

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

BEFORE:
THE HON'BLE JUSTICE OM NARAYAN RAI

C.O. 918 of 2026

Sri SaibalBasu
-Vs-
Smt.SudeeptaBasu

For the Petitioner	: Mr. SaibalBasu (in-person)
For the Opposite Party	: Dr. Debabrata Karan, Sr. Adv., Mr. Debopriyo Karan,Adv.
Heard on	: 07.05.2026
Judgment on	: 07.05.2026

OM NARAYAN RAI, J.:-

1. This revisional application is directed against an order dated February 10, 2026 passed by the learned Additional District Judge, 10th Court, Alipore in Act VIII Case No. 59 of 2018 whereby the petitioner's application under Section 151 of the Code of Civil Procedure, 1908 (hereafter "the Code") praying *inter alia* for interim custody of a minor child during all weekends, half of all school vacations, special school holidays and all special occasions of the child, including but not limited to occasions like birthday till the final adjudication and disposal of the said Act VIII case has been rejected.
2. The petitioner has instituted Act VIII Case No. 59 of 2018 praying *inter alia* for custody of his minor child. In the said case, the petitioner had filed

an application under Section 12 of the Guardians and Wards Act, 1890 (hereafter “the 1890 Act”) which was disposed of by an order dated April 12, 2023. The said order was carried in revision before this Court by filing C.O. 2501 of 2023. The said revisional application came to be disposed of on October 12, 2023 by modifying the order dated April 12, 2023 to a certain extent. By the said order dated October 12, 2023 a Co-ordinate Bench of this Court had directed the learned Trial Court “*to dispose of the ACT-VIII case within a period of six month mandatorily, from the date of communication*” of the order without granting any unnecessary adjournment to either of the parties.

3. Since the Act VIII case was not concluded within the time fixed by this Court, despite the aforesaid order, the petitioner approached this Court again by filing C.O. 2390 of 2024.
4. The said revisional application was disposed of by this Court by an order dated July 09, 2024 by requesting the learned Trial Court to “*make all endeavor to bring the said case to its logical conclusion within a reasonable time*”. This Court passed such direction, uponreferring to the earlier order dated October 12, 2023 by which disposal of the Act VIII case was directed to be done within a period of six months mandatorily. Despite the aforesaid order, the Act VIII case is still continuing.
5. In such circumstances, the petitioner filed another application under Section 151 of the Code praying, *inter alia*, forinterim custody of the minor child during all weekends, half of all school vacations, special school holidays and all special occasions of the child, including but not limited to

occasions like birthday till the final adjudication and disposal of the Act VIII case.

6. Such application has been rejected by the learned Trial Court by passing the order impugned. Feeling aggrieved by such order, the petitioner has approached this Court by way of the present revisional application.

SUBMISSIONS MADE BY THE PETITIONER:

7. The petitioner, appearing in person, submits that the opposite party is solely responsible for the long pendency of the case. He refers to a table of adjournments and deferments (at pages 107 to 109 of the revisional application) and submits that the case has been adjourned on fifty four occasions and while the majority of such adjournments is attributable to the opposite party, there is none attributable to the petitioner.
8. Relying on a judgment of the Hon'ble Supreme Court in the case of ***Yashpal Jain vs. Sushila Devi & Others***¹, it is submitted that it has now been mandated by the Hon'ble Supreme Court that trial of a suit should be conducted on day to day basis and dates should be fixed in consultation with the learned Advocates appearing for the respective parties to enable them to adjust their calendar so that case proceedings are not hampered.
9. He further submits that the order impugned is wholly unreasoned. It is submitted by the petitioner that the petitioner's prayer has been rejected on the specious ground that as the order dated April 12, 2023 that had been initially passed by the learned Trial Court, was modified by the order dated October 12, 2023 passed by this Court in C.O. 2501 of 2023 therefore, no

¹AIR 2023 SC 5652 : 2023 SCC OnLine SC 1377

further order could be passed on the petitioner's application under Section 151 of the Code.

10. He submits that the learned Trial Court has failed to appreciate that the order dated October 12, 2023 passed by this Court in C.O. 2501 of 2023 was premised on the then obtaining position and the Court's expectation that the Act VIII case would be concluded in the following six months as directed by this Court. He asserts that since the proceedings have long spilled over the period mandatorily fixed by this Court, for which the petitioner is not to be blamed, therefore, he should not be deprived of the interim custody of his child with whom, he has interactions only on selected occasions.
11. In support of his submission that no permanence can be attached to orders passed in child custody matters, he relies on a judgment of the Hon'ble Supreme Court of the case of ***Rosy Jacob vs. Jacob A. Chakramakkal***².
12. Another judgment of the Hon'ble Supreme Court in the case of ***VikramVir Vohra vs. ShaliniBhalla***³ has also been cited for the same proposition.
13. He next takes the Court through an order passed by another Co-ordinate Bench of this Court in CPAN 409 of 2020 and CPAN 522 of 2020 wherein this Court had observed that the opposite party was guilty of contempt of Court by willful and deliberate violation of orders passed by the learned Additional District Judge by not allowing visitation to the father i.e. the petitioner herein. He submits that such conduct alone, should have disentitled the opposite party to object to any of the prayers made by the

² AIR 1973 SC 2090 : (1973) 1 SCC 840

³ AIR 2010 SC 1675 : (2010) 4 SCC 409

petitioner especially since she is responsible for the painful protraction of the litigation.

14. In support of his contention that conduct of a party is a relevant consideration in matters pertaining to child custody, he relies on a judgment of the Hon'ble Supreme Court in the case of **Gaurav Nagpal vs. Sumedha Nagpal**⁴.

15. The petitioner hands up to Court a server copy of the order dated May 06, 2026 passed by the learned Additional District Judge, 10th Court, Alipore, South 24-Parganas under Act VIII Case No. 59 of 2018 and submits that even on the last date i.e. May 06, 2026 that had been fixed for the opposite party's evidence, adjournment was sought for by the opposite party and the same was granted by the learned Trial Court fixing July 07, 2026 as the next date for the opposite party's witness "as special last chance".

SUBMISSIONS MADE ON BEHALF OF THE OPPOSITE PARTY:

16. Learned Senior Advocate appearing for the opposite party, submits that the petitioner has been remiss in making payments of the maintenance that had been directed by the learned Court in favour of the opposite party and that substantial sums are due and owing from the petitioner on such count.

17. It is further submitted that in view of the order dated October 12, 2023 passed by this Court in C.O. 2501 of 2023, the learned Trial Court has rightly rejected the petitioner's prayer made in the application under Section 151 of the Code.

⁴ AIR 2009 SC 557 : (2009) 1 SCC 42

18. It is then submitted that since no affidavits have been called for all the allegations made in the revisional application shall be deemed not to have been admitted by the opposite party.

RE-JOINDER BY THE PETITIONER:

19. The petitioner refutes the contention of the opposite party that any sum is due and owing from the petitioner on account of maintenance. It is submitted that the petitioner has been meticulous and regular in making payments to the opposite party in terms of the direction passed by the learned Trial Court.

ANALYSIS & DECISION:

20. Having heard the contention of the respective parties and having considered the material on record, this Court is of the considered view that the order impugned cannot be sustained for the reasons that follow hereinafter.
21. The order dated October 12, 2023 had been passed with a view to make certain interim arrangements for the purpose of facilitating visitation of the petitioning father in respect of his child. Indeed the order dated April 12, 2023 passed by the learned Trial Court (by which the petitioner was aggrieved), stood modified by the order dated October 12, 2023, but at the same time, it cannot be lost sight of that this Court had also directed the learned Trial Court to dispose of the Act VIII case within a period of six months. A holistic reading of the order dated October 12, 2023 would not suggest an inference that the interim arrangements were meant to continue *ad infinitum* without change, notwithstanding the fact that the Act VIII case that had been directed to be concluded within six months has continued for fivefold that time and is still counting.

- 22.** It cannot be said that the state of affairs which was there when the order dated October 12, 2023 still continues at this distance in time when the father and the child have already spent more than two and half more years of limited access to each other.
- 23.** The learned Trial Court was therefore, required to apply its mind to the matter and to reach an independent conclusion as to whether there was a changed fact situation and if indeed it was so then whether in such situation, the petitioner's prayers as made in the said application under Section 151 of the Code could be considered for grant. The learned Trial Court was not justified in declining the petitioner's request merely on the ground that the petitioner's prayer for interim visitation and other reliefs had been answered in a certain way more than two and half years back. The learned Trial Court ought to have considered as to whether with passage of time the petitioner's prayers have entered the zone of fruition keeping mind the welfare and the best interest of the child.
- 24.** The judgment of the Hon'ble Supreme Court in the case of **Rosy Jacob** (supra) which has been followed by the Hon'ble Supreme Court in **Vikram Vir Vohra** (supra) also provides a complete answer to such a situation in paragraphs 14 and 17 thereof. The relevant extracts of the said paragraphs are given hereinbelow:-

"14.Absolute right of parents over the destinies and the lives of their children has, in the modern changed social conditions, yielded to the considerations of their welfare as human beings so that they may grow up in a normal balanced manner to be useful members of the society and the guardian court in case of a dispute between the mother and the father is expected to strike a just and proper balance between the requirements of welfare of the minor children and the rights of their respective parents over them.....".

17. The appellant's argument based on estoppel and on the orders made by the court under the Indian Divorce Act with respect to the custody of the children did not appeal to us. All orders relating to the custody of the minor wards from their very nature must be considered to be temporary orders made in the existing circumstances. With the changed conditions and Circumstances, including the passage of time, the Court is entitled to vary such orders if such variation is considered to be in the interest of the welfare of the wards. It is unnecessary to refer to some of the decided cases relating to estoppel based on consent decrees, cited at the bar. Orders relating to custody of wards even when based on consent are liable to be varied by the Court, if the welfare of the wards demands variation."

(Emphasis supplied)

25. The learned Trial Court was thus required to appreciate the essence of child custody cases and examine the prayers made in the petitioner's application from the view point of the welfare and best interests of the child. The order impugned evidently lacks all of this and is therefore liable to be interfered with.
26. For all the reasons aforesaid, the order impugned dated February 10, 2026 is set aside. The matter is remitted to the learned Trial Court for a fresh consideration on merits. The learned Trial Court is requested to hear the parties afresh and decide the petitioner's application under Section 151 of the Code for interim custody and allied reliefs in accordance with law, upon interviewing the child if necessary.
27. Since the Act VIII case has been pending since 2018 and there have been at least two directions for expeditious disposal thereof by this Court, the learned Trial Court is requested to consider the directions passed by this Court in. In such regard, the directions issued by the Hon'ble Supreme Court in the case of **Yashpal Jain** (supra) must be observed. In such

context the following observations in paragraph 47 of the judgment may be noted:-

“47.*****

- v. Fixing of the date of trial shall be in consultation with the learned advocates appearing for the parties to enable them to adjust their calendar. Once the date of trial is fixed, the trial should proceed accordingly to the extent possible, on day-to-day basis.*
- vi. Learned trial judges of District and Taluka Courts shall as far as possible maintain the diary for ensuring that only such number of cases as can be handled on any given day for trial and complete the recording of evidence so as to avoid overcrowding of the cases and as a sequence of it would result in adjournment being sought and thereby preventing any inconvenience being caused to the stakeholders.*
- vii. The counsels representing the parties may be enlightened of the provisions of Order XI and Order XII so as to narrow down the scope of dispute and it would be also the onerous responsibility of the Bar Associations and Bar Councils to have periodical refresher courses and preferably by virtual mode.*
- viii. The trial courts shall scrupulously, meticulously and without fail comply with the provisions of Rule 1 of Order XVII and once the trial has commenced it shall be proceeded from day to day as contemplated under the proviso to Rule (2).....”*

- 28.** Since the learned Trial Court has fixed July 07, 2026 as the next date for the defendant’s witness, the learned Trial Court is requested to consider hearing out the application under Section 151 of the Code and disposing the same prior to the said date so that the suit can also proceed unhindered by the pending interlocutory application.
- 29.** The parties shall be at liberty to make appropriate application for early hearing of the application under Section 151 of the Code before the learned Trial Court.
- 30.** No opinion is expressed on the submissions made by the parties as regards maintenance. It will be open to the parties to take appropriate steps on

suchcount in accordance with law. With the aforesaid observations C.O. 918 of 2026 stands disposed of. There will be no order as to costs.

- 31.** Since no affidavit has been invited, affidavit-in-opposition has been invited all allegations made in the revisional application shall be deemed not to have been admitted by the opposite party.
- 32.** 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.)

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