

CASE NO.:
Appeal (civil) 6501 of 2001

PETITIONER:
BIMLENDU KUMAR CHATTERJEE APPELLANT

Vs.

RESPONDENT:
DIPA CHATTERJEE & ORS. RESPONDENTS

DATE OF JUDGMENT: 19/09/2001

BENCH:
D.P. Mohapatra & Shivaraj V. Patil

JUDGMENT:

D.P. Mohapatra, J.

Leave granted.

We have heard the petitioner Shri Bimlendu Kumar Chatterjee, who appeared in person and learned counsel appearing for the respondents.

The appellant is the husband of respondent no.1 . Smt. Dipa Chatterjee. The dispute raised in the case relates to the right of the appellant to have custody or at least a right to visit regularly his daughter who is now residing with respondent no.1.

This appeal is directed against the order passed by a Division Bench of the Ranchi Bench of Patna High Court on 6th November, 2000 in LPA 358/97 (R) titled Bimlendu Kumar Chatterjee vs. Smt. Dipa Chatterjee & Anr. Relevant portion of the order reads thus :

The Court heard this matter for some time. The Court has also seen the record of the present letters patent appeal. The Court is also conscious of the order which was passed by a Bench presided over by Honble Mr. Justice Narayan Roy and Honble Mr. Justice M.Y. Eqbal on 25th November, 1997. In short, the Court will not permit the child to become a shuttle-cock. The matter must rest on the order as recorded on 25th November, 97. Thus, the application filed on 16th August, 2000 is consigned.

From the above order it is clear that the Division Bench has reiterated the arrangement made in the order dated 25th November, 1997 regarding custody of the child.

In the order dated 25th November, 1997 in LPA

No.358/1997 (R) a Division Bench of the High Court disposed of the petition filed by the appellant herein praying to the Court to ascertain from the respondent no.1 herein whether she was agreeable to the desire expressed by him for an amicable settlement of the matter. The Division Bench disposed of the said petition with the following order :

We find that the Letters Patent Appeal itself has been filed for giving custody of the girl child to the appellant. Since the matter is subjudice in this court, in our view, it would not be appropriate to pass any direction giving the female child in custody of the appellant even temporarily. A liberty has already been given to the appellant by the order impugned to see his daughter at least once in a week and in view of the direction the appellant may see his daughter once in a week and the respondent no.1 must make her daughter available to the appellant in terms of the order impugned.

For the reasons aforementioned we refrain ourselves from passing any further order in the matter.

Thereafter in the order passed on 10th August, 1998 in MJC No.783 of 1997 (R) filed in LPA No.358/97 (R) for initiation of a contempt proceeding against respondent no.1 for violating the order dated 25th November, 1997 of the Court, a Division Bench passed the following order :

The petitioner will have the liberty to visit the house of Opp.Party NO.1 on every Sunday in the afternoon between 2.00 p.m. and 4.00 p.m. and if he does so, the Opp. Party No.1 will make arrangement to enable him to meet daughter and allow him to remain with her for a reasonable time. This order is being passed so as to avoid future controversy.

LPA No.358/97 (R) was decided by the judgment rendered by a Division Bench on 4th May, 2000. The appeal was allowed and that part of the order by which the learned single Judge had directed that the child will remain with the mother with liberty to the father to go and see the child at least once a week, was set aside.

Thereafter, it appears that the respondent no.1 having failed to restore custody of the child to him, the appellant filed an application before the High Court seeking implementation of the order of the Family Court, Dhanbad giving custody of the child to him. Considering the said application, another Division Bench passed the order dated 6th November, 2000, as quoted earlier. The said order is under challenge in this appeal.

As noted earlier, in the order under challenge, the High Court reiterated the order passed on 25th November, 1997 in LPA No.358/97 (R) overlooking the position that the said order which was an interim order passed in the appeal was not subsisting after disposal of the appeal by the judgment dated 4th May, 2000. Further, the

Division Bench had also overlooked the position that the LPA itself having been disposed of, no further order reviving the interim order passed during the pendency of the said appeal could be passed in the disposed of case. In the circumstances, the order under challenge is clearly unsustainable and has to be set aside. The learned counsel appearing for the respondents fairly accepted the position that the impugned order is wholly unsupportable.

Then the question arises what will be an appropriate order to be passed on the facts and circumstances of the case. The appellant, who is the father of the child, submitted before us that after long years of litigation, he has not yet got even a right to see his child for some time at regular intervals. The grievance of the appellant cannot be brushed aside. A humanitarian approach is necessary for solving the problem.

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 the suit/appeal stated to have been filed 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.

.J.
(D.P. Mohapatra)

.J.
(Shivaraj V.Patil)

September 19, 2001