

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

CIVIL MISCELLANEOUS APPEAL No.29 of 2010

JUDGMENT: (per SK,J)

This civil miscellaneous appeal under Section 47 of the Guardians and Wards Act, 1890 (for short, 'the Act of 1890'), arises out of the order dated 31.12.2009 passed by the learned District Judge, Anantapur, in O.P.No.534 of 2005. The said O.P. was filed by the respondent herein under Sections 7 to 10, 12 and 25 of the Act of 1890 seeking custody of his minor son. By the order under appeal, the Court below allowed the O.P. and appointed the father as the guardian of the person and property of the minor child. Aggrieved thereby, the respondent in the O.P., the mother of the child, filed this appeal.

By order dated 29.01.2010, this Court granted interim stay of all further proceedings pursuant to the order under appeal. The minor son of the parties has already completed 17 years of age as on date. In camera proceedings were held on 17.08.2017 and this Court interacted with the child. He expressed in no uncertain terms that he is happy staying with his mother at Warangal, where he is presently undergoing coaching for IIT-JEE exam. He stated that his father was a complete stranger to him as he did not spend any time with him after second class.

As the paramount consideration which would weigh with this Court in a matter of this nature is the interest and welfare of the child and as the child in question is practically on the verge of attaining the age of majority, we are of the opinion that he would be sufficiently aware of where his interest lies. As he categorically stated that he is happy staying with his mother and that his father is a complete stranger to him, we

cannot uphold the order under appeal. The mother continued to have the custody of the child pending this appeal and it is too late in the day to now appoint the father as his guardian for a short period of less than one year.

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:31.08.2017

GJ

