

Misc Case 291 of 2022 (Act-VIII)

Present : Dhananjay Kumar Singh,

J.O. Code – WB01399

Additional District Judge, 1st Court, Barasat, North 24 Parganas

Order Number - 20

Dated 24.01.2025

Today is the date fixed for passing order in respect of petition dated 30.09.2022, 09.05.2024 and 06.06.2024 filed on behalf of petitioner father.

Petitioner files hazira.

Opposite Party files hazira.

Learned Advocate for petitioner is present.

Learned Advocate for opposite party is present.

Record is taken up for passing order.

In the first petition dated 30.09.2024 petitioner prays for interim custody of child by producing child at least thrice in week before petitioner and temporary custody of child at least 4 days in a week with petitioner.

Learned advocate for petitioner father has submitted that, petitioner is father of minor and for welfare of child, it is necessary to give temporary custody of said child to petitioner. He prays for temporary custody of said child to petitioner for considerable period.

Learned advocate for opposite party wife has argued that he has no objection if visitation allowed to petitioner but that should be after taking into account welfare of child.

I have heard the submissions of the learned advocate for petitioner father, learned advocate for opposite party mother and perused the records. From the records it is revealed that, petitioner filed this case for temporary custody of child namely Arnaa Biswas, who was born on 18.02.2018. Opposite party mother has not filed written objection of the said petition filed by petitioner father but she filed suggested proposal praying for passing order in respect of visiting place of child near to school of child. From the records, it is revealed that, subject child is about 7 years old female child, and she has been in custody of opposite party mother, and petitioner father and opposite party mother have been residing separately, and there are allegations and counter allegations of petitioner father and opposite party mother against one another.

From the contents of the proposal, filed by opposite party mother, it is clear that opposite party mother has no objection in case visitation rights granted to petitioner father but major controversies between the parties are in respect of place of visitation.

Under section 12 of the Guardian and Wards Act 1890, this court has power to grant temporary custody of child to petitioner, if same is necessary for welfare of child. In the matter of temporary custody of child the court is require to look into all the relevant aspects effecting welfare of child, as children are the real future of society. In the case of **Lakshmi Kant Pandey VS Union of India** reported in AIR 1984.S.C. P 469 the Hon'ble Supreme Court observed as follows:

'It is obvious that in a civilized Society the importance of child welfare cannot be over emphasized, because the welfare of the entire community, its growth and development depend on the health and well being of its children. Children are a supremely important national asset and the future well-being of the nation depends on how its children grow and develop'.

As welfare of the child is of paramount importance, it is to be remembered that Parents are the best Judges with regard to the welfare of the child. When there is normal relationship of parents, there is unconditional love for the child and the parents in a peaceful state of mind is able to decide what is necessary for the welfare of the child. The situation changes slightly when parents are separated due to matrimonial dispute or when the marriage tie is broken. In such state of affairs, parents are always not able to apply their mind with regard to the best interest, and welfare of their children. As ego crepts into the mind of parents and due to existence of depression there is conflict between the parents, for which the aggrieved parent knocks the door of court. In such a situation Courts have duty to make endeavor that the disputes between parents are resolved for the interest of child failing which courts have the responsibility to pass necessary orders with regard to custody considering the welfare of the child. In this case father approached before this court praying for temporary custody of child. It is fact that in the growth of a child father also play vital role although in case of child upto 7 years old, mother play vital role. In this case both father and mother of child are residing separately, and child is 7 years old and she has been in custody of mother, and father has approached before this court for custody of said child, claiming child welfare will be better in his custody. Whether the allegations made against mother by father is true or not, cannot be determined without taking evidence, but father being, the natural

guardian of child has right of temporary custody of the child, and for the welfare of child it is necessary, so that he can share his love and affection with the child, but considering the allegations of father against mother and in the interest of child, and after hearing the parties and taking into accounts the facts and circumstances of this case, it will be justified to make following arrangement –

1. Opposite Party mother will hand over the temporary custody of minor child to Petitioner father at his notified residence, on every Sunday at 11:00 am and petitioner father will return back the minor child to opposite party mother to her notified residence at 3:00 pm on same day, with effect from 02.02.2025.
2. Petitioner Father and Opposite Party mother will maintain favourable environment during the whole procedure, so that no any nuisance caused to minor child.
3. Petitioner father and opposite Party mother will exchange their residential address and intimate to one another, at least one hour prior to their scheduled visit to respective residence.
4. Petitioner will bear the expanses of opposite party and minor child in respect of cost of transportation and fooding during the whole procedure.

With above observations petition dated 30.09.2024 filed by petitioner father is allowed in part on contest.

In the petition dated 09.05.2024 petitioner father prays for directing opposite party mother not to use private pool car for subject child except consent of petitioner father in respect of transportation to school.

Learned advocate for petitioner father has submitted that, safety and security of subject child is primary concern of petitioner in respect of transportation of subject child from residence to school and school to residence, and opposite party mother has not performed it diligently causing apprehension in mind of petitioner. He prays for passing appropriate order, so that transportation arrangement of subject child from residence to school and school to residence should be made properly. Learned advocate for Opposite party has submitted that, opposite party used to do transportation arrangement for subject child taking into account all aspects, including safety and security of child. He prays for rejecting prayer of the petitioner as same cannot be granted.

I have heard the submissions of the learned advocate for petitioner, learned advocate for opposite party and perused the records. It fact that

safety and security of child is primary concern for every parents in this age, when offence against child is raising day by day. Considering that arrangement of transportation of child from residence to school and school to residence closely connecting with safety and security of child, so opposite party mother is directed to do the arrangement of transportation of child from residence to school and school to residence in consultation with petitioner.

With above observation petition dated 09.05.2024 filed by petitioner is allowed in part on contest.

In petition dated 06.06.2024 petitioner father prays for directing opposite party mother to co-operate in medical treatment of subject child including visiting at CMC, Vellore.

Learned advocate for petitioner has submitted that subject child is suffering from ear disease, and for better treatment he wants that she should be treated at Vellore, CMC but opposite party mother has not been co-operating . He prays for passing appropriate order.

Learned advocate for opposite party has submitted that subject child does not like to travel outstation, and disease from which she has been suffering is treatable at Kolkata. He prays for rejecting the prayer of petitioner.

I have heard the submissions of the learned advocate for petitioner father, learned advocate for opposite party mother, and perused the records. From some copies of prescriptions filed by the parties, from which it is revealed that subject child has been suffering from ear disease, but the degree of that disease is not serious, in this circumstances, at this stage it is not necessary to bring subject child to CMC, Vellore for treatment as subject child is not comfortable with long journey and possibilities of better treatment at Koolkata. However, petitioner and opposite party are directed to take immediate step for regular treatment of subject child at Kolkata.

With above observations petition dated 06.06.2024 filed by petitioner is disposed of.

Fix **16.07.2025** for evidence.

D/C by me.

A.D.J., 1st Court.

A.D.J., 1st Court, Barasat.