

In the 2nd Court of the Ld. Additional District Judge, Sealdah

Matrimonial Suit No. 349 of 2016

(R-247 of 2017)

(CNR No. WB-SP07002254-2017)

Present : Sri Bibhas Chatterjee,
Additional District Judge
2nd Court, Sealdah
(WB00702)

Order no.51, dated 29.08.2022

The record is taken up for passing order as regards to the petition u/s 38 of Special Marriage Act,1954 so filed by the petitioner/husband on 28.09.2021 wherein he prayed for an order of interim custody and also an order of visitation of the minor son namely, **Arinjoy Chakraborty** on the ground stated therein.

The respondent/wife filed the written objection against the instant petition and prayed for dismissal of the said petition on the ground stated therein.

Be it mentioned here that for the convenience, the petitioner/husband will be referred as "petitioner" and the respondent/wife will be referred as "respondent" only.

It is not disputed that the petitioner and the respondent are husband and wife. The parentage of the child is also not disputed. It is also an admitted fact that since the birth of the child dated 25.09.2014 the child has been staying with his mother who is presently residing in her paternal house. The petitioner filed the instant case against the respondent for divorce u/s 27(1)(d) of the Special Marriage Act.

It is submitted by the ld. Advocate for the petitioner that since the date of pregnancy of the respondent and till this day, the petitioner has/had performed all the moral and legal obligations to maintain the respondent and being the father he also left no stone unturned for the betterment, welfare and wellbeing of the minor son and never ignored from sharing the equal responsibilities of son's educational expenses. It is alleged that despite all sorts of care and responsibility, the respondent did not allow the petitioner to see the minor son except two/three times in seven years as the child is under the control of his mother. Ld. Advocate put much emphasis upon his submission that it is the legitimate right of the

petitioner being a father and in no way and any circumstances, the petitioner and his old aged parents can be deprived from enjoying the right of joy and comfort having the company of the minor son. Ld. Advocate for the petitioner finally prayed for getting the interim custody of the said minor son **Arinjoy Chakraborty** in his house from the paternal house of the respondent, once in a week, preferably on Sunday for few hours by incurring all transportation expenses of to and fro journey.

To fortify his submission, ld. Advocate for the petitioner cited few decisions of the ***Hon'ble Court reported in Anuj Chaturvedi -vs- Jyoti (IA No. 25007/2018 dated 04.10.2019) (Special Leave to Appeal (C) No.(S) 6303/2017 and AIR 1990 Cal-4 (S. Sibani Banerjee-vs- Tapan Kumar Mukherjee).***

In the written objection, the respondent denied all the material allegations contained in the petition. Refuting the submission of the ld. Advocate of the petitioner, ld. Advocate for the respondent contended that the instant petition cannot be entertainable, either in law or in fact. Ld. Advocate alleged that the petitioner suppressed the fact of his impotency at the time of negotiation of the marriage. After the marriage, he never performed his social, financial obligations and responsibilities towards the respondent and the minor son. The petitioner absolutely did nothing for the betterment and welfare of the minor son. He specifically submitted that the neither the petitioner nor his parents have/had any interest to visit the child since the date of his birth. Ld. Advocate would also submit that it would not be fair and beneficial for the child, when his father is longing to give attention and care to the minor son.

It is further submitted that the petitioner did not come with clean hands before this Court as he has suppressed the earlier order passed by this Court on 04.09.2017 as regards to the interim custody and visitation of the minor son. Ld. Advocate finally submits that when the petitioner being the father waived his own right by disobeying the earlier order passed by this Court, so the prayer for passing any further order by filing the instant petition on self same issue cannot be entertained and accordingly, prayed for its dismissal.

Heard ld. Advocates of both sides. I have also perused the petition along with the written objection and also considered the

decisions, cited by the ld. Advocate for the petitioner.

The crux of the petition dated 28.09.2021 is as to whether the petitioner would be permitted/allowed the interim custody of the child once in a week, preferably on Sunday for few hours by taking the son in his own house from the paternal house of the respondent. It is mentioned here that on 04.09.2017, this Court was pleased to dispose of one application on more or less the self same issue directing the petitioner to see his minor son on holidays in between 11 A.M. to 12 noon at the residence of the respondent under the prior intimation to the respondent and the respondent was also directed to see that no sort of hindrance and encumbrances would cause at the time of visitation. This Court was also pleased to mention in the said order that the prayer of interim custody of the minor son was unjustified as the petition was filed by the petitioner after 2 years 11 months from the date of filing of the instant petition for divorce. The said order has never been challenged by the petitioner. No prayer for modification of the said order has been applied for till date. All these lead to infer that the petitioner has accepted the said order of this Court. While the said order is in force, the prayer so made, by the petitioner by filing another petition dated 28.09.2021 carries no merit and essence. The principles of res judicate bearing squarely applicable in this matter, makes the instant petition untenable in the eye of law. The petition dated 28.09.2021 is not feasible and acceptable in the mode and manner in which it has been so made. Also the petitioner has not come up with clean hands before this court as he suppressed all the details, which he ought to have disclosed. This Court is constrained to say that the instant petition is frivolous, baseless and time waisting and as such, it deserves rejection.

Hence, it is

O r d e r e d

that the petition dated 28.09.2021 stands rejected on contest but without cost.

Todate i.e. on **07.12.2022** for further evidence of P.W.1. The petitioner do come ready in this case on the next date fixed.

Dicttd & Corttd by me
Sd/-Bibhas Chatterjee
Additional District Judge
2nd Court, Sealdah

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Addl. District Judge,
2nd Court, Sealdah