

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MA No. 65 of 2015

1. Smt. Savita Sahu W/o Girvar Sahu, aged about 27 years, R/o Village : Sandi, Police Station & Tahsil-Palari, District- Balodabazar- Bhatapara, Chhattisgarh
2. Minor Payal D/o Girvar Sahu, aged about 6 years, Minor Through Natural Guardian Mother Smt. Savita Sahu, R/o Village Sandi, Police Station & Tahsil-Palari, District- Balodabazar- Bhatapara, Chhattisgarh
3. Minor Leeladhar S/o Girvar Sahu, aged about 4 years, Minor Through Natural Guardian Mother Smt. Savita Sahu, R/o Village Sandi, Police Station & Tahsil-Palari, District- Balodabazar- Bhatapara, Chhattisgarh

---- Appellants

Versus

1. Girvar S/o Kuleshwar Sahu, aged about 29 years, R/o Village : Rohasi, Police Station & Tahsil-Palari, District-Balodabazar- Bhatapara, Chhattisgarh

---- Respondent

For Appellants – Shri C.K.Sahu, Advocate
For Respondent – Shri Wasim Miyan, Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment on Board

21/08/2015

1. Heard on I.A.No.1/15 for condonation of delay as the instant miscellaneous appeal has been preferred after 897 days of its limitation.

2. Learned counsel for the appellants submits that after the impugned order passed by the Chief Judicial Magistrate, Balodabazar, C.G. in Guardian and Wards Case No.2/12 vide order dated 12-09-2013, the appellants preferred the appeal under Section 96 of the CPC before the Court of District & Sessions Judge, Balodabazar, C.G. On 19-01-2015, the learned District & Sessions Judge, Balodabazar has returned the memo of appeal for want of jurisdiction with a note to file appeal before the High Court. Thereafter, the appellants preferred the instant miscellaneous appeal. The delay is bonafide, hence, the same may be condoned.

3. On due consideration, for the reasons mentioned in I.A.No.1/15, the delay in filing of this miscellaneous appeal is hereby condoned.

4. I.A.No.1/15 is hereby allowed.

5. Heard on admission.

6. The instant miscellaneous appeal has been filed against the order passed by the Chief Judicial Magistrate, Balodabazar vide order dated 12-09-2013 passed in a case of Guardian and Wards Act, No.2/12. The learned Court below allowed the application filed under Section 25 of the Guardian and Wards Act, 1890 (in short 'the Act, 1890) and the applicant/respondent was declared as guardian of non-applicants 2 and 3/appellants 2 and 3.

7. Against the order, the non-applicants/appellants preferred the appeal. On 19-01-2015, the District Judge, Balodabazar, C.G. returned the appeal as the jurisdiction for hearing lies to the High Court.

8. For the purpose of appreciation on the point of law, the Act, 1890 perused.

9. Definition clause, Section 4(5) of the Act, 1890 is relevant which reads as under:-

“4. Definitions –

xxxxx xxxxxx xxxxxx

(5) “the Court” means –

- (a) the District Court having jurisdiction to entertain an application under this Act for an order appointing or declaring a person to be guardian; or
- (b) where a guardian has been appointed or declared in pursuance of any such application –
 - (i) the Court which, or the Court of the officer who, appointed or declared the guardian or is under this Act deemed to have appointed or declared the guardian; or
 - (ii) in any matter relating to the person of the ward the District Court having jurisdiction in the place where the ward for the time being ordinarily resides; or
- (c) in respect of any proceeding transferred under section 4A, the Court of the officer to whom such proceeding has been transferred;”

10. As per Section 25 of the Act, 1890, the provisions of law is as under:-

25. Title of guardian to custody of ward. – (1) If a ward leaves or is removed from the custody of a guardian of his person, the Court, if it is of opinion that it will be for the welfare of the ward to return to the custody of his guardian, may make an order for his return and for the purpose of enforcing the order may cause the ward to be arrested and to be delivered into the custody of the guardian.

(2) For the purpose of arresting the ward, the Court may exercise the power conferred on a Magistrate of the first class by section 100 of the Code of Criminal Procedure, 1882 (10 of 1882).

(3) The residence of a ward against the will of his guardian with a person who is not his guardian does not of itself terminate the guardianship.”

11. From the bare perusal, it goes to show that the Chief Judicial Magistrate is not empowered to entertain the application filed under Section 25 of the Act, 1890, the concerned Chief Judicial Magistrate committed a mistake of law to hear the application filed under Section 25 of the Act, 1890 and also committed mistake by passing the order with allowing the prayer made in this behalf by the applicant as the concerned Chief Judicial Magistrate was not empowered to entertain the application. Thus, the order passed on 12-09-2013 is beyond jurisdiction, the judicial officer was required to see the provision and as per definition clause the District Court can alone are empowered to entertain an application made under Section 25 of the Guardian and Wards Act. Therefore, the order passed is without authority of law.

12. In the Act, 1890, appeal shall lie to the High Court from an order made by a Court; as the order passed by the Court below was beyond jurisdiction, the District Judge ought to have also taken note of it as the appeal itself is not maintainable as it arises out from an order which itself is beyond jurisdiction and hence void. The concerned District Judge has also not taken care of above mentioned provisions and the factual aspects.

13. As the impugned order passed by the Chief Judicial Magistrate, Balodabazar is beyond jurisdiction, hence, liable to be set aside on the face of it. Consequently,

the instant miscellaneous appeal is admitted for consideration and disposed of finally setting aside the impugned judgment dated 12-09-2013 as it is beyond jurisdiction. However, the parties shall be at liberty to approach before appropriate forum regarding redressal of their grievance and prayer, if any, permitted under the law.

14. Copy of this order be sent to the Judge concerned who passed the impugned order and also to the concerned District Judge as to make them aware to hear and dispose of matters as per law in future.

15. The appeal allowed to the extent indicated above.

Sd/-

(Chandra Bhushan Bajpai)
Judge