

D/L 16
26.09.2024
Court No.19
Sandip

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO 3435 of 2024

Dr. Agnidipa Das

Vs.

Ranajoy Dutta

Mr. Anirudhha Chatterjee
Mr. Rajdeep Mojumder
Mr. Billwadal Bhattacharyya
Mr. Srijib Chakraborty
Mr. Anish Kumar Mukherjee
Mr. Aditya Mondal
Mr. Tamoghna Pramanick
Ms. Sagnika Banerjee

...for the Petitioner.

Mr. Kallol Basu
Mr. Bratin Kr. Dey
Mr. Samik Sarkar
Mr. Ayushman Dasgupta

...for the Opposite Party.

The parties are husband and wife; they have a daughter, namely *Arya Dutta* now in the custody of the mother, the petitioner of the instant application under Article 227 of the Constitution of India.

The father, the opposite party herein has initiated the connected proceeding under the Guardian and Wards Act, 1890 for custody of his daughter. The said proceeding being *Act VIII Case no. 176 of 2022* is pending before the 13th Court of learned Additional District Judge at Alipore, District: 24 Parganas (South).

The father, in the said proceeding had filed an application under Section 151 of the Code of Civil Procedure praying temporary custody of his daughter from October 07, 2024 to October 11, 2024.

The learned Trial Judge by the order impugned being Order no. 46 dated September 11, 2024 has disposed of the said application by permitting the father to take temporary custody of his daughter from October 07, 2024 till the morning of October 10, 2024.

Mr. Anirudhha Chatterjee, learned advocate for the mother submits that by virtue of a writ of *Habeus Corpus* issued in *WPA (H) 55 of 2022*, the custody of the minor was restored to the mother. The said writ petition was disposed of vide order dated September 13, 2022, with certain directions regarding access of the father to the minor and the father is getting access to his daughter in terms of the said directions but handing over the temporary custody of the child to the father during the festival of *Durga Puja* clearly offends the said directions of the Hon'ble Division Bench.

Mr. Kallol Basu, learned advocate for the father on the other hand submits that the Hon'ble Division Bench in the order dated September 13, 2022 has clarified that any interlocutory application(s) if filed in the Guardianship proceedings, shall be considered by the competent Court on its merit without being influenced by the observations made in the said order. He further submits that the father is equally entitled as the mother to enjoy the company of his daughter during the festival time.

Having heard the learned counsel for the parties and on perusal of the records, it appears that in the matter of access and temporary custody of their daughter, the parties are following the arrangement made in the aforementioned order dated September 13, 2022.

The desire of the father to have the company of his only child during the festival period is natural, but it cannot outweigh the mother's feeling of anxiety in keeping the 7 years old daughter away from her for whole three days, though in terms of the said order dated September 13, 2022, the daughter is staying overnight with the father.

This Court, to strike a balance between the requirements and desire of the parties, permits the father to take custody of the daughter at **10:00am** on **October 09 2024** and **October 15, 2024** and shall return such custody to the mother at **10:00am** on the date following the said dates, i.e. on **October 10, 2024** and **October 16, 2024** respectively. This arrangement is in addition to the existing arrangement of access/custody made in the said order dated September 13, 2022.

C.O. 3435 of 2024 is disposed of with the above terms without any order as to costs.

Parties to act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent Photostat certified copies of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Biswajit Basu, J.)