

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

C.A.A. NO.43/2016
IN
APPEAL AGAINST ORDER NO.49/2015

Smt. Sunita Purshottam Moon
..VS..
Shri Aniruddha P. Moon and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.G. Bhandare, Advocate for the appellant.
Shri G.G. Modak, Advocate for respondent No.1.
Shri Prasad Dharaskar, Advocate h/f Shri S.A. Chaudhari, Advocate for
respondent No.2.

CORAM : Z.A.HAQ, J.
DATED : 24.8.2016.

The prayer made on behalf of the appellant to stay the effect, operation and implementation of the judgment passed by the learned Principal District Judge on 5th May, 2012 cannot be granted at this stage as the order is operating for last more than four years and the appellant has not been able to show any change in circumstances.

The prayer made on behalf of the appellant that the order passed by the Collector on 12th May, 2016 be quashed cannot be entertained in the present appeal against order.

The learned Advocate for the appellant has

submitted that this Court, by the order dated 18th January, 2016 granted liberty to the parties to approach this Court after the decision of the Collector and, therefore, the legality of the order passed by the Collector can be examined by this Court. The submission made on behalf of the appellant cannot be accepted. The learned Advocate for the appellant has not been able to point out any provision which enables this Court to consider the challenge to the order passed by the Collector on 12th May, 2016 in this appeal. The effect of the order passed by this Court on 18th January, 2016 is not that this Court can examine the legality of the order passed by the Collector in appeal against order filed under Section 47 of the Guardian and Wards Act, 1890.

The learned Advocate for the appellant relied on Section 141 of the Code of Civil Procedure and has argued that the order passed by the Collector can be challenged in the present appeal. The argument is misconceived. The provisions of Section 141 of the Code of Civil Procedure provide that the procedure under the Code is to be followed as far as it can be made applicable, in all proceedings in a Court of civil jurisdiction. Section 141 of the Code of Civil Procedure does not deal with the substantive rights of the parties and does not confer the appellate or revisional jurisdiction. The civil application is **dismissed**.

The appellant will be at liberty to challenge the order passed by the Collector in appropriate proceedings before appropriate Forum.

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The ward - Ms. Priti Purushottam Moon is in custody of the respondent No.1 - Aniruddha Purushottam Moon who is real brother of Priti. Considering the facts on record and as the respondent No.1 has not been able to establish that the prayer made in this application that the respondent No.2 be directed to release ½ of the amount of pension in favour of the respondent No.1, is required to be granted, I am not inclined to grant the prayer. The civil application is **dismissed**.

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The impugned order is dated 5th May, 2012 and pursuant to it admittedly the custody of the ward is with the respondent No.1. It is submitted at the Bar that the respondent No.1 is married and is having two children. In these facts, I am not inclined to pass interim order directing the respondent No.1 to hand over the custody of the ward - Ms. Priti to the appellant. The civil application is **dismissed**.

JUDGE

CERTIFICATE

“ I certify that this Judgment/Order uploaded is a true and correct copy of original signed Judgment/Order”.

Uploaded By : N.V. Tambaskar.
Personal Assistant.

Uploaded On : 25.8.2016.