



IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.28784 of 2019

(In the matter of an application Under Articles 226 and
227 of the Constitution of India)

████████████████████

....

Petitioner

-versus-

████████████████████

....

Opposite Party

***For Petitioner : Mr. B.Bhuyan, Sr. Advocate along
with Ms. S. Sahoo, Advocate***

***For Opposite : Mr. L. K. Moharana, Advocate
Party***

CORAM:

JUSTICE G. SATAPATHY

DATE OF HEARING : 17.03.2025

DATE OF JUDGMENT : 14.05.2025

G. Satapathy, J.

1. The Petitioner-wife has invoked the extraordinary writ jurisdiction of this Court under Articles 226 & 227 of the Constitution of India by praying to quash the order dated 23.11.2019 passed under Annexure-8 by which the learned Senior Civil Judge, Talcher has allowed the I.A. No.123 of 2017 arising out of MAT No.19 of 2016 granting visitation right to the Opposite Party-father.



2. By the impugned order, the learned trial court has observed inter-alia the following:-

"The father is entitled to visitation right to his son once in a fortnight preferably on a holiday as per the date, time, place fixed by the respondent-O.P. under intimation to this Court. So also the father shall have assessed to the child on his birth day, on the special festive occasion also."

3. Heard, Mr. Bibekananda Bhuyan, learned Senior counsel who is assisted by Ms. Sujata Sahoo, learned counsel for the Petitioner and Mr. Lalit Kumar Moharana, learned counsel for the OP in the matter and perused the record.

4. The relationship between the Parties is never in dispute, but the Petitioner-wife challenges the impugned order granting visitation right of the son to the father-cum-OP on the ground that the husband has not paid the interim maintenance so also the litigation expenses to her and the minor child was deserted by the husband when he was hardly one month old and the minor child is in her custody since 17.09.2012 and in the meantime, he had already grown up and the father had never visited the



son nor had taken care of the child or made arrangement for his survival. Additionally, it is also contended that since I.A. No.127 of 2017 has been filed U/S. 26 of the Hindu Marriage Act, 1955 (In short "the HM Act") for custody of the child which was directed to be disposed of along with MAT case by the learned trial Court, no visitation right could have been granted to the OP in another petition filed in such I.A.

5. Admittedly, the husband-OP has filed MAT Case No.19 of 2016 against the Petitioner No.1-wife for seeking divorce and in such MAT Case, the OP-husband has filed I.A. No. 127 of 2017 seeking custody of the child, but the learned trial Court admittedly by an order passed on 16.12.2017 has directed for its disposal along with the original MAT Case. Be that as it may, the visitation right is an important right of either of the parents to see the children born out of their wedlock. It is not in dispute that the father in this case has no access to the child, but he has definitely right to see his son provided the



same is in the paramount interest of the child, who has right to the affection of both of his parents. It is also equally important that the child is entitled to love & affection, protection & guidance of both the parents and their family. While deciding any matters relating to the custody or visitation right of the child, the paramount consideration is the welfare of the child and if the welfare of the child so demands, the technical objection cannot come in the way, but while deciding the welfare of the child, it is not the view of one spouse alone which has to be taken into consideration, however, the Court is required to decide the issue on the basis of what is in the best interest of the child. The child is always the victim in the custody battles and in the fight of egos and acrimonies between two spouses, but the childhood of such child is the worse sufferer and such childhood is spoiled due to the alter egos of the spouses.

6. It is a matter of fact that the child especially of tender years requires love, affection



company, protection and guidance of both the parents and these are not only the requirement of the child, but also are his/her basic human rights and need. Further, the child should not be denied with proper care and affection, merely because his/her parents are at war with each other. The child is not an inanimate object which can be tossed from one parent to other. This Court is of the considered opinion that excepting the extreme circumstance, one parent should not be denied to contact or visit his/her child and the cogent reasons must be assigned while refusing visitation right of either of the spouses to their child.

7. In this case, there is allegation and counter allegation by the parties against each other, but the Petitioner-wife challenges the visitation right on the ground that she has not been paid with maintenance and thereby, visitation right should not have been granted to the husband, however, such contention is insignificant because the visitation right



of the child is considered on a different pedestal of welfare of the child which is paramount in considering the application for visitation right.

8. Upon a holistic consideration of facts and circumstance as presented in this case and the paramount consideration being the welfare of the minor child and prioritizing the child's need for love & affection from his parents and there being no tangible material or extreme circumstance to refuse the father from his legitimate right to visit his son, this Court considers that the learned trial court has rightly granted visitation right of the child to the father necessitating no interference by this Court in exercise of extraordinary writ jurisdiction.

9. In the result, the writ petition being devoid of merit stands dismissed on contest, but in the circumstance, there is no order as to costs.

(G. Satapathy)
Judge