
(2019) 05 CAL CK 0055

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 9476 (W) Of 2019

Dipanwita Jana (Bhowmik)

APPELLANT

Vs

State of West Bengal & Ors

RESPONDENT

Date of Decision : 20-05-2019

Acts Referred:

Citation : (2019) 05 CAL CK 0055

Hon'ble Judges : Manojit Mondal, J;Joymalya Bagchi, J

Bench : Division Bench

Advocate : Dipanwita Jana (Bhowmik), Anupam Bhowmick

Judgement

Investigating Officer viz., S.I., Abhijit Dey, respondent no.6 is present in Court today. His presence is noted and dispensed with.

Heard the petitioner as well as the respondent no.7 in person. We are also interacted with the minor child.

Petitioner submits that she was ill-treated by her in laws as well as by respondent no.7. It is her contention that the respondent no.7 had suppressed her earlier marriage at the time when negotiations of marriage between the two had taken place. She was unable to bear the ill-treatment meted out to her at her matrimonial home and was compelled to withdraw herself from the company of respondent no.7. She is presently residing at Midnapore and has secured appointment in a school at Debra. There is no female member residing with respondent no.7 at Kolkata who can take care of the child. She prays that the minor girl child be handed over to her and she would make arrangements for her education in a good school at Midnapore.

On the other hand, respondent no.7 submits that the child has been admitted at Ashoka Hall School in Kolkata, a well-known educational institution in the city. She is pursuing her education there. Best interest of the child would suffer if she is shifted to Midnapore for the sake of ensuring that she is in custody with the petitioner.

Respondent no.7 vehemently denies and disputes the allegations of suppression of earlier marriage or torture meted out to the petitioner. He submits he has made arrangements for the child at Kolkata while he goes out to attend office.

In the course of our interaction with the parties, we proposed that respondent no.7 may arrange for separate residence for the petitioner in or around Kolkata so that the child may be with her while pursuing her education in the city. Petitioner, however, was unwilling to such proposal as it would affect her employment prospects, as aforesaid.

Under such circumstances, we are of the opinion that the issues before us require consideration of various factors which may be thrashed out in an appropriate civil proceeding and it may not be proper to decide once and for all the rights of the parties relating to the guardianship or custody of the minor child in a summary proceeding as the present one. However, we are not unconscious that love and affection of a mother to her child is most essential for the latter's emotional and physical well being. No doubt, education in a prominent school is very vital for her future but lack of emotional stability may jeopardize a balanced development of a child. Adequate association as well as affection for both the parents are the building blocks of a stable childhood which form the bedrock of a well rounded adult in later years.

However, we have chosen to protect the best interest of the child by balancing the aforesaid factors, namely, her education in Kolkata as well as her access to her mother who is pursuing her employment at Midnapore till the parties approach the appropriate civil court for adjudication of the dispute.

Accordingly, we dispose of the writ petition in the following manner:-

- a) parties are at liberty to approach the appropriate civil court of competent jurisdiction for determination of guardianship and custody of the minor child viz., Rupkatha Bhowmik in accordance with law;
- b) till the parties approach the civil court or any interim order relating to custody is passed by the said court, the child, namely, Rupkatha will stay with her father at Kolkata from Monday to Friday and shall be handed over at the petitioner's residence by respondent no.7 or his representative after school] hours on every Friday or the last working day of the week and the petitioner shall keep the child with her during the weekend and hand over the child to the school authorities on Monday or the first working day of the week, as the case may be;
- c) during long holidays like summer vacation, puja vacation or christmass vacation, the child shall be handed over the petitioner or the first day of such vacation and the petitioner shall hand over the child to the school authorities upon reopening;
- d) as the school is presently in summer recess, the child shall be handed over to the petitioner today and upon reopening of the school i.e. on 10th June, 2019, petitioner shall send the child to the school on that day. Respondent no.7 shall

give necessary instructions to the school so that the petitioner may hand over the child to the school authorities as directed above. It is made clear that these directions are interim in nature and may be varied by the civil court of competent jurisdiction, if approached by the parties in accordance with law, in the best interest of the child.

Since no affidavit-in-opposition has been called for, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

Petitioner, respondent no.7, the school authorities i.e., Ashoka Hall School and other respondents shall act on the Photostat plain copy of the order.

Urgent photostat plain copy of this order, duly countersigned by the Assistant Registrar (Court) shall be given to the parties on compliance of all necessary formalities.