

Act VIII Case No. 86 of 2023

Order No. 05 dated 16.12.23

Today is fixed for hearing of the application dated 31.08.2023 filed by the petitioner/mother Smt. Mousumi Kundu @Bhar.

Both parties file haziras through respective Ld. Advocates. O.P. also files written objection against the main application u/s 10 of the Act.

The application dated 31.08.2023 is taken up for hearing.

Ld. Advocate appearing on behalf of the petitioner/mother submitted that the parties of this case are legally married couple and the male child namely Shinay Kundu was born in their wedlock on 29.12.2018. Subsequently due to matrimonial disputes she was driven out from the matrimonial home and the custody of the child was retained by the father/O.P. At present she is living separately from the minor son. It is alleged by the petitioner that a criminal case has been instituted by her u/s 498A/406 of IPC being Kultoli P.S. case No. 99/2023 dated 14.02.2023 against the O.P./father and his other family members. Th O.P./father has also lost his job for committing theft in his office and he is not a fit person to keep the custody of the child. She being the biological mother and natural guardian has been deprived of meeting her son and the child has also been deprived of the company and love and affection of his mother which is not good for his well-being and proper upbringing and if the temporary custody of the child is handed over to her, that would satisfy the best interest of the child.

The Ld. Advocate appearing for the O.P./father by pressing his written objection submitted that under the custody of the father is child is being brought up properly. He alleged of an extra marital affair of the petitioner which led her to leave the matrimonial home without thinking about the minor and she has certain medical conditions for which she has been advised to take mental therapy. Petitioner is not the fit person to have the custody of the child. Consequently the prayer of the petitioner should be dismissed.

Considered.

Perused the petition. From the application dated 31.08.2023 it is found that the petitioner/mother by dint of this application has prayed for interim custody of the minor.

The main petition is for appointment of the petitioner/mother as the guardian of the minor and getting the custody of the minor. The child is under the care and custody of the father/O.P. for a considerable long period and therefore, at the interim stage the Court is not inclined to transfer the custody of the minor and instead is of the view that the relief should be moulded for the interest of justice.

This court after going through the entire case record is of the considered opinion that instead of delivering the custody of the minor, the justice would be sub-served if the visitation right is allowed in favour of the petitioner/mother at this stage and the same would be best for the welfare of the minor. There may be disputes and differences between the spouse but that does not mean that a mother would be deprived of to meet the son and the son also deserves the love and affection of the mother as well. The child is residing at Tarakeswar in the district of Hooghly and the mother is presently staying at Kultoli in the district of South 24-Parganas.

Considering the above, the court is of the opinion that the following order would meet the ends of justice.

Hence, it is

Ordered

That the instant application dated 31.08.2023 filed by the petitioner/mother Smt. Mousumi Kundu @ Bhar be and the same is disposed of on contest without any order as to costs and the relief is moulded accordingly.

O.P/father Sri Sankar Kundu is directed to produce the minor child namely Shinay Kundu at Chinsurah court premises to enable the petitioner/mother to meet her son on 1st and 3rd Saturday of every month for two hours from 2.30p.m. to 4.30 p.m. until further order. The parties shall maintain the decency and decorum of the public place during such visits and co-

operate with each other so that no untoward incident may take place before the child.

The first of such visit is fixed on 01st January, 2024 in front of court premises.

The instant petition is thus disposed of.

Fix **07.06.2024** for hearing of the case.

D/C by me,

D.J.

District Judge, Hooghly