

CO. 938 of 2025

10.06.26
D/L
SI-03
Ct. 06
(Samar)

Smt. Lopamudra Ballav Bandyopadhyay
Vs.
Sri Mahesh Bandyopadhyay

Mr. Chittapriya Ghosh,
Ms. Priyanka Saha,
Mr. Komal Singh,
Mr. Suman Mukherjee,

... for the petitioner.

Mr. Apurba Ghosh,
Mr. Pronojit Roy,

....for the opposite party.

1. This revisional application is directed against an order dated August 30, 2024 passed by the learned Judge, Family Court, Asansol Sadar, Paschim Bardhaman in Misc. Execution Case No. 01 of 2022.
2. The opposite party had instituted Act-VIII Case No. 19 of 2019 before the learned Judge, Special Court, Asansol, seeking custody of the minor child of the parties. Such Act-VIII case was allowed by the learned Trial Court thereby granting custody of the minor child to the opposite party and directing the opposite party to bring the child once every month to the "*sheresta*" of his learned advocate to facilitate the child's meeting with the petitioner from 10 a.m to 5 p.m preferably in the first week of the month with 7(seven) days prior notice to the petitioner.
3. Alleging that the opposite party was not complying with the order, the petitioner filed an execution case being Misc. Execution Case No. 01 of 2022. The

said Misc. Execution Case was transferred to Family Court on May 03, 2024 upon the Family Court having begun functioning from February 23, 2024.

4. Records reveal that the Family Court, Asansol received the records of the aforesaid Misc. Case on June 07, 2024. August 19, 2024 was fixed as the first date in the said Misc. Case and on the said date none appeared for either of the parties. August 30, 2024 was fixed as the next date and parties were directed to show cause for their non appearance.
5. On August 30, 2024 while the opposite party appeared, the petitioner remained unrepresented. In such view of the matter, the learned Family Court dismissed the Misc. Execution Case observing that the petitioner was not interested to proceed with the case. The case was dismissed for non compliance of Court's order.
6. Feeling aggrieved by the said order dated August 30, 2024 the petitioner has approached this Court by way of present revisional application.
7. Mr. Ghosh, learned advocate appearing for the petitioner's submits that the petitioner was unaware of the fact that upon the petitioner's Misc. Execution Case being transferred to the Family Court, the petitioner could no longer be represented by any advocate and that the petitioner was

required to present her case personally. He invites the attention of this Court to a resolution taken by the Paschim Bardhaman, District Bar Association on August 17, 2024 to demonstrate that on August 19, 2024 when the case was first set for hearing before the Family Court, the learned members of the association had adopted a resolution requesting the learned District Judge and all other learned Judges not to pass any adverse order in any case on August 19, 2024, even if, no step was taken.

8. He submits that as the petitioner was unaware that the petitioner could not be represented by any learned advocate therefore the petitioner could not remain personally present before the learned Family Court on August 30, 2024.
9. Learned advocate appearing for the opposite party submits that this revisional application ought not to be entertained inasmuch as the petitioner has an equally effective remedy before the learned Family Court itself in terms of the provisions of Order 21 Rule 106 of the Code.
10. Mr. Ghosh, learned advocate appearing for the petitioner retorts by relying on a decision of a Co-ordinate Bench of this Court in **Smt. Kanan Ghorai @ Smt. Kanan Bala Ghorai Vs. Smt. Sumita Maity & Ors. (C.O. 268 of 2020)** decided on **March 05, 2020**, where a Co-ordinate Bench of this Court had in exercise of its power under Article

227 of the Constitution of India restored a Misc. Appeal that had been dismissed.

11. Heard learned advocates appearing for the respective parties and considered the material on record.
12. In view of the specific provisions of Order 21 Rule 105 and Order 21 Rule 106 of the Code of Civil Procedure, 1908, this Court finds that the petitioner can very well approach the same learned court by way of an appropriate application under the said provisions.
13. The order passed in **Smt. Kanan Ghorai @ Smt. Kanan Bala Ghorai Vs. Smt. Sumita Maity** (*supra*) was passed in a case where the petitioner was not entirely unrepresented as in the case at hand. In that case, the petitioner had prayed for an adjournment which was refused and the case was dismissed. In the case at hand the petitioner was not represented at all on the day when the case was dismissed.
14. In such view of the matter, this revisional application is disposed of by granting liberty to the petitioner to approach the learned Family Court by way of in an appropriate application seeking setting aside or recall of the order dated August 30, 2024 passed by the said learned Court.
15. It is clarified that the period during which this revisional application remained pending before

this Court shall be excluded for the purpose of computing the period limitation for filing such application before the learned Family Court.

16. Needless to mention, that this Court has not gone into the merits of the petitioner's case for restoration of the petitioner's Misc. Execution Case and the learned Family Court shall decide such application, if filed by the petitioner, on its own merits in accordance with law.

17. Since the matter pertains to the visitation rights of a mother in respect of her child, if such an application is filed by the petitioner, then the learned Family Court is requested to dispose of the same as expeditiously as possible and preferably within a period of six months from the date of filing thereof without granting any unnecessary adjournment to either of the parties.

18. With the above observations, CO. 938 of 2025 stands disposed of. There shall be no order as to costs.

19. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Om Narayan Rai, J.)