

AD-30
Ct No.16
17.02.2026
TN

FMAT 443 of 2025
IA No: CAN 1 of 2025
CAN 2 of 2025

Sajal Roy
Vs.
Moumi Roy

Mr. Anindya Halder,
Mr. Mazhar Hossain Chowdhury

.....for the appellant

Mr. Uday Sankar Chattopadhyay,
Mr. Suman Sankar Chatterjee,
Ms. Aishwarya Datta,
Ms. Bidisha Chakraborty

....for the respondent

Re: CAN 2 of 2025

1. In view of sufficient explanation for the delay having been furnished, CAN 2 of 2025 is allowed, thereby condoning the delay in preferring FMAT 443 of 2025.
2. There will be no order as to costs.

Re: FMAT 443 of 2025
CAN 1 of 2025

3. The present appeal has been preferred against an order whereby custody of an eight-year-old male child, namely Priyanshu, has been given to the respondent-mother.
4. Learned counsel for the appellant-father argues that the parties have been separated since the year 2021.
5. For the last five years since then, Priyanshu has been living with the appellant-father.

6. It is submitted that by the impugned order, the learned Trial Judge, merely going by the educational qualification of the respondent-mother, has given custody of the child to the mother, leaving only visitation rights for the father.
7. It is contended that the child, if uprooted from his paternal home where he is residing at present, would suffer distress.
8. Learned counsel for the respondent opposes the prayer and submits that the mother is not only well-qualified but the welfare of the child will be subserved with the mother. That apart, learned counsel for the respondent-mother takes the Court through the findings of the learned Trial Judge, where it was recorded that the learned Trial Judge had an interaction with the child and was satisfied that the child is willing to stay with both the parents; more so, with the respondent-mother.
9. Upon perusal of the impugned judgment, we find certain salient features of the matter. First, although the learned Trial Judge went primarily on the premise of the higher educational qualification of the mother, at the same time, the learned Trial Judge *prima facie* resorted to conjecture and surmise in observing that any detachment of the minor from his mother may cause a “scratch” in the mind of the minor, who is just eight years old. It was further observed that “this

deviation has already caused demoralization in the life, encouragement, dreams, hopes, future, education and everything of the minor". Considering the said fact, it was observed that mother's love and care is now utmost needed.

10. However, the said findings do not find support in the materials available before the learned Trial Judge. That apart, it seems that the learned Trial Judge was swayed more by the learned Trial Judge's personal inclinations and views than the facts of the case.
11. Fact remains that the child has been with the father since his birth. Although both the parents were residing together till the child attained 3 years of age, since then, for the last 5 years, the child is residing at his paternal home. In the paternal home, as evident from the findings in the impugned judgment, the aunt (father's brother's wife) of the child is imparting tuition to him, apart from there being two other private tutors.
12. There is no material reflected from the impugned order that the child's education has suffered of late or that there was any particular reason that the child should be uprooted from his normal and habitual residence for the asking, just on the conjectural premise that mother's love is more required by the child.

13. As such, we find sufficient arguable points having been raised in the appeal.
14. Accordingly, the appeal is admitted to be heard on the above questions as well as the other grounds taken in the memorandum of appeal.
15. CAN 1 of 2025 is disposed of, without any order as to costs, by staying the operation of the impugned order till the disposal of the appeal, subject to the respondent-mother having visitation rights to the minor child Priyanshu in the following manner:
16. The respondent-mother shall pick up the child every Saturday at 05:00 p.m. from the residence of the appellant-father and take the child to her own residence. The child shall remain in the residence of his mother, the respondent, from then onwards till the next day, that is, the following Sunday evening and shall be returned by the respondent-mother to the appellant-father at the latter's residence sharp at 07:00 p.m. on the following day, that is, Sunday.
17. This arrangement will continue every week, starting from the coming weekend, till disposal of the appeal.
18. In the event any difficulty is faced either by the child or by the parties in such visitation, it will be open to the parties to approach this Court with a proper application in that regard. We express hope and trust that the parties shall be prudent in their dealings with

the child and shall not force themselves upon the child in any manner whatsoever.

19. It is made clear that the above *ad hoc* arrangement, for the time being, shall only prevail during pendency of the appeal and shall not in any manner prejudice the rights and contentions of the parties in the appeal.
20. We find that the appellant-father initially filed a suit for restitution of the conjugal rights, which was subsequently withdrawn and a divorce suit filed by the father as a counter blast to a subsequent suit for restitution of conjugal rights filed by the respondent-mother.
21. From the above turn of events, it transpires that all is still not lost and there is ample scope of the parties reconciling their matrimonial disputes as well as there is a chance of the parties staying on together as a couple by shedding their personal differences, which will be of utmost benefit to the child in the final count.
22. In such view of the matter, this is a fit case to be referred to mediation.
23. Accordingly, we refer the matter to the Calcutta High Court Mediation Committee for exploring the avenue of mediation to resolve all disputes between the parties, not only limited to the custody of the child but also the matrimonial disputes between the parties. We request the Calcutta High Court Mediation Committee to make at least one professional

Psychologist a part of the mediation process by appointing her/him as a Mediator.

24. This order shall be communicated immediately through the Office to the Calcutta High Court Mediation Committee and the file shall be sent to the said Committee at the earliest.
25. The parties as well as all concerned shall act on the server copy of this order, coupled with the written communication by the learned Advocates for the parties, without waiting for the certified copy of the same.
26. In the meantime, the trial court records shall be brought by special messenger at the cost of the appellant, to be deposited within a week from date.
27. The appellant shall prepare and file the requisite number of informal paper books without comparing with the records within six weeks from the date of service of notice of arrival of the trial court records on the learned Advocate for the appellant.
28. In view of the appearance of the parties, the appeal be treated to be ready as regards service.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)