

AD-25
Ct No.16
21.01.2025
(SSS)

FMA 122 of 2025
With
CAN 1 of 2025

Shri Sukanta Sinha Ray
Vs.
Lalima Das and Anr.

Mr. Rabindra Narayan Dutta,
Mr. Sibasis Ghosh,
Mr. Hare Krishna Halder,
Mr. Ardhendu Nag,
Mr. Soham Banerjee
...For the Appellant.

Mr. Souradipta Banerjee,
Mr. Prosenjit Saha,
Mrs. Fatima Hassan
.....For the Respondents.

1. The present appeal has been preferred against an order whereby the Act VIII case of the petitioner-father for custody and interim visitation of his child has been dismissed altogether on the finding that the Family Court, and not the City Civil Court, has jurisdiction to take up the matter. Since there are arguable questions involved, we admit the appeal and, with the consent of the parties, take up the appeal itself for hearing, particularly keeping in view the implicit urgency involved as the matter arises out of a custody proceeding.

2. The appellant challenges the order on the ground that in terms of an unreported judgment passed by a learned Single Judge of this Court in C.O. No. 2028 of 2018 with C.O. No. 2587 of 2018 with C.O. 407 of 2019, it was held that the City Civil Court, under Section 5(3) of the City Civil Courts Act, has jurisdiction to take up custody matters.

3. It is argued that the learned Trial Judge misinterpreted the said decision.

4. It is further argued that in the previous proceeding for custody initiated for the same relief before the Barasat Court, the respondent-mother had taken an objection on the ground that the City Civil Court, and not the Barasat Court, has jurisdiction to hear the matter. Thus, the present demur taken by the respondents before the City Civil Court, on the basis of which the impugned order was passed, is *mala fide*.

5. It is further argued that the City Civil Courts Act also has a *non obstante* clause and as such, Section 5(3) prevails over any other statute.

6. Learned Counsel appearing for the respondents controverts such submissions and points out that in the unreported judgment cited by the learned Advocate for the appellant, the court had distinguished between an application for custody in respect of the property and one for the person of a

minor. In case of the former, the City Civil Court might retain jurisdiction under Section 5(3) but in respect of the latter, the Family Court has jurisdiction under the explanation to Section 7(1) of the Family Courts Act, 1984.

7. The appellant also argues in rejoinder that in any event, the Act VIII case itself could not have been dismissed by the learned Trial Judge even if it was held that the Family Court has determination to hear the matter. The appropriate course of action would have been to return the application under Section 14 of the City Civil Courts Act.

8. We find from a perusal of the unreported judgment of the learned Single Judge cited by the appellant that, as rightly pointed out by learned Counsel for the respondents, the same distinguished between an application for custody in respect of the person of a minor, for which the Family Court was held to have jurisdiction, and one relating to the property of a minor which, not coming under the purview of the Explanation to Section 7(1) of the Family Courts Act, 1984, has to go before the City Civil Court.

9. We also find from the concerned provisions of law that Section 7(1), in its Explanation, clearly enumerates the suits and proceedings which are to be heard exclusively by the concerned family court.

10. In respect of such matters, undoubtedly, since the Family Courts Act is a special statute having overriding effect and having been enacted subsequent to the City Civil Courts Act with the Legislature having full knowledge of the existence of the City Civil Courts Act, the jurisdiction of the District Court is ousted in favour of the Family Court. However, Clause (g) of the explanation to Section 7(1) of the Family Courts Act provides that a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor has to be heard by the Family Court.

11. To such limited extent, the said provision overrides Section 5 of the City Civil Courts Act. Although Section 21 of the latter Act lends overriding effect to the Act over anything to the contrary in any other law including in particular, the Letters Patent of the High Court, the Family Courts Act also provides in Section 20 thereof that the provision of the said Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any law other than the said Act.

12. As held above, since the Family Courts Act was enacted at a time when the City Civil Courts Act was already subsisting and came within the purview of

“any other law for the time being in force” as enumerated in Section 20 of the Family Courts Act, 1984, in the event of a conflict between the two, the Family Courts Act, which is a special statute in respect of the disputes mentioned therein, prevails over the City Civil Courts Act.

13. However, although there is no conflict between the two statutes regarding an application for guardianship in respect of the property of a minor, which would go to the City Civil Court, insofar as an application for custody or access to the person of the minor is concerned, the same is squarely covered by Clause (g) of the Explanation to Section 7(1) of the Family Courts Act, 1984 and as such, has to be heard by the Family Court and not by the City Civil Court.

14. Accordingly, the learned Trial Judge was justified to the extent that it came to the conclusion that the Family Court has jurisdiction to hear out the matter. Although the reasoning that the application was not under the Guardians and Wards Act, but under Section 6 of the Hindu Minority and Guardianship Act, 1956 is a bit doubtful, since quotation of captions is immaterial, be that as it may, fact remains that the conclusion of the learned Trial Judge was correct to the extent that the application

was maintainable before the Family Court and not the City Civil Court.

15. However, the learned Trial Judge erred in law in dismissing the Act VIII case as a whole. The appropriate recourse for the City Civil Court, under Section 14 of the City Civil Courts Act, was to return the Act VIII application to the petitioner/appellant for the purpose of being presented before the appropriate court, that is, the Family Court having jurisdiction.

16. Accordingly, FMA 122 of 2025 is allowed in part, thereby modifying the impugned order to the extent that the application filed under Act VIII by the appellant for custody and other reliefs relating to the minor child of the parties, is hereby directed to be returned to the appellant for being presented before the appropriate Family Court having jurisdiction.

17. The City Civil Court shall act on a server copy of this order for the purpose of compliance and ensure that the application is returned to the appellant at the earliest after such communication is made. Immediately thereafter, the appellant shall present the same before the appropriate Family Court. It is expected that upon being so presented, the Family Court shall consider the scope of granting any interim relief to the parties, if permitted in law.

18. This court has not gone into the merits of the allegations and counter allegations of the parties and

it is left open to the concerned Family Court to deal with all issues independently and in accordance with law.

19. CAN 1 of 2025 stands disposed of accordingly as well. No order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)