

13.05.2020

(Through Video Conference)

Court No. 02
Item No. SL - 02
snandy

(DISPOSED OF)

CAN 3092 of 2020
in
WP 5399 (W) of 2020

Hriday Nest of Family Harmony
Vs.
The State of West Bengal & Ors.

Mr. Sakya Sen, Advocate
Mr. Rohit Banerjee, Advocate

.....for the Petitioner

Mr. Kishore Dutta, Learned Advocate General
Mr. Srijib Chakraborty, Advocate

.....for the State

The Public Interest Litigation has been initiated for framing a guideline concerning children who are disassociated with the parents.

The allegation which appears to be the sub-stratum of the instant Public Interest Litigation is that no visitation has been permitted despite an order passed by the Civil Court during the lockdown due to pandemic and the applications for urgent hearing is kept in suspended animation without being addressed by the concerned Court.

It is highlighted by Mr. Sen, learned Advocate appearing for the petitioner that an attempt to approach the Government instrumentality for interacting with the child not in institution, have gone in vain as the portal or the dedicated website is not responding. Several ancillary issues are raised in course of argument by Mr. Sen relating to the welfare of the children both in institution and otherwise which has been answered by the

learned Advocate General, appearing in the instant matter.

We are not oblivious of the fact that the child is the worst sufferer to the separation of the parents and falling off the nuptial tie. The parents may have fallen apart because of several factors viz. lack of sensitivity, lack of communication, ego and non-convergence to the issues, which appear to be a normal wear and tear of a conjugal life. The parent has a statutory as well as a social right to interact with the child and concern for his wellbeing. It is no gainsaying that the visitation/interaction with the child may sometime yield a positive result as the child can act as a bridge between the warring parents and may fill up the gaps to restore the institutional chord. It is no doubt true that the welfare of the child is paramount and visitation is one of the integral parts of restoring the broken thread between the litigating parents.

The pandemic has caused a distance to be maintained, as the virus (Covid-19) is contagious. The physical distancing is the need of an hour and because of the restrictions on the movement of the vehicles and other means of commutation, it impedes visitation by physical interaction. The technology has been developed where the virtual interaction/visitation can also be taken as a part of the right of visitation. The society changes with the advancement of technology and the medium of education, so the concept of social justice, which is dynamic and not static. The Court cannot be laid of the application filed by either of the parents for virtual visitation but should have activated the process as the

welfare of the child is of paramount consideration. Even after observing the same, the purpose of litigation as filed, cannot be used as a tool for ventilating the grievance, which is of a personal nature as the adequate remedies are provided in law.

So far as the allegation as to lack of response being done by the Government when one of the parent wishes to interact with the child in custody of the other parent, we also feel that the remedy lies in law and the approach can be made by an aggrieved parent.

We are confident that the concerned Judge is alive of the fact that the child being vulnerable and needs constant support both mentally and physically and the welfare being the paramount consideration, shall take up the issue as and when raised on an urgent basis depending upon the given facts and circumstances.

We do not feel that keeping the instant Public Interest Litigation in the docket of the Court shall subserve any purpose and accordingly the writ-petition being **WP 5399 (W) of 2020** is **disposed of**.

In view of the disposal of the writ-petition itself, the connected application being **CAN 3092 of 2020** is also **disposed of**.

(Soumen Sen, J.)

(Harish Tandon, J.)

