

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

Miscellaneous Petition No.274/2020

Smt. Sonu Bhati v/s Suraj Bhati

Indore, dated 01.07.2020

Shri P.R. Bhatnagar, learned counsel for the petitioner.

Shri Nilesh Dave, learned counsel for the respondent.

Both the parties are present before this Court in person along with the minor child.

The present Writ Petition is arising out of the order dated 06.01.2020 passed by the Principal Judge, Mandsaur, by which, the learned Presiding Officer in a case under the Hindu Minority & Guardianship Act, 1956, while considering the application under Section 12 of the Act, has granted the custody of the minor child to his father. Undisputedly, the child in question is less than three years of age.

The order dated 06.01.2020 passed by the learned Principal Judge reveals that for the last six months, the child was residing with his father, grandfather and grandmother and after discussing various judgments of the Hon'ble Supreme Court, the Presiding Officer has observed that at this stage if the child is separated from his father, it might adversely effect the mental status of the child. Except for making such casual observation, no details have been looked into especially the statutory provision as contained under Section 6 of the Hindu Minority & Guardianship Act, 1956.

The impugned order was passed on 06.01.2020 and the petition was filed on 14.01.2020. Notices were issued in the matter, however, on account of lockdown, the matter was not heard. Finally, the matter was taken up through video conferencing on 25.06.2020 and this Court has directed the father to keep the child present. Though, this Court is deciding cases through video conferencing only, however, by making an exception, the case was heard in open Court. The child was permitted to go to her mother and the child started playing with her mother. He was very happy with her mother and this Court really fails to understand as to how an observation has been made that in case, the child goes with her mother, it will affect the child emotionally and mentally. He is minor child of very tender age and he is happy with his mother.

Section 6 of the Hindu Minority & Guardianship Act, 1956 reads as under:-

“6. Natural guardians of a Hindu minor.—The natural guardian of a Hindu minor, in respect of the minor’s person as well as in respect of the minor’s property (excluding his or her undivided interest in joint family property), are—

(a) in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;

(b) in case of an illegitimate boy or an illegitimate unmarried girl—the mother, and after her, the father;

(c) in the case of a married girl—the husband: Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section—

(a) if he has ceased to be a Hindu, or

(b) if he has completely and finally renounced

the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi). Explanation.—In this section, the expression “father” and “mother” do not include a step-father and a step-mother.”

It is true that welfare of the child is of paramount importance keeping in view Section 17 (2) of the Guardian & Ward Act, 1890, however, the Court is bound to take a decision after taking into account the age, sex, religion and other factors also.

In the present case, this Court is dealing with the custody of a minor child as already stated earlier, the wife is also from a well off family, she is able to maintain herself and it is nobody's case that the wife doesn't have income to look after the child. As the child is happy with the mother, keeping in view the statutory provisions governing the field, the mother is granted the custody of the child. However, the father shall be permitted to meet the child. The trial Court vide order dated 06.01.2020 has permitted the mother to meet the child on every Saturday in the A.D.R. Building.

Resultantly, the mother, who is the petitioner before this Court shall permit the father to meet the child in the A.D.R. Building at Mandsaur from 10:30 am to 12:30 pm on every alternative Saturday of the month. The trial Court shall be free to pass a final order without being influenced by its earlier order dated 06.01.2020 and the order passed by this Court under Article 227 of the Constitution of India.

With the aforesaid, the present Writ Petition stands allowed.

It is needless to mention that in case, certified copy is not available due to some technical reason, the order uploaded on the website of the High Court shall be treated as certified copy for all purposes and the counsel shall be free to obtain certified copy later on as and when facilities are made available to him.

(S.C. SHARMA)
J U D G E

Ravi