

January 3, 2024
Sl. No.3
Court No.19
s.biswas

CO 477 of 2023

Ikbal Ali
vs.
Golam Sattar Gazi and others

Mr. Sudeep Sanyal
Mr. Sukanta Das
Ms. Tutun das
Mr. Chandrachur Lahiri

... for the petitioner

Mr. Debasis Kar

... for the opposite parties

The revisional application arises out of an order dated April 11, 2022 passed by the learned District Judge, North 24 Parganas, Barasat, in Miscellaneous Case No.81 of 2020.

By the order impugned, the learned court allowed the father, visitation of his children, in the form of video conferencing every alternate Sunday at 4 p.m. The petitioner challenges such order on the following grounds:

- a) The petitioner being the biological father does not have any interaction with the children;
- b) The children will be tutored by the in laws,
- c) The children ought to have been allowed to bond with the petitioner;
- d) The petitioner cannot be held guilty before he is pronounced to be so, upon trial.

Mr. Sanyal, learned advocate appearing for the petitioner submits that the petitioner should bond

with the children and physical interaction would be necessary for such purpose. Video conferencing, twice a month, would not create such bonding. The petitioner was being accused of an offence which had not been committed by him. The wife was a schizophrenic and she had committed suicide.

Learned advocate for the opposite parties submits that charge-sheet had been filed. Prima facie, finding of guilt is available. The petitioner has found to have committed offences under Section 498A and 304B of the Indian Penal Code, by the investigating agency. There is evidence of physical and mental torture not only by the petitioner but also by the family of the petitioner. There has been an allegation of claim of dowry and it also appears that supplementary charge-sheet has been filed against Rabeya Khatoon, the mother-in-law and Ruksana Yasmin, sister-in-law of the deceased. The in-laws of the deceased were absconding and a prayer for issuance of a warrant of arrest, was also made. Subsequently, the in-laws were granted bail. The petitioner was also released on bail.

Perused the contents of the charge-sheet. There is a continuing strained relationship between the two families. This court is of the view that it would not be proper for the court to direct physical interaction of the children with the father as the children are very

young and they have been separated from their father since long. Presence of any family member from the mother's side, would be impossible due the tension and acrimonious relationship. Under the circumstances, presence of any of the in-laws of the petitioner, would not be advisable. The criminal trial is pending. The charges are yet to be framed. They cannot be allowed to go alone to meet the father. Moreover, it appears that the incident of the mother's death due to burning, took place in 2017. The FIR was registered then, but the father filed an application for visitation and the custody only in 2020. It is available from the records that there has been a long separation between the father and the children. Such separation was perpetuated by the unfortunate incident of the death of the mother, for which there has been a criminal proceeding against the father. The mental stability of the children are yet to be determined and this court is of the view that a sudden interaction between the father and the children after a gap of five years, considering the incident which took place and the loss of the mother, may cause further trauma to the children. Such situation should be avoided.

Under such circumstances, the order impugned is modified to the extent that on every Saturday and Sunday, the petitioner shall be entitled to speak to

the children via video conference in the presence of an elderly person of the mother's family, for half an hour between 4:00 p.m. and 4:30 p.m. The learned advocate on record for the opposite party shall provide the phone number to the father. Such arrangement will continue for a while. The petitioner may renew his prayer at a later stage, under changed circumstances. At this stage, physical interaction cannot be allowed.

The revisional application is accordingly disposed of.

All the parties are directed to act on the basis of the server copy of the order.

Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)