

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.1036 of 2006

JUDGMENT: (per SK,J)

This appeal under Section 47 of the Guardians and Wards Act, 1890, was filed by the first respondent in O.P.No.728 of 2003 on the file of the learned Principal District Judge, Medak at Sangareddy, aggrieved by the order dated 17.01.2006 passed therein declaring the father of the minor child, Sobha, the first respondent herein, as her legal guardian. The appellant, the grandfather, was directed to forthwith handover the custody of the minor child to him.

By order dated 20.11.2006, this Court granted interim suspension of the order under appeal after speaking to the minor child, Sobha, who expressed her inclination to stay with her grandparents. The father was however granted visitation rights on every Sunday between 4.00 p.m. and 6.00 p.m. at the residence of the grandparents. Thereafter, on 12.03.2015, this Court again interacted with the minor child, Sobha, her father and the grandparents. By an order passed on the said day, this Court took note of the undertaking given by the father that he would deposit a sum of Rs.1,00,000/- in a fixed deposit in the name of the minor child, Sobha, in a Nationalised Bank for a period of three years and would file proof thereof. However, on 24.04.2015, this Court took note of the difficulties expressed by both parties with regard to compliance with the order dated 12.03.2015 and directed the father to invest Rs.1,00,000/- in his name in a fixed deposit in any Bank for a period of three years making his daughter, Sobha, the nominee. The original fixed deposit receipt was directed to be handed over to the daughter, Sobha, by 30.04.2015.

Heard Sri Palle Sriharinath, learned counsel for the appellant/ grandfather and Sri S.Sudarshan, learned counsel for the respondent/ father.

Sri S.Sudarshan, learned counsel, fairly conceded that despite the direction of this Court on 24.04.2015, his client failed to invest Rs.1,00,000/- in a fixed deposit and handover the receipt thereof to his daughter, Sobha.

Sri Palle Sriharinath, learned counsel, would inform this Court that the minor child, Sobha, remained in the custody of the grandparents since the year 2006 when this Court granted interim suspension of the order under appeal and that she is on the verge of attaining the age of majority.

Upon perusing the order under appeal and keeping in mind the fact that the paramount interest of the minor child would be the deciding factor in a case of this nature, we find no ground to allow the father to act as the guardian of his daughter for the remaining period of her minority. She has all along been with her grandparents and it is fairly conceded before us that the father did not exercise his visitation rights in terms of the order dated 20.11.2006.

Though Sri S.Sudarshan, learned counsel, would assert that the grandparents did not allow him to do so, the very fact that the father did not choose to take any steps if he was obstructed from visiting his daughter would weigh against him.

The C.M.A. is accordingly allowed and the order under appeal is set aside.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

Dr. SHAMEEM AKTHER,J

Date:03.08.2017

GJ