

Court No. 16
(266283)

17.12.2024

(AD 72)

(S. Banerjee)

FMA 742 of 2023

CAN 1 of 2023

Shalini Sarkar

Vs.

Florence Mousumi Rozario & Anr.

Mr. Ayan Dutta

Mr. Bikash Kumar Singh

...for the appellant

Mr. Rachit Lakhmani

Mr. Arindam Paul

...for the respondent no. 1

The present appeal has been preferred against an ad interim order of refusal of injunction. The genesis of the matter is a suit instituted by the appellant, who is the biological mother of a minor girl of about eight years, challenging the purported adoption of the minor by respondent no. 1.

Learned counsel for the appellant contends that the appellant, who is herself an orphan, was raised in an orphanage and due to financial stringency, although she gave birth to the minor daughter in the year 2017, could not take the child in her custody for about seven years thereafter.

However, upon such stringency being somewhat mitigated, the appellant took information and found out that her child had been given to the respondent no. 1 by the respondent no. 2, the latter

being the sister of the caretaker of the orphanage where the petitioner was brought up and whom she had relied on.

It is contended that the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 were not complied with and as such, the purported adoption in favour of the respondent no. 1 is bad in law.

It is further argued by learned counsel for the appellant that in the event the minor is permitted to be removed outside the precincts of Kolkata, it may be difficult to implement the final decree if the suit is decreed in favour of the plaintiff/appellant.

In view of the above issues being involved, we admit the appeal on the grounds as taken in the memorandum of appeal.

The appeal itself is next taken up for hearing on consent of the parties along with the connected applications.

While controverting the arguments of the appellant, learned counsel for the respondent no. 1 contends that the prayers for injunction made by the plaintiff/appellant ought to be dismissed on the ground of equity alone, since the appellant did not even care to take information about her daughter for seven long years after her birth.

It is submitted that the respondent no. 1 is the only mother which the minor girl knows since her birth and as such, the minor's world revolves around the respondent no. 1. It is contended that no prima facie case has been made out by the appellant for getting a declaration in the suit, more so since the paramount consideration in such cases is the welfare of the child.

It is also argued that the appellant had taken out a writ petition unsuccessfully previously, which also was affirmed in the appellate court.

As such, it is argued that the injunction application made by the appellant in the Court below lacks bona fides.

Learned counsel for the respondent no. 1 further argues that in the event the child is restricted from being moved outside Kolkata, it will severely curtail the individual liberty of the child, who would then not be permitted to leave the city even on vacations.

Upon a careful consideration of the rival contentions of the parties, we find that the order impugned herein palpably lacks reasons. None of the parameters of grant of injunction or refusal thereof were adverted to even at the ad interim stage by the learned trial Judge.

However, balancing the equities between the parties, we are of the opinion that the purpose of justice would be subserved in the event the respondents are restrained from removing the minor child from the territorial limits of the State of West Bengal without the leave of the trial Court at least till the disposal of the injunction application pending in connection with the suit.

It has been contended by the plaintiff/appellant that the respondents have not filed written objection to the injunction application since long and as such, no lenience ought to be shown to the respondents.

Be that as it may, for the ends of justice, we are inclined to grant an opportunity to the respondents to file their written objection(s) to the injunction application expeditiously.

Accordingly, FMAT 288 of 2023, along with CAN 1 of 2023, are disposed of by modifying the impugned order to the effect that the respondents shall not take the minor child, in respect of whom the suit has been filed, outside the territorial limits of the State of West Bengal without the leave of the learned trial Judge till disposal of the injunction application pending in connection with Title Suit No. 921 of 2023.

The respondents shall file their written objection(s) to the injunction application in the trial

Court on or before January 10, 2025. Reply if any, shall be filed within January 17, 2025.

The learned trial Judge is requested to dispose of the main injunction application as expeditiously as possible, positively within February 14, 2025.

It is made clear that we have not entered into the merits of the matter and those will be kept open for being adjudicated at the final hearing of the injunction application. The learned trial Judge shall, at the stage of final hearing of the injunction application and at all further stages of the suit, decide the issues involved independently on their own merits without being influenced in any manner by any of the observations made herein and/or by the ad hoc arrangement made by this Court.

In the event the respondents apply for taking the child outside the State of West Bengal before the learned trial Judge, it is expected that such application will be decided, upon giving an opportunity of hearing to the present appellant, as expeditiously as possible, preferably within a week from filing of such application.

(Sabyasachi Bhattacharyya, J.)

(Partha Sarathi Sen, J.)