

20.03.2024
Sl. No.25(DL)
srm

C.O. No. 4117 of 2023

Nupur Kazi

Versus

Dr. Kabir Hossain

Md. Sabir Ahmed,
Mr. T. Ahmed,
Ms. Sumon Biswas,
Mr. Dhiman Banerjee

...for the Petitioner.

Dr. Debabrata Karan,
Mr. Debojyoti Karan,
Mr. Debopriyo Karan

...for the Opposite Party.

1. The propriety of the order dated October 17, 2023 passed by the learned Additional District Judge, Fast Track, 5th Court at Alipore, South 24-Parganas, in connection with Act VIII Case No.43 of 2023, is under challenge before this Court.
2. The mother who is the petitioner submits that the order impugned suffers from several defects:
 - (a) In view of lack of funds, the child and the mother are residing at Asansol at the maternal grandfather's residence, and they cannot travel to Kolkata every week.

(b) It is not financially feasible for the mother to maintain a life in Kolkata, due to paucity of funds. She cannot take the child for the visits at the South City Mall, Kolkata.

(c) The length of time between 11.00 am to 4.00 pm for the physical visitation was not suitable, as the child is five years old he requires rest in the afternoons.

3. Mr. Ahmed, learned Advocate for the petitioner/mother submits that the main issue is with regard to the financial burden which such order of visitation has imposed on the mother. The mother does not have the financial capability to embark upon a journey from Asansol to Kolkata on every Saturday. That apart, the child himself would suffer huge physical stress.

4. Dr. Karan, learned Advocate appearing on behalf of the opposite party/father submits that the order was passed at a time when the child was residing in Kolkata. The child continues to reside in Kolkata and studies in a nursery school at Tollygunge. The father was deprived of not only physical visitation, but also video conferences. The father has not seen the child

for the past six months. The biological father has every right to be a part of the child's life, growth and over all development.

5. The issues before this court are whether the direction for physical visitation would be convenient, congenial and beneficial for the child and whether the father should be allowed an interaction with the child. Upon hearing the parties at length, it appears that the main constraint why the mother often lives in Asansol, is financial. It also appears that the child's education is suffering. The mother cannot shuttle between Asansol and Kolkata. She must provide a stable home to the child and ensure that he has proper schooling.
6. The father is present before this Court and upon the Court's query with regard to bearing the expenses of the child he has shown his *bona fide* intention to maintain the child, and pay for his maintenance.
7. The opposite party has undertaken before the Court to pay Rs.20,000/- per month for the child. As the mother has not completely shifted to Asansol, but mainly resides in Kolkata, she will continue to reside

in Kolkata with the child and continue with the education of the child.

8. This Court finds that the child has been missing school because of the travel between Asansol and Kolkata, which is undesirable. The child's normal life and development is of utmost importance and the child must go to school on regular basis.
9. With regard to the duration of the visit, as the child is five years old, the Court appreciates he might be tired if he has to spend about five hours in a shopping mall. Thus, the duration of physical visitation should be modified. The child shall spend every Saturday with the father, between 4.00 pm to 8.00 pm at the South City Mall at Kolkata.
10. The father assures the Court that the child will not be detained, if he is tired. The activities during such visitation will be at the choice of the child and as per his desire. They will spend the time at the food court and the time zone or play area. The mother will be at liberty to accompany the child. During such visitation, the father will have exclusive time with the child. The mother will wait at a place nearby. The child will not be taken outside the Mall.

11. The child and the mother shall be picked up by the father and dropped off.
12. The learned Advocates-on-record of the respective parties shall coordinate and exchange the phone numbers and the address or the location from which the child and the mother should be picked up.
13. The virtual visitation, as directed, is not interfered with.
14. The visitations, as directed by this Court, will commence from March 23, 2024 and will continue on every Saturday, as directed.
15. The payment of Rs.20,000/- for the month of March, 2024 shall be transmitted to the account of the petitioner/mother within March 22, 2024. Thereafter month by month within 22nd of each succeeding month. This amount, as has been undertaken to be paid to the mother for the child's maintenance is full and final settlement for the next three years, insofar as the maintenance to the child is concerned.
16. The maintenance claimed by the wife/petitioner is not governed by this order and this Court has not expressed any opinion on the other proceedings, which are pending between the parties.

17. The revisional application is disposed of.

18. There shall be no order as to costs.

19. Parties are to act on the basis of the server copy of
this order.

(Shampa Sarkar, J.)