

21.04.2025.
Item No. 6.
Court No. 13
sp

F.M.A. No. 1138 of 2024
With
I.A. No. CAN 1 of 2024
And
I.A. No. CAN 2 of 2024
And
I.A. No. CAN 3 of 2024

Dr. Arnab Chakraborty
Versus
Smt. Shelly Chakraborty

Mr. Kallol Basu,
Ms. Sohini Chakraborty,
Ms. Prajaaini Das,
Ms. Shreejita Sen.

...For the appellant.

Mr. Bikram Banerjee,
Ms. Sagarika Goswami,
Mr. Adrita Dey.

...For the opposite party/wife.

1. The appeal is directed against an order dated 15th July, 2024 passed by the learned Chief Judge, City Civil Court at Kolkata in Case No. 01 of 2021 under the Guardians and Wards Act, 1890 (Act VIII).
2. By the impugned order, the trial Court has dismissed the appellant/father's application for custody of the child. The grounds for rejection of the application are primarily that that the father has failed to visit the child in terms of the visitation rights given.
3. It appears from the paper book filed in Court that as many as three witnesses were examined by the father, namely, himself, his mother and a police constable.

4. In addition thereto, in an application filed under Order 41 Rule 27, the appellant has brought on record several documents. The said documents were to indicate the financial income of the opposite party/wife.

5. The impugned order does not even mention a word about the evidence that has come on record before it. The impugned order has been passed completely de hors the records. There is not a whisper in the impugned judgment as regards why the evidence of the father, the paternal grandmother and the police constable's evidence has been ignored and brushed aside by the trial Court. The constable depose that the child was found at a local railway station under suspicion circumstances and rescued.

6. Even the suo moto order directing maintenance of Rs. 35,000/- to be paid towards school fee and expenses of the child and her food is devoid of any evidence. The impugned judgment also does not record or take into consideration that a sum of Rs. 15,000/- ordered as maintenance for the child in an application being Misc. Case No. 41 of 2022 under Section 23 of the Protection of Women from Domestic Violence Act, 2005.

7. This Court records its anguish at the cavalier manner in which the impugned order dated 15th July, 2024 has been passed. The said order shall stand set

aside. The matter is remanded back to the trial Judge for consideration afresh of the Case No. 01 of 2021.

8. It is expected that at least on remand from his Court, the trial Judge will follow due process of law in discussing the evidence on record. Before recording conclusions, it is requested that the trial Judge dispose of the application as expeditiously as possible. The additional documents filed by both sides, may be filed by way of affidavit in trial Court. Both the parties shall be entitled to lead further oral and documentary evidence before the trial Judge

9. Both sides have raised the issue of the authority of a Court under Act VIII to order maintenance of the child. The trial Judge shall receive judgment cited by both the sides and pass an appropriate order in this regard keeping in mind the sum of Rs. 15,000/- already ordered as maintenance for the child indicated hereinabove.

10. It is expected that both the husband and wife facilitate a smooth visitation bearing in mind that the child needs access and affection of both the mother as well as the father.

11. The interim measure of maintenance also ordered by this Court on 17th February, 2025 of a sum of Rs. 17,000/- shall also continue to be paid by the husband until disposal of the application by the trial Judge afresh on remand. The case No. 01 of 2021

under Act 8 shall stand restored to the file of the trial Court.

12. It is only after receiving the aforesaid oral and documentary evidence that the trial Judge shall proceed to decide the matter, having regard to the entire evidence that is on record.

13. The visitation of the father of the child at the place agreed in terms of this Court's order dated 14th February, 2025 shall continue and commence at 11.30 a.m. or thereabout. The parties shall be flexible with each other in so far as the time is concerned.

14. With the aforesaid observations, F.M.A. No. 1138 of 2024 shall stand disposed of.

15. In view of the above, all connected applications shall also stand disposed of.

16. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)