

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.197 of 2015

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1. Tapeswar Thakur Son of Late Jhari Thakur, resident of Village-Jagdishpur,
P.S.- Amba, District- Aurangabad.

.... Appellant/s

Versus

1. Indu Devi W/o Late Deepak Kumar Thakur and D/o Mithilesh Thakur, resident
of Village-Jasoiya Tole, Kanhaibigha P.S. Aurangabad (M) District- Aurangabad.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Bachan Jee Ojha, Adv.

For the Respondent/s : Mr. Birendra Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date: 30-03-2018

Heard Mr. Bachan Jee Ojha, learned counsel for the appellant
and Mr. Birendra Kumar learned counsel for the sole respondent.

This appeal under Section 19(1) of the Family Court's Act,
1984 arises from a judgment and decree of the Principal Judge,
Family Court in Guardianship Case No. 3 of 2013 whereby in
exercise of powers vested under Section 25 of the Guardians and
Wards Act, 1890 (hereinafter referred to as 'the Act'), the respondent
has been awarded the custody of her minor children i.e her son aged
about 4 and ½ years and a daughter aged 1 and ½ years. The decree
also reserves the rights of the appellant of visitation at interval of 15
days during the days hour while an obligation has been cast on the



respondent to file an undertaking that she would not remove the minor children from the jurisdiction of the Court and not to do any act contrary to her responsibility as a guardian as well to produce the children before the Court on an interval of every 6 months for the satisfaction of the court below.

When this matter is taken up for consideration while Mr. Ojha fairly submits that he has no instructions on the appeal, Mr. Birendra Kumar Singh counsel for the sole respondent who was the petitioner before the Court below informs that the respondent is staying at her matrimonial home which comprises of her father in law, mother in law and the brother in law (younger brother of her deceased husband). He submits that there was some misunderstanding consequent upon the death of the husband in a car accident but the matter is now resolved and the respondent petitioner has returned to her matrimonial home.

Having heard learned counsel for the parties, this Court is of the opinion that while there cannot be any dispute as to the right of the mother to the custody of her minor children as their natural guardian as stipulated under Section 6 of the Hindu Minority and Guardianship Act, 1956 even otherwise the stipulations present in Section 17 of the Guardians and Wards Act, 1890 which are essential consideration for such conferment, we find nothing except the apprehensions expressed



by the appellant herein as to the future of the children and which in absence of cogent reasons would not warrant an interference with the judgment and decree under appeal. While the law preserves the right of the mother as a natural guardian of the custody of her minor children, the right is not absolute rather is subject to scrutiny by the Court at regular intervals and the court below has been very cautious in reminding the responsibility vested in the respondent petitioner which needs to be abided with, for continued custody of the minor children. Considering that there is no objection by the appellant herein that the respondent petitioner has defaulted on the obligation so cast, the issues under appeal do not merit consideration.

In the circumstances noted, we are satisfied that the judgment and decree in appeal is in tune with the legal prescriptions as found in the Guardians and Wards Act, 1890 as well as the Hindu Minority and Guardianship Act, 1956.

The appeal is dismissed but with no order as to costs.

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

Bibhash

AFR/NAFR	NAFR
CAV DATE	NA
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