

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.1311 of 2016

Smt. Tabassum D/o Usman Khan, W/o Mohammad Ansar Alam R/o Village -
Bagdob, PS - Baisi, P.O. - Puranaganj, District - Purnea (Bihar).

... .. Appellant/s

Versus

Mohammad Tausif Raza S/o Shamsuddin Raza R/o Village - Ram Barodia,
Tahsil - District - Indour (M.P.).

... .. Respondent/s

Appearance :

For the Appellant/s	:	M/s Kumar Kaushik and Inteqhah Hassan, Advocates
For the Respondent/s	:	Mr. Fahad Khurshid, Advocate

**CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)**

Date : 06-12-2017

I.A. No. 3020 of 2017

Heard learned counsel for the appellant, and the respondent.

This interlocutory application has been filed for condoning
the delay of about 16 days in preferring the present appeal.

No counter affidavit has been filed on behalf of the
respondent who is represented by Mr. Fahad Khurshid and there is
no opposition to the prayer.



For the reasons mentioned in this interlocutory application, we are satisfied that the appellant was prevented from sufficient cause from preferring this appeal within time.

As a result, this interlocutory application is allowed and the delay in filing this appeal is hereby condoned.

Miscellaneous Appeal No.1311 of 2016:

This appeal is directed against the judgment dated 27.9.2016 passed by the Principal Judge, Family Court, Purnea in Title Suit No. 04 of 2016 which was filed by the appellant for impleading her ex-husband Md. Tousif Raza under Section 7 of the Guardian and Wards Act as well under Section 352 of the Mohammedan Law seeking custody of her minor son, namely, Md. Adnan Raza aged about 5 years, at that point of time, with a prayer that she may be appointed legal guardian of her minor son.

The suit was dismissed by the court below. While dismissing the suit, it has been held by the court below that the plaintiff herself did not appeared and examined her as a witness supporting the facts mentioned in the plaint and at the same time, the defendant Md. Tousif Raza has stated that he has handed over his son to the plaintiff and plaintiff has exempted for the expenses of Iddat period. The court below had impression that the consent



for grant of custody to the plaintiff may have been given under influence of money etc. and, thus, held that age of Md. Adnan is more than five years and it not would be in the welfare of the child, Md. Adnan, to appoint the mother as his guardian as she is living with her second husband and, as such, the defendant, being natural guardian, was held be the guardian of Md. Adnan Raza.

Before us, I.A. No. 8792 of 2017 has been filed jointly by the appellant as well as the respondent. Both of them are present before us today and the child, Md. Adnan Raza, is also present. We have interacted with them. The respondent has said that he has already remarried and he also considers, looking to his capacity and the prevailing circumstance, that the mother would be in the better position in taking care of the child. The mother has also stated that she is ready to keep her child and she has stated that her present husband, namely, Md. Ansar Alam, has also stated that he is ready to keep him and give every assistance in his welfare. The child, Md. Adnan Raza has stated before us that he is seven years old and expressed his willingness to live with his mother and Md. Ansar Alam. In the joint affidavit also the appellant has undertaken to look after her minor son properly and do everything possible in his interest and welfare. The respondent has said that he has no objection if the appellant is



declared to be the sole guardian of the child. It is also stated in paragraph 6 of interlocutory application that the present husband of the appellant, namely, Md. Ansar Alam, son of Md. Shamsuddin has already stated on affidavit in the court below that he will take proper care of the child and would do everything possible in his interest and welfare. Presently child resides with her mother at Purnea and had admitted to National Public School Bagdob, Baisi, Purnea. The appellant has further stated that her present husband resides at Germany and working as Chef. The appellant would be staying with him along with child in Germany, if she is appointed legal guardian of the child.

Having regards to the aforesaid, we are also of the opinion, specially in view of the undertaking given by the respondent and the present husband of the appellant before the court below as well as the statement made in the joint petition filed on behalf of the parties as also their statements before us, that it would be in the interest of the child if he stays under the guardianship of his mother - the appellant.

Accordingly, this appeal stands disposed of in terms of the compromise arrived at between the parties and in view thereof, the impugned judgment is set aside.



The mother is declared the sole guardian of the child till he attains the age of majority.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.01.2018
Transmission Date	NA

