 years and completed her 10th Grade. After my interaction with the child, the child in clear terms, had expressed her unwillingness to be with the mother, but however, she had expressed her willingness to continue with the present



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visitation right of the mother. She had in many words tried to avoid being with the mother which pre-supposed that the child has an aversion to be with the mother. The mother should use the present visitation rights given to her to erase the aversion that had crept into the mind of the child. Once that is achieved by the mother, I do not see any inhabitation in the child to readily accept to be in the company of the mother, it is in the hands of the mother how she approaches her minor child. In the present scenario, I do not find that the child would be comfortable being in the custody of the mother for such a longer duration as prayed for by her. In view of the aforesaid reasoning and findings, I am not inclined to accept the relief sought by the applicant/mother for the present. Hence, this Application is dismissed. However there shall be no order as to costs.

27.04.2023

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