

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

**Before:
The Hon'ble Justice Hiranmay Bhattacharyya**

**C.O. 1240 of 2025
Rishi Agarwal
Vs.
Dipika Agarwal nee Khaitan**

For the Petitioner : Mr. Uday Gupta, ...Sr. Advocate
Mr. Rohan Dwaipayan Bhowmick
Ms. Ankita Dey
..... advocates

For the Opposite Party : Ms. Amrita Mitra
Mr. Arindam Paul
Ms. Dipannita Dutta
.... advocates

Reserved on : 28.04.2025

Judgment on : 22.05.2025

Hiranmay Bhattacharyya, J.:-

1. This application under Article 227 of the Constitution of India is at the instance of the father of a minor child and is directed against an order being No. 88 dated 20.03.2025 passed by the learned Additional District Judge 10th Court at Alipore, District- 24 Parganas (South) in Act VIII Case no. 17 of 2019. By the impugned order, the application filed by the father on 22.01.2025 was allowed; the application dated 27.01.2025 filed by the petitioner father stood rejected and the 3rd application filed by the petitioner father on 28.01.2025 was disposed of.

2. Petitioner filed a suit for divorce against the opposite party herein before the learned Additional District Judge, 24 Parganas (South) at Alipore being MAT no. 246 of 2019. Subsequently, the petitioner filed an application under Section 25 of the Guardians and Wards Act, 1890 before the learned District Judge, 24 Parganas (South) at Alipore which is registered as Act VIII case no. 17 of 2019.
3. In the said Act VIII proceedings, the petitioner filed an application under Section 12 of the Guardians and Wards Act. The petitioner claims that in compliance with the final judgment and order dated 13.03.2023 passed in CO No. 755 of 2019, CO 528 of 2020 and CO 543 of 2020, petitioner took on rent the property being plot no. 1B on the first floor of the building situated at 25 Ballygunge Circular Road, Kolkata- 19. The petitioner prayed for temporary custody of the child. The learned Additional District Judge, 10th Court at Alipore by an order being no. 51 dated 11.04.2023 rejected the prayer for temporary /interim custody of the child. Challenging such order the petitioner approached this Court by filing a Civil Application under Article 227 of the Constitution of India which was registered as CO 1389 of 2023. The said Civil Revision Application was disposed of by a co-ordinate bench by order dated 24.05.2024 by passing certain directions thereby modifying the order dated 11.04.2023 with regard to visitation and stay of the child with the petitioner during vacation and on some other occasions.
4. The petitioner filed an application before the learned Trial Judge on 22.01.2025 praying for an order allowing the petitioner to terminate the lease deed dated 23.03.2023 for the property being plot no. 1B and to allow the child to stay at the residence of the petitioner at 60 Ballygunge Circular Road, 6th floor with the petitioner and the grand- parents during the visitation to Kolkata.
5. The petitioner filed another application on 27.01.2025 praying for a direction upon the opposite party to hand over interim custody of the child to the petitioner.

6. On 28.01.2025 the petitioner filed another application praying for an order to take cognizance of the acts and events that allegedly took place in the Court room on 27.01.2025 and for a further direction for physical examination of the child and mental evaluation of the child by a Doctor and a child psychologist in a Government Hospital at Kolkata and a report thereof be placed on record.
7. By the order impugned the application dated 21.01.2025 was allowed; the application dated 27.01.2025 stood rejected and the 3rd application dated 21.01.2025 was disposed of.
8. Mr. Gupta, learned Senior Advocate appearing for the petitioner submitted that the petitioner herein only prayed for allowing the petitioner to terminate the lease in respect of the rented property and to allow the child to stay at the residence of the petitioner during the visitation at Kolkata and there was no prayer for stopping the visitation of the child at Kolkata. He submitted that the arrangement made by this Hon'ble Court in its order dated 24.05.2024 in CO No. 1389 of 2023 could not have been modified by the learned judge without an application being made therefor. He further submitted that merely on the basis of oral submission the learned Judge directed that the child was no longer required to come down to Kolkata for visitation. He further contended that the child was brought to Kolkata on 27.01.2025 as the learned Trial Judge by an order dated 22.01.2025 wanted to meet the child. Mr. Gupta further contended that in the impugned order the learned Judge has recorded that the child had expressed difficulty in coming to Kolkata, but the said order reflects a picture which is totally contrary to the observations made by a co-ordinate bench in the order dated 20.01.2023 passed in CO No. 1389 of 2023. He contended that by the order impugned the learned Judge has in effect restrained the grand-parents and the aunt from meeting with the child at Kolkata and Delhi which is contrary to the judgment and order passed by the co-ordinate bench in CO No. 1389 of 2023 on May 24, 2024. The learned Senior Advocate for the petitioner further contended that no material was produced by the opposite party in

support of the allegation that the child was being inconvenienced in any manner whatsoever while visiting in Kolkata and learned Judge of the family Court has stopped the visitation at Kolkata only on the basis of oral submissions made in course of hearing.

9. Ms. Mitra learned advocate appearing for the opposite party seriously disputed the submissions made by the learned Senior Advocate for the petitioner. She submitted that the learned Trial Judge passed an order dated 22.01.2025 by observing that she will talk privately with the child on 27.01.2025. Learned Trial Judge met with the child in her chambers on 27.01.2025 at about 3 PM for almost 30 minutes. She submitted that the child is now studying in a higher class and she needed time to revise the subject and the weekends are the only time when she could relax and meet her friends and do some extra curricular activities. She further submitted that the child gets very tired coming back to Delhi from Kolkata late on Sunday night and due to lack of proper sleep the child feels very tired in the school following day. She further submitted that the child will be spending time with the father and grand-parents for 21 days in summer vacation and she would also be spending time with the petitioner and his family during winter vacation. The learned advocate for the opposite party further submitted that the opposite party filed an application on 11.12.2024 for modification of the order dated 24.05.2024 and the impugned order was passed on such application.
10. The learned advocate appearing for the opposite party placed reliance upon the decision of a co-ordinate bench in the case of **Sanjib Saha vs. Smt. Bidisha Saha (Nee Roy)** reported at **AIR (2006) Cal 214**; the decision of the Hon'ble Supreme Court in the case of **Sugirtha vs. Gowtham** reported at **2024 INSC 1036** and **Deepti Bhandari vs. Nitin Bhandari & Anr.** reported at **(2012) 1 SCC 725** in support of her contention that considering the welfare of the child the father should be required to travel to meet the child rather than the child traveling to meet the father.

11. Heard the learned advocates for the parties and perused the materials placed.
12. Record reveals that the co-ordinate bench, by an order dated 24.05.2024 in CO 1389 of 2023, directed that the petitioner shall be entitled to meet the child at the residence of the opposite party at Delhi on 27.07.2024 between 4PM to 6PM upon prior notice and on 3rd Saturday in the month of August the petitioner may visit the child at Delhi from 4PM to 6PM and thereafter in the month of September the child shall come to Kolkata at the residence of the petitioner in the 3rd Saturday and visitation day of every month and stay of the child shall be as per the schedule mentioned in the said order. An application for modification of the order dated 24.05.2024 was filed on the ground that certain subsequent development took place and on such application, the co-ordinate bench passed an order on 17.01.2025 granting liberty to the petitioner to make necessary prayer with regard to such developments before the learned Trial Judge with a direction upon the learned Trial Judge to decide the same in accordance with law without being influenced by the said order.
13. The petitioner claims that the child stayed with the grand-parents during the winter vacation from 09.01.2025 to 11.01.2025 and she was very comfortable and extremely happy in spending her time with them. The petitioner claimed that he had to incur a substantial amount on account of rental dues, electricity charges, maintenance and ancillary expenses for keeping the rented accommodation habitable and for such reason the petitioner filed an application praying for permission to allow the petitioner to terminate the lease deed dated 23.03.2023 for the property being Plot no. 1B on the first floor of the premises being no. 25 Ballygunge Circular Road and to allow the child to stay at the residence of the petitioner on the 6th floor of premises no. 60 Ballygunge Circular Road with the petitioner and the grand-parents during the visitation in Kolkata.
14. On such application being filed by the petitioner, the learned Trial Judge, by the impugned order, permitted the petitioner to terminate the lease deed

and further directed that it would no longer be necessary for the petitioner to maintain any rented accommodation. However, the learned Trial Judge observed that the child was no longer required to come for visitation to Kolkata and the petitioner was directed to meet the child in New Delhi during monthly visitation and restrained any other person apart from the petitioner from accompanying the child during the monthly visitation.

15. From a bare reading of the Order No. 88 dated 20.03.2025, this Court finds that the said order was passed only on the application filed by the petitioner on 22.01.2025. In the application dated 22.01.2025 the petitioner only prayed for an order to allow him to terminate the lease deed and to allow the child to stay at the residence of the petitioner along with the petitioner and the grand-parents during the visitation to Kolkata.
16. After going through the averments and the reliefs claimed in the petition dated 22.01.2025 filed by the petitioner-father, this Court finds that the petitioner sought for an order to allow the minor child to stay at the residence of the petitioner at 60, Ballygunge Circular Road, 6th Floor with the father and the grandparents during the visitation to Kolkata. The relief sought for to terminate the lease deed is consequential to the primary relief claimed to allow the child to stay with the father and grandparents at 60, Ballygunge Circular Road.
17. It was open to the learned Trial Judge either to allow or reject the petition dated 27.01.2025 as a whole but the main relief could not have been denied after allowing the consequential relief. The effect of the order impugned is that the order of visitation at Kolkata has been stopped. Thus, the petitioner had been put to a worse off position on the application filed by him, which is impermissible.
18. Though the learned advocate appearing for the opposite party contended that the application filed by the opposite party on 11.12.2024 for modification of the arrangement made for visitation of the child in Kolkata was also the subject matter of consideration by the learned Trial Judge

while passing the order dated 20.03.2025, this Court is not inclined to accept such contention of Ms. Mitra for the reasons as stated hereinafter.

19. This Court finds that the order dated 20.03.2025 does not make any reference to any application for modification being filed by the opposite party herein. It appears to this Court that the only reason which weighed in the mind of the learned Trial Judge for holding that the child shall no longer be required to come for visitation to Kolkata is that the child revealed to the learned Trial Judge on 27.01.2025 while the learned Judge met with the child at her chamber that the visitation in Kolkata is becoming difficult for her because she has to miss school on each occasion she has to come down to Kolkata for visitation. The learned Judge also noted that since the child is in class VI and will be going on to Class VII, her education has to be of utmost priority and the wishes of the grand-parents to see the child, though legitimate has to be limited to fit the curriculum and the schedule of the child.
20. Though the learned Trial Judge modified the order for visitation by observing that the child shall no longer be required to come to Kolkata for visitation only on the basis of some statements alleged to have been made by the child indicating her inconvenience to come to Kolkata for visitation, the petitioner was not put on notice on the alleged inconvenience of the child. That apart the learned Trial Judge restrained the grand-parents of the child from meeting the child only on the ground that the wishes of the grand parents to see the child has to be limited to fit the curriculum and schedule of the child. To the mind of this Court the same cannot be a ground to disregard the wishes of the grand- parents for meeting with the grand-daughter. No adverse material against the grandparents has surfaced to deny their right of visitation of the minor grand-daughter.
21. In our society, grand parents are more attached emotionally with their grandchildren. There is a saying that grandparents love the interest more than the principal.

22. It appears from the impugned order that the learned Judge interacted with the child. The order does not record anything adverse against the grandparents to indicate that the grandparents acted in a manner which is detrimental to the welfare of the minor. To the mind of this Court a meeting between the grandparents and the grand-daughter can, by no stretch of imagination, be said to be adverse to the welfare and the development of the minor. The love and affection of the grandparents would have a positive impact on the life and mind of a minor rather than affecting her education and other extra-curricular activities.
23. It appears that the petitioner father was not informed by the Judge about the inconvenience alleged to have been faced by the child for the visitation at Kolkata. This Court feels that the petitioner-father ought to have been afforded any opportunity to consider the issue of such inconvenience prior to a final decision being taken to stop the visitation at Kolkata.
24. Reasons assigned by the learned Trial Judge restraining the grand-parents from accompanying the child during the monthly visitation is not acceptable to this Court.
25. That apart the existing arrangement of monthly visitation at Kolkata also could not have been modified on an application filed by the father praying for allowing the child to stay at his residence during the monthly visitation at Kolkata as already held by this Court.
26. Though the learned advocate for the opposite party contended that the application for modification filed by the opposite party herein on 11.12.2024 was considered by the learned Trial Judge while passing the order dated 20.03.2025 it would be relevant to point out at this stage that this Civil Revision application was taken up for hearing for the first time on 23.04.2025 when this Court noted the submissions of the learned advocate for the petitioner that the earlier order of visitation was modified by the impugned order without there being any application for modification filed by the wife/opposite party herein. The opposite party herein filed a put up

petition before the learned Trial Judge on the very next day i.e., on 24.04.2025 wherein it was stated that though an application was filed by her on 11.04.2024 but the same has not been mentioned in the order sheet dated 11.12.2024 and for such reason the opposite party prayed for clarification and/or modification of the order dated 11.02.2024. The opposite party filed an affidavit before this Court wherein the copy of the order no. 90 dated 24.04.2025 has been annexed. It appears from the said order that the learned Trial Judge after perusing the record observed that there is no endorsement on the application dated 11.12.2024 that the copy of the said application was served upon the petitioner. It was further recorded in the said order that the order dated 11.12.2024 does not reflect filing of the said application and on 11.12.2024 an application dated 03.12.2024 filed by one **Raj Kishan Soni** was heard and disposed of. Thus, it is evident that the application for modification of the visitation order on the ground of alleged inconvenience of the child alleged to have been filed on 11.12.2024 was neither served upon the petitioner nor the same was considered on 11.12.2024.

27. For such reasons this Court is not inclined to accept the submission of the learned advocate for the opposite party that the prayer of the opposite party for modification of the visitation order inter alia on the ground of inconvenience of the child was considered while passing the impugned order.
28. A copy of the application alleged to have been filed on 11.12.2024 has been annexed to the affidavit filed by the opposite party herein in the Civil Revision Application. After going through the said application dated 11.12.2024 this Court finds that the opposite party herein prayed for an order to the effect that as long as visitation in Kolkata and Delhi are concerned, the meeting of the father with the child during school days are to be avoided and to ensure that the child reaches home at Delhi by 5 PM on Sunday so that the child gets adequate rest for the school the next day while booking the tickets. Therefore, even by going through the reliefs claimed in

the application alleged to have been filed on 11.12.2024, it is evident that the opposite party herein did not seek for stopping the visitation at Kolkata but only prayed for an order to ensure that the child reaches home at Delhi by 5 PM on Sunday while booking the air tickets.

29. For all the reasons as aforesaid, this Court is inclined to interfere that the Order No. 88 dated 20.03.2025 passed on the application filed by the petitioner dated 22.01.2025 and to direct the learned Trial Judge to consider the said application afresh after giving an opportunity of hearing to the learned advocates for the respective parties and by passing a reasoned order keeping in mind the observations made hereinbefore.
30. In ***Sugirtha*** (supra) the Hon'ble Supreme Court while considering the venue for access of the two year minor child interfered with the order passed by the Hon'ble High Court and the Family Court allowing the visitation at the place of residence of the father on the ground that such orders did not provide any justified reasons and without considering that the interest and welfare of the child is paramount. This Court has already disapproved the reasons assigned by the learned Trial Judge in the order impugned and for such reason the decision in the case of ***Sugirtha*** (supra) cannot come to the aid of the petitioner.
31. In ***Deepti Bhandari*** (supra) the petitioner therein moved an application for modification of the order for visitation and to shift the place of visitation from Jaipur to Delhi and upon such prayer being disallowed the Special Leave Petition was filed. In the case on hand it has already been observed that no prayer for modification of the existing visitation arrangement was made by the opposite party hereinbefore the learned Trial Judge. The decision in ***Deepti Bhandari*** (supra) being distinguishable on facts cannot come to the aid of the opposite party.
32. In ***Sanjib Saha*** (supra) the co-ordinate bench after noticing that the father was not in India and had gone away to his place of work in USA allowed the father in terms of a consent order to have access to the daughter not at the

place of the mother but at the residence either of the Special Officer or the social activist appointed by the Court. The said decision is also distinguishable on facts and the same cannot come to the aid of the petitioner.

33. The petitioner prayed for handing over the custody of the child to him by filing the application dated 27.01.2025. The learned Trial Judge after taking note that the child is a Class VII student studying in reputed school in New Delhi thought fit not to change the entire set up plainly on the basis of a singular incident. After going through the portion of the order dealing with the application dated 27.01.2025, this Court is of the considered view that the learned Trial Judge was right in rejecting the application dated 27.01.2025.
34. For such reasons this Court is not inclined to interfere with the portion of the order dated 20.03.2025 by virtue of which the application dated 27.01.2025 was rejected.
35. By filing the application dated 28.01.2025 the petitioner herein sought to highlight an incident that allegedly took place in the Court room just before and after the child was privately examined by the learned Judge of the Family Court. The learned Trial Judge, in the order impugned, noted that during the hearing of the said application the learned advocate for the opposite party did not deny the allegation made against her but sought to justify her action by explaining the reasons therefor. The learned Trial Judge disposed of the said application by observing that it is not desirable for any lawyer to behave in the manner as narrated in the application and the learned Judge advised that the learned advocate should act in a more professional way and she should refrain from any such unwanted act.
36. This Court does not find any reason to interfere with the portion of the order dated 20.03.2025 thereby disposing of the application dated 28.01.2025.
37. For all the reasons as aforesaid CO No. 1240 of 2025 stands allowed in part. The order being no. 88 dated 20.03.2025 is set aside. The application dated

22.01.2025 filed by the petitioner-father is restored to the file of the learned Additional District Judge, 10th Court at Alipore in Act VIII Case No. 8 of 2019 and the learned Judge is directed to consider the said application afresh, afford opportunity of hearing to the respective parties and dispose of the same in accordance with law in the light of the observations made hereinbefore by passing a reasoned order as expeditiously as possible but preferably within a period of 30 working days from the date of receipt of a server copy of this order.

38. There shall be, however, no order as to costs.
39. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)

(P.A.-Sanchita)