

(2002) 05 JH CK 0015

Jharkhand High Court

Case No: FA No. 10 of 1999 (R)

Bimlendu Kumar Chatterjee

APPELLANT

Vs

Smt. Deepa Chatterjee and
Others

RESPONDENT

Date of Decision: May 15, 2002

Acts Referred:

- Hindu Minority and Guardianship Act, 1956 - Section 6

Citation: AIR 2003 Jhar 46

Hon'ble Judges: M.Y. Eqbal, J; Hari Shankar Prasad, J

Bench: Division Bench

Advocate: B.K. Chatterjee, for the Appellant; Pradip Modi, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. Heard learned counsel for the parties on I.A. petition No.278/2002, which is filed by the plaintiff-appellant u/s 151. CPC for getting custody of his child.
2. The plaintiff-appellant is the husband of respondent-Deepa Chatterjee and out of their wed lock a child was born. Some differences cropped up between them, as a result of which plaintiff-appellant filed a Title (Matrimonial) Suit No. 1/92 in the court of Additional District Judge for restitution of conjugal rights as respondent Deepa Chatterjee had left the residential house of plaintiff-appellant with her daughter and during the pendency of the matrimonial suit the plaintiff-appellant filed a petition for custody of the child. On 21.11.1996 an order was passed for custody of the child to the appellant by the learned Family Court. The respondent Deepa Chatterjee, without preferring an appeal against the said order, filed a writ petition, which was held to be not maintainable but granted visiting right to the plaintiff-appellant once in every week. The said order was affirmed by an interim order dated 25.11.1997 in LPA No. 358/97. By judgment dated 4.5.2000 a Division Bench was pleased to set aside the order of the learned Single Judge and affirmed the order of the Family

Court passed on 21.11.1996. The plaintiff-appellant, thereafter filed an application before the Family Court, Dhanbad for implementation of the order dated 21.11.1996 affirmed in LPA No. 358/97. The learned Family Court sought some clarification, as a result of which the plaintiff-appellant had filed an interlocutory application No. 962/2000 in the disposed of LPA No. 358/97. By an order dated 6.11.2000 the Division Bench affirmed the interim order dated 25.11.1997 passed in LPA No. 358/97 but, being aggrieved with the said order dated 6.11.2000, the plaintiff-appellant preferred a SLP before the Hon'ble Supreme Court, being SLP (Civil) No. 1447/ 2001 and Hon'ble Supreme Court, by an order dated 19.9.2001, allowed the aforesaid Civil Appeal No. 6501/ 2001 (arising out of SLP (Civil) No. 1447/ 2001 and set aside the order dated 6.11.2000 in LPA No. 358/97. Pursuant to that order the plaintiff-appellant has filed this interlocutory application for a direction for making appropriate arrangement for getting custody of his minor daughter.

3. The plaintiff-appellant appeared in person and submitted that he has been pursuing the matter for the last 10 years to get custody of his minor daughter and order in his favour for handing over custody of the minor daughter has been passed directing the respondent No. 1 to hand over the custody of the minor daughter but inspite of the order she has no respect for the orders of the Hon'ble Court and till now she disobeyed the orders of the Court. He further submitted that his wife and minor daughter are under the control of his Sasural people and they are miacheviously tutoring them not to reside with him and to hand over the custody of the minor daughter in question and his anxiety and desire to bring up his daughter in proper way and give proper education to her will be clear from the series of applications filed by him before the respective authorities and as per order of Hon'ble Supreme Court passed in Civil Appeal No. 6501/2001 the custody of his daughter be handed over to him so that he could give her proper education.

4. On the other hand, learned counsel appearing for the respondent No. 1, submitted that the respondent No. 1 and minor daughter are not willing to reside with the plaintiff-appellant and deposition of respondent No. 1 and minor daughter was recorded in the open Court in presence of the parties and both of them refused to reside with the plaintiff-appellant and minor daughter submitted that she is not at all willing to go to her father. Learned counsel further argued that welfare of the minor daughter is the paramount consideration and when the minor daughter, who is aged about in between 15-16 years, is not willing to go to plaintiff-appellant's house then appropriate order is necessary on this point and the prayer of the plaintiff-appellant for handing over the custody of the minor daughter may be refused.

5. It is true that the plaintiff-appellant has been pursuing the matter for the last several years for getting custody of his minor daughter but till now the custody of minor daughter has not been handed over to him, although he is entitled to custody of his minor daughter but neither the respondent No. 1 nor his daughter wants to

go to the house of the plaintiff-appellant and when statements of both were recorded, the respondent No. 1, who is the wife of the plaintiff-appellant, has gone to the extent of saying that she may take poison. In that view of the matter if the custody of the minor daughter is given to the plaintiff-appellant then a piquant situation may be created afterwards.

6. We perused the order of the Hon'ble Supreme Court dated 19th September, 2001 passed in civil Appeal No. 6501 of 2001. The relevant portion of the order reads as under :--

"In the result, the appeal is allowed. The order dated 6th November, 2000 in LPA No. 358/97(R) is set aside. Leave is granted to the appellant to file an application for appropriate interim arrangement for getting custody of his child or for making an arrangement enabling him to see his child at regular intervals before the court in which trie suit/appeal stated to have been tiled by him is pending. If such an application is filed, the Court will dispose of the same as expeditiously as possible. There will be no order as to costs."

7. Considering the direction given in the aforesaid Civil Appeal No. 6501/2001 coupled with the fact that the settled principle of law is that in the matter concerning the custody of minor child, the paramount consideration is the welfare of the minor and not the legal right of one or other party. It may not also be relevant as to whether the father or the mother is liable to be accused for the matrimonial imbalance leading to the dispute as regards custody of the child. Further, in the instant case the child is the daughter and she can welt be looked after only by her mother as in her father's house there will be none to take care of a daughter aged in between 15-16 years. The daughter, on being asked, submitted that she will be better looked after by her mother and her father always tortures her. In that view of the matter, when minor daughter does not want to go to her father's house (plaintiff-appellant's house), it is desirable that as interim arrangement, plaintiff-appellant be allowed to see his minor daughter.

8. We, therefore, direct that respondent No. 1 will appear before the Registrar General. Jharkhand High Court, Ranchi with her minor daughter and plaintiff-appellant will see his daughter once every fortnight.

9. With the aforesaid observation and direction the I.A. petition is disposed of.