
(2013) 01 RAJ CK 0075

In the Rajasthan High Court

Case No : Habeas Corpus Petition No. 20 of 2013

Aditeyendra Garg Alias Guddu

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision : 23-01-2013

Acts Referred:

Constitution of India, 1950 — Article 226
Guardians and Wards Act, 1890 — Section 6
Hindu Marriage Act, 1955 — Section 9

Citation : (2013) 01 RAJ CK 0075

Hon'ble Judges : Veerendr Singh Siradhana, J;Ajay Rastogi, J

Bench : Division Bench

Advocate : Anita Agrawal, for the Appellant;

Final Decision : Dismissed

Judgement

1. It is in peculiar circumstances the present habeas corpus petition has been filed by the father of so called detainee Ketan Kumar who is said to be nine years of age and is allegedly in the illegal custody of her mother respondent-4, herein and his grievance is that there is a matrimonial dispute going on & pending before the Family Court at the behest of the petitioner where he has moved application U/s 9 of Hindu Marriage Act for restoration of conjugal rights. Counsel submits that earlier also the petitioner approached this Court by filing D.B. Civil Writ Petition (Habeas Corpus) No. 217/2012 and that came to be disposed of by the Court vide order dt. 09.10.2012 with liberty to the petitioner to approach the District Mediation Centre at Bharatpur where the party resides, by filing application for pre-litigation mediation to resolve the dispute, pursuant thereto the petitioner approached the mediation centre at Bharatpur and after number of notices being sent to detainee's mother, respondent-4, herein, she came forward but no dialog has taken place and virtually the mediation filed and since welfare of the child is paramount consideration, who is in illegal custody of her mother respondent-4 that constrained him to approach this Court by filing instant habeas corpus petition.

2. Counsel submits that apart from the fact that remedy is available with the petitioner of filing application under Hindu Minority & Guardianship Act and U/s 6 of Guardians & Wards Act, 1890 but that may take sometime and as interim measure this Court may exercise its jurisdiction U/Art. 226 of the Constitution at least for restoration of the custody of his minor child and in support of submission placed reliance upon the judgment in Syed Saleemuddin Vs. Dr. Rukhsana and Others, and Gaurav Nagpal Vs. Sumedha Nagpal,

3. We do find justification that the paramount consideration in such matters always remain in the interest of child which is to be taken note of regarding its custody but a remedy is available to the petitioner under the provisions of the law for seeking custody of minor child as alleged by him who is at present with his mother respondent-4 and that cannot be said to be illegal for which the instant habeas corpus petition could be said to be maintainable.

4. As regards the judgment in Syed Saleemuddin Vs. Dr. Rukhsana and Others, on which counsel placed reliance, it was a case where an application was filed by the parents and that was pending before the appropriate authority and to take interim measure some via media was taken note of by the High Court and the matter travelled to the Apex Court and as regards the judgment in Gaurav Nagpal Vs. Sumedha Nagpal, it was a case where the matter travelled from the authority where the initial application was filed U/s 6 of the Hindu Minority & Guardianship Act, 1956 and that travelled to the Apex Court and habeas corpus petition under these facts & circumstances, is not maintainable. However, it will not preclude the petitioner from availing remedy available to him under the law. Consequently, instant habeas corpus petition under these facts & circumstances is not maintainable and accordingly dismissed. However, the petitioner is always at liberty to avail remedy which the law permits to him and if application is filed, it is expected from the competent authority to decide the same expeditiously in accordance with law.