

20.05.2025
Item No.19
Court No.446.
S. De

C.O. 4470 of 2024
Mrs. Shreyasi Dey.
Vs.
Arijit Dey.

Mr. Partha Pratim Roy,
Mr. Anirban Das,
Ms. Poulami chakraborty, ...for the petitioner.

Mr. Sawmyen Datta,
Mr. Pinaki Brata Ghosh,
Mr. Abhinaba Roy, ...for the respondent.

1. This is an application under Article 227 of the Constitution of India filed by the petitioner/wife against an order dated 11.09.2024 passed by the learned Additional District Judge, 3rd Court at Barasat, North 24 Parganas in Miscellaneous Case No. 218 of 2018, whereby the opposite party was directed to produce the children before the Court on 3rd October, 2024, at 3:00 P.M.

2. It is specifically argued that the learned advocate representing the petitioner herein, prayed for an adjournment on the ground of illness of her senior advocate and the notice was served upon the petitioner and, to that extent, strong objection was raised on behalf of the father. The learned Court recorded that on consensus between the parties, the opposite party, that is the petitioner herein, was directed to produce

the children at 3:00 P.M. which is absolutely contrary to the order passed by the Hon'ble Court on June 24, 2019.

3. It is submitted that by virtue of such order, the Hon'ble Court directed the father to visit the children at the residence of Ms. Debasree Dhamali, a practicing advocate of this Court, between 6.00 to 8.00 P.M. every Thursday and, accordingly, the petitioner's father was directed to pay Rs.3,500/- per visitation to the said learned advocate payable at every instance of such visitation.
4. However, learned advocate for the opposite party submits that the order has been last complied with on or about two years back and it is the petitioner whose continuous hindrance in facilitating the visitation as directed to the Hon'ble Court is creating delay. It is also submitted on behalf of the opposite party that an application was taken out in the year 2021 before the learned Court for producing the children before the Trial Court and the petitioner filed one put up petition along with another petition under Section 151 of CPC praying for allowing the petitioner/husband to meet the minor children.

5. It is further submitted that Section 12 application is now on the verge of completion and the argument on behalf of the father is complete.
6. At this stage, learned Trial Court, considering the non-compliance of the matter was pleased to pass such direction on consensus between the parties.
7. Heard the submission of both the learned advocates.
8. This is a fight between the parents and the children are the victims in the custody. Both the children are aged about 13 and 16 years respectively and the fact of this case revealed the harsh reality that since 2018 there is hardly any communication between the father and the children. In the year 2019 the Co-ordinate Bench tried to bridge the gap between the father and the children and, accordingly, made an arrangement of visitation under the supervision of a Special Officer. However, the petitioner/mother failed to say what was the last date of such visitation. The learned advocate for the father/opposite party said, since last two years the order of the Hon'ble Court has not been complied with.

9. A child of tender age requires love and affection of both the parents. Any responsible parents must consider the welfare of the child and to take all endeavour to facilitate at least a healthy and congenial atmosphere for their child where they have the company of both the parents.
10. In this case on 11.09.2024 the opposite party prayed for adjournment on the ground of her senior advocate and the learned Court passed a common order directing the petitioner/mother to produce the child at 3 p.m. on 03.10.2024. It is submitted that the mother never agreed and no consent was given on her side. However, no petition was filed on her behalf after apprised about the order.
11. The learned advocate for the petitioner further failed to say as to whether his client was present in the Court or not. But fact remains, no petition for production of child was filed by the husband in that regard. The learned Court has not assigned any reason for giving such direction when the miscellaneous case is on the verge of completion. It is further contended that such order is a modification of the order passed by the Hon'ble Co-ordinate Bench in 2019 when no such prayer was made.

12. On the other hand, it is strongly contended by the opposite party that the petitioner/mother has always created hindrances and favoured the children not to meet the father. As a result, he being the father is deprived of the love, affection and even the right of visitation to his own children. It is denied that the learned Trial Court, in his own volition, passed such direction recording 'on consensus' of the parties.

13. In the above factual backdrop, this Court is to consider whether the order of the learned Trial Court is to be given effect. I am unable to accept the contention of the learned advocate of the petitioner that without consent, the learned Court passed such direction and it amounts to modification of the order passed by the Hon'ble Court on fact remains the order of the Hon'ble Court has not been complied with by the parties for the reason best known to the parties.

14. It is also a fact that parties are not complying with the direction of the Hon'ble Court.

15. Be that as it may, the ground reality is that a proceeding filed by the father is pending for disposal.

16. At this stage, the order of production of child on consensus has been objected to and certainly the Court cannot compel the parents by passing any such order which may have an adverse effect since the welfare of child should be of paramount consideration.
17. Accordingly, in order to settle the dispute, the order impugned, is directed to keep in abeyance till the disposal of the proceeding. However, the learned Court is directed to reconsider the matter after giving an opportunity of hearing to both the parties if any such prayer of visitation is made by the parties.
18. C.O. 4470 of 2024 is, accordingly, disposed of.
19. It is made clear that this order, in no way, prevent the learned Trial Court to proceed with the original miscellaneous case being no. 218 of 2018.

(Chaitali Chatterjee (Das), J.)