

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

MA No.7/2022
CM Nos. 2644/2022 &
2645/2022

1. Harsh Verdhan Sadotra, aged 69 years
 2. Ramesh Chander, aged 65 years
- Both appellants sons of Ram Lal, both residents of
Village Kanhal (Upper), Tehsil Bishnah and
District Jammu

....Appellant/Petitioner(s)

Through :- Mr. Rohit Verma, Advocate

V/s

1. Narian Saran Gupta S/o Late Ram Saran Gupta
R/o H.No.56, Sector-5, Trikuta Nagar, Jammu
2. Alka Agarwal D/o Narian Saran Gupta W/o
Ashok Agarwal R/o H.No.505, Drew Berry
Everest World Complex, Kolshet Road,
Opposite Bayer India Company, Dhokali, Thane
Sandozbaugh, Maharashtra

.....Respondents

Through :- Mr. S.S.Ahmed, Advocate with
Ms. Supriya Chauhan, Advocate

**Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE MOHAN LAL, JUDGE**

JUDGMENT (Oral)
13.10.2023

Sanjeev Kumar J.

1. This appeal by the appellants under Section 19 of the Family Courts Act, 1984 is directed against the order dated 29.10.2021 passed by the Principal Judge, Family Court, Jammu ["the Family Court"] in File No.164/G&W Act titled *Narain Saran Gupta and another v. Nemo,*

whereby the Family Court has appointed the respondents herein as guardian of the person of minor, namely, Reedhika Dutt D/o of Late Ravi Dutt R/o H.No.56, Sector-5, Ward No.53, Trikuta Nagar, Jammu.

2. The impugned order and judgment of the Family Court is assailed by the appellants primarily on the ground that despite the fact that the appellants were close relatives of the minor i.e. brothers of the deceased father of the minor, yet they were neither arrayed as party respondents in the application filed by the respondents before the Family Court nor were they put on notice by the Family Court.

3. Mr. Rohit Verma, learned counsel appearing for the appellants, submits that had the appellants been given an opportunity to contest the application filed by the respondents, they would have definitely demonstrated before the Family Court that it was in the larger interest and welfare of the minor to be in the custody of the appellants.

4. On the other hand, Mr. S.S.Ahmed, learned counsel appearing for the respondents, submits that on the directions of this Court dated 20.04.2022, the minor was produced in the Court on 20.05.2022. The minor aged 14 years expressed her desire to pursue her studies in Orchid International School, Thane, Maharashtra itself. She further stated that she was well settled there and was being taken good care by her maternal grandfather and maternal aunt, the respondents herein. He, therefore, submits that even if the Court accepts the contention of the learned counsel for the appellants and the matter is remanded, it would still be an exercise

in futility. He submits that ultimately it is the welfare of the child, which is to be ascertained, inter alia, from the wish and desire of the minor.

5. Heard learned counsel for the parties and perused the material on record.

6. True it is that while filing an application for seeking declaration/appointment as guardian of a minor under the Guardian and Wards Act, 1890 [“the Act”], it is obligatory on the part of the applicant to disclose names and particulars of any other person who is closely related to the minor and may be interested in his/her custody. Similarly, the Court considering the application may issue a special notice of the application to a person who, in the opinion of the Court, is also required to be heard in the matter. From the record, we find that there was a publication of notice in the newspaper to which the appellants have not responded.

7. Be that as it may, having regard to the fact that the appellants as well as the respondents are related to the minor in almost equal degree and, therefore, were possibly equally interested to have her custody and take care of her welfare. It would have been ideal and in consonance with law had the Family Court after examining the application issued special notice to the appellants herein, who were equally related to the minor and hear them in the matter. In such situation, the Family Court would have been in a better position to determine as to whether it was in the larger interest and welfare of the minor to give custody to the appellants or the respondents. This, however, has not happened.

8. In view of the aforesaid, we could have remanded the matter to the Family Court for re-determination. However, having regard to order dated 20.05.2022 passed by this Court recording desire of the minor to stay in Mumbai along with the respondents, we refrain from doing so.

9. Indisputably, the minor was 14 years old when she appeared in the Court on 20.05.2022. She was matured enough to make her choice as to whether she would like to stay in Mumbai with the respondents or would love to stay with the appellants herein at Jammu. She made a clear choice. She expressed her desire to pursue her studies in Mumbai in the Orchid International School, Thane, Maharashtra, where she is presently studying. She categorically stated that she was well settled and was being taken good care by the respondents.

10. Having regard to the aforesaid statement made by the minor, who is now capable of making her choice in effective manner, we are of the opinion that sending the case back to the Family Court for re-determination of the issue would be an exercise in futility. We find it in the larger interests of the minor and her welfare not to disturb her from studies and her living in Mumbai and put her into entirely new environment.

11. For the foregoing reasons, we do not wish to interfere with the order passed by the Family Court. This Appeal is, accordingly, dismissed.

(Mohan Lal)
Judge

(Sanjeev Kumar)
Judge

Jammu:
13.10.2023
Vinod, PS

Whether the order is reportable: Yes/No