

Act VIII Case No.41 of 2020

Present : Sri Prashant Chowdhary, Addl. Dist. Judge, 9th Court, South 24-Pgs, Alipore.

Order No.23 dated 18.02.2022

Record is taken up for passing order in respect of the application U/s.151 CPC filed by the petitioner for physical visitation of the minor child.

Heard both the Ld. Advocates for the petitioner and the respondent.

Ld. Advocate for the petitioner submitted that Ld. Court was pleased to pass an order on 21.12.2020 wherein the petitioner/husband was allowed to meet minor child/ward through electronic media/video conferencing on every Sundays from 11 a.m to 12 noon until further order. Ld. Advocate further submitted that the petitioner could not meet the child through video conferencing effectively as the respondent willfully avoided the order of the Ld. Court by adopting various means at different times. Ld. Advocate further submitted that the parents of the petitioner were even not allowed to meet with the child through video conferencing by the respondent. Ld. Advocate for the petitioner submitted that for the welfare of the minor child and for his all round development, it is very necessary for the petitioner to meet with the child physically as meeting through video calls are restricted only to audio visual cues and there is always lack of communication through body language, clothing, general appearances and facial expressions. Ld. Advocate also submitted that meeting through virtual mode is not adequate and physical visitation is necessary. Accordingly, petitioner prayed for an order directing the respondent to make the child, Master Tanus Ray available at a place on every Sundays for the whole day or for multiple days for visitation/custody or in the alternative any other suitable time for such period in presence of Ld. Advocate Commissioner and make the child, Master Tanus Ray available on the other day before petitioner and his parents and grand parents through video conferencing.

Ld. Advocate for the respondent has submitted her W.O against the application U/s.151 C.P.C filed by the petitioner for a direction for physical visitation of the minor child. Ld. Advocate for the respondent raised objection against the application U/s.151 CPC filed by the petitioner. Ld. Advocate submitted that the respondent had complied with the order of the Ld. Court by allowing the petitioner to meet the child through virtual mode. Ld. Advocate further submitted that due to the existence of the pandemic situation caused due to Covid – 19 and as it is growing day by day, it will be harmful for the minor to direct for physical visitation. Ld. Advocate prayed for rejecting the application U/s.151 CPC filed by the petitioner for physical visitation.

Heard. Perused. Considered.

Admittedly, this is a case under the Guardians and Wards Act and it is related to the paramount welfare and interest of the minor.

Petitioner is the father of the minor, namely, Tanush Ray. It is an admitted fact that the custody of the minor is at present with the respondent/mother. It also appears from the record that both the parties are living separately. Record reveals that there is an order by which the petitioner has been allowed to meet the minor through video conferencing on every Sundays from 11 a.m to 12 noon until further order.

Contd.

Contd.Order No.23 dated 18.02.2022

A child of tender years requires the love and affection and company of both the parents. As of now as it appears that both the parents are living separately and one of the parents is having the custody of the minor and such being the situation, the other parent not having the custody of the minor should not be denied the love, care, protection, affection of the child.

Accordingly, keeping in mind the paramount welfare of the minor child, I am of the view that the prayer of the petitioner for the physical visitation for the purpose of meeting the child should be allowed for the intellectual growth and overall welfare of the minor child.

Ld. Advocates of both sides were asked in open court about their preferences of the time and the place where it would be convenient for the child as well as the petitioner and the respondent for the purpose of meeting the child.

Ld. Advocate for the respondent had submitted that it would be convenient for the respondent to allow the petitioner to meet with the child at her residence from 11 a.m onwards on Sundays. However, Ld. Advocates of both sides fairly submitted to allow the visitation in presence of the Ld. Advocates of both sides.

Accordingly, the respondent/wife is directed to allow the petitioner/husband to meet with the minor son on every alternative Sundays from 11 a.m to 1 p.m at her residence in presence of Ld advocates. The respondent/wife is directed to physically produce the minor child before the petitioner for enabling him to meet the minor child physically on every alternative Sundays from 11 am to 1 pm at her residence.

However, it appears from Order no.9 dated 21.12.2020 that the O.P/wife was directed to produce the minor, Master Tanus Ray through Video Conferencing before the petitioner/husband on every Sundays from 11 a.m to 12 noon until further order. As the petitioner is hereby allowed to meet the minor child physically on every alternative Sundays from 11 a.m to 1 p.m, it would be appropriate to shift the date of meeting the child through video conferencing from every Sunday to every Saturday from 7 p.m to 8 p.m. I also do not find any reason either from the pleadings of the parties or from their submissions for abstaining the parents of the petitioner from meeting the minor child through video conferencing. Accordingly the parents of the petitioner are allowed to meet the minor child through video conferencing only on every Saturdays from 7 pm to 8 pm along with the petitioner.

Fix 07.04.2022 for framing of issues.

The application U/s.151 CPC is hereby disposed of.

D/C by me

Sd/-P. Chowdhary
(ADJ)

Sd/- Prashant Chowdhary
Addl. District Judge,
9th Court, South 24-Parganas, Alipore