

CO/2136/2024

**KAZI RUKSANA ALIAS KAZI RUKSANA AHMED
VS.
HIRAK AHMED HOSSAIN**

Mr. Satyam Mukherjee, Adv.
Ms. Sayani Ahmed, Adv.
Mr. Saibal Rakshit, Adv.

...For the Petitioner

Mr. Souma Subhra Roy, Adv.
Miss. Neelam Kumari, Adv.

...For the Opposite Party

1. This revisional application is directed against an Order No.10 dated 8th January, 2024 passed by the learned Additional District & Sessions Judge, 7th Court, Barasat, in Misc. Case (Act-VIII) No.188 of 2022, directing the petitioner /mother to give access to the father to meet with the child on every Friday evening to Saturday evening and for that purpose to hand over the child to the opposite party/father till evening of Saturday.
2. It is submitted by the learned advocate appearing on behalf of the petitioner-mother that the father/opposite party has instituted a proceeding under section 25 of the Guardian & Wards Act, 1890 (hereinafter referred to as 'the said Act') falsely alleging that the mother is restraining the minor to meet with the father. The present petitioner filed a written objection against such condition denying the allegation levelled against her by

the father/opposite party . It is the case of the petitioner that the grandmother of the minor that is the mother of the present opposite party-father, namely, Khaleda Ahamed also filed a separate proceeding being Misc. Case (Act-VIII) No.20 of 2021 under section 7 of the said Act prior to filing of the case by the opposite party which is still pending for consideration before the learned Additional District & Sessions Judge, Fast Track 1st Court at Barasat.

3. It is further submitted by the learned advocate that initially the learned trial court refused to pass any ad-interim order of visitation in favour of the said grandmother vide order dated 5th February, 2021 however such permission was granted by the Hon'ble court as an interim measure , to the grandparents to meet their grandchild on every Sunday between 4.00 p.m. to 7.00 p.m. The said order was subsequently modified as the child was unwell and was suffering from fever after meeting the grandparents and vide an order dated 10th June, 2022, the grandparents were allowed to meet their grandchild at the chamber of Mr. Surajit Basu, learned counsel on every Sunday between 4.00 p.m. to 7.00 p.m. subject to following the Covid protocol. The order of visitation as granted earlier was modified in course of hearing of application and lastly, the grandparents were allowed to meet their grandchild on 1st and 3rd Saturday of every month

since 11.00 a.m. to 12.00 noon in the Mediation Centre of Barasat Court.

4. In the year 2022 the father-opposite party filed the instant proceeding being Misc. Case No.188 of 2022 before the trial court by suppressing the earlier orders passed in the proceeding filed by his mother.
5. It is further submitted by the learned advocate appearing for the petitioner that pursuant to the direction of the learned court the child was produced on every 1st and 3rd Saturday of every month since 11.00 a.m. to 12.00 noon in the Mediation Centre of Barasat Court for long period but on such occasion, the opposite party-father never tried to meet his minor son despite having the knowledge of the order of visitation passed by the learned Court.
6. The learned trial court while hearing the petition under section 12 of the said Act filed by the opposite party-father herein allowed the prayer of the opposite party prayer with the direction to the mother to allow the minor's father to meet the child on every Friday evening to Saturday evening. It was directed further that the mother would hand over the child to the opposite party-father at 6.00 p.m. on Friday and he after visitation would return the child to the custody of the mother at 6.00 p.m. on Saturday against such order this revisional application has been filed .
7. It is also submitted before this court on behalf of the petitioner-mother that on last three Saturdays she

could not produce the child as was directed by this court, on account of the exam of the minor as well as the exam of the mother and also on account of ill health of the child but she is ready and willing to take the child at a place to be decided by the parties subject to convenience of the petitioner-mother and the child.

8. It is further assailed by the petitioner that the father did not discharge his duties in maintaining his child and not provided a single farthing but the same has been denied by the learned advocate appearing on behalf of the opposite party-father.
9. While admitting this revisional application, direction was given by a Co-ordinate Bench on 23rd September, 2024 ,that to facilitate the meeting of father and child arrangement is to be made at a place near the residence of the mother of the child at Haroa Bridge, Haroa, District-North 24 Parganas and the opposite part will be able to meet at the aforesaid place on every Saturday and Sunday from 1.00 p.m. till 5.00 p.m. however it is seen that the said direction has not been followed by either of the parties . In fact, since when the visitation was allowed, the direction to meet the father with his child was flouted on various pretext by either of the parties. The instant revisional application was pending since 2024 and no prayer was made before the Court for any order of modification or for any further arrangement in order to facilitate the

meeting of the father with the child by either of the parties.

10. Be that as it may, it is admitted that parties are living apart since 2020 and till date the father has not seen the child or *vice versa*. It is the unfortunate reality that children often bear the burnt of parental conflicts, especially in custody disputes. It is a well-settled law while dealing with custody of child the court must keep in mind that the best interest and welfare of the child should be of paramount consideration .Court should prioritize the child's well being considering the factors like emotional and physical needs ,relationship with each parent and child 's wishes . In this case it is an admitted fact that since 2020 till 2022 the father never applied for any right of visitation or to meet his child and never tried to meet his child even when such visitation was arranged according to the direction of the courts with the grandparents and the same was allowed by the petitioner.

11. In view of the above facts and circumstances of the case, this Court is of the view that at this stage when the father has practically become a foreigner to the child and the child who is not well-acquainted with the father, handing over custody with the father for the entire day would not be beneficial for the child and accordingly, this court is unable concur with the order passed by the learned trial court regarding such

handing over of the child with the father. At the same time, this Court cannot deny the lawful right of a father to meet with his child and the mother must ensure to take all steps in order to facilitate such visitation. Therefore, the arrangement made between the parties earlier regarding visitation of the child at Haroa Bridge, Haroa, District-North 24 Parganas on consent by both the parties is to be continued only with the little modification that the child to be produced on every Sunday at 3.00 p.m. at the same place and the visitation will continue till 6.00 p.m. It is made clear that either of the parties will not take any such steps which will be detrimental to the well being of the child.

12. It is submitted before this court on behalf of the petitioner-mother that despite a direction passed by the co-ordinate Bench on 23rd September, 2024, with regard to withdrawal of proceeding initiated by the grandparents of the child, it has not yet been followed. The order of the Hon'ble court was not challenged before any forum and it is still in force. No one has given any unfettered right to violate any order or direction passed by a court of law and the parties must understand the consequence of violating the same which, may otherwise be treated as willful violation to comply with the direction of the Hon'ble Court.

13. With the aforesaid direction, the revisional application is disposed of.
14. Parties are at liberty to approach the learned trial court with regard to the place and hours of visitation subject to convenience of both the parties as well as the minor. If such proposal is raised, the learned trial court shall consider the same considering all the aspects thereto.
15. There will be no order as to costs.
16. Urgent Photostat certified copy of this order, if applied for, be given to the parties, on priority basis, upon compliance of all necessary formalities.

[Chaitali Chatterjee (Das), J.]