

HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

HON'BLE SRI JUSTICE M.S.K.JAISWAL

C.M.A.No. 832 of 2008

Dated: 20.03.2015

Between:

Shaik Saleem

... Appellant

Vs.

Shaik Sultana

... Respondent

-

HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

HON'BLE SRI JUSTICE M.S.K.JAISWAL

C.M.A.No. 832 of 2008

JUDGMENT: (Per Hon'ble Sri Justice MSK Jaiswal)

This appeal is preferred against the order of the III Additional Sessions Judge, Guntur in GWOP No. 259 of 2005, dt. 21.01.2008, by and under which the learned trial Judge has dismissed the petition of the appellant/father seeking

custody of his minor son.

2. The admitted facts are that the petitioner/appellant is the husband of the respondent, whose marriage was solemnized in the year 1998 and they had a male child. After that, disputes arose between the couple. It is alleged that on 25.08.2005 the minor boy was taken away by the Respondent/mother and in spite of several efforts, they did not come back. Therefore, the appellant had pronounced *Talaqnama* and divorced the Respondent/wife on 04.10.2005 and sent a demand draft for Rs.3,000/- towards the maintenance for the *iddat* period. Thus, the minor boy remained in the custody of the Respondent/mother. It is now alleged that the Respondent/mother is not taking proper care of the minor boy, as she has no independent source of income, and on the other hand the appellant has capacity to take care of the child properly and therefore requested for the custody of the minor child.

3. The allegations of the appellant are refuted by the Respondent/wife contending *inter-alia* that the allegation with regard to her leaving matrimonial home is not correct, and as a matter of fact the appellant and his parents had been subjecting the Respondent/wife to unbearable harassment, which lead to the marriage being disrupted.

4. During the course of trial, the petitioner/appellant examined as PW-1 and Exs.P.1 to P.27 are marked, and on behalf of the respondent/wife, she was examined as RW-1 and Exs.B.1 to B.8 are marked. Upon considering the material on record and having heard the submissions made on behalf of both the parties, the trial Judge had dismissed the petition holding that the petitioner is not entitled to be appointed as guardian for the minor child. Aggrieved by the same, the present appeal has been preferred.

5. The learned counsel for the appellant submits that the appellant, being the father of the minor boy, is entitled for the custody of his son as against the Respondent/mother, who has no means to maintain the minor boy.

6. On the other hand, the learned counsel for the respondent/wife submits that the attitude of the appellant in giving the divorce goes to show his *mala fide* intention, as he did not even wait for a period of two months before pronouncing the *Talaqnama* and ever since that date when the appellant left the consortium of the respondent, he never bothered to visit the child, who is in the custody of the mother for all these 13 years, and it will not be safe for transferring the

custody of the minor boy, especially when the appellant/father has married again and got other children, and on the other hand, the Respondent/wife is living with her parents and is taking proper care of her minor son.

7. We have heard both the learned counsel and considered the material on record, including the authorities relied upon by the learned counsel for the appellant. The vital aspect to be considered for granting the custody of a minor child is whether the father is to be preferred as against the mother and *vice-versa*, but not the legal position. Here, the total fact situation is to be considered. The minor boy is aged about 14 years. During the course of the pendency of the appeal, we had interviewed the boy, and even the boy has shown very much disinclination towards his father and even not allowed his father to touch him. When such is the matter, it may not be proper for the Court to compel the boy to go and join the company of his father. Apart from that, the appellant has got re-married and has children. On the other hand, the Respondent/mother is not re-married, living with her old parents, and for the last 14 years the minor boy is in her custody. The financial capacity of the Respondent/mother is not disputed. The boy is studying 8th Class in Narayana Olympiad School, Vijayawada. During the interaction, we found that the boy is very intelligent, sharp and decisive in his mind as what he wants to be in future.

8. Though the second marriage of the father does not make him unfit to be the guardian of the child, the paramount consideration in such a case should be the welfare of the minor. It cannot be disputed that a child of the tender age would feel psychologically most secure in the company of the mother, rather than the father. No one can compete with the mother in that respect, ordinarily. The amount of love and care which a child receives from the mother cannot be had or expected from any other relation, including the father.

9. Therefore, in view of the above and considering all the facts and circumstances of the case, we are of the opinion that the welfare of the child is safer in the custody of the Respondent/mother as against the appellant/father. The learned trial Judge has taken into account all the facts and circumstances and properly appreciated the material on record and rejected the request of the petitioner/appellant. Upon reconsideration of the material available, we do not find any favourable reason than that of the trial Court to grant guardianship of the minor boy to the father. There are no merits in the appeal and the same is

liable to be dismissed.

10. In the result, the appeal is dismissed. As a sequel, the miscellaneous petitions, if any pending, shall stand closed accordingly. No costs.

G. Chandraiah, J.

M.S.K. Jaiswal, J.

Dt.20.03.2015

Kv

Note: L.R. Copy to be marked : Yes / No.

HON'BLE SRI JUSTICE G. CHANDRAIAH
AND
HON'BLE SRI JUSTICE M.S.K.JAISWAL

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

C.M.A.No. 832 of 2008

(Judgment of the Division Bench delivered by
Hon’ble Sri Justice MSK Jaiswal)

Dated: 20.03.2015

Kv