

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 435 OF 2019
WITH
CIVIL APPLICATION NO. 3703 OF 2018

Mrs. Taibunnisha @ Akila Ibrahim ...Appellant

V/s

Shri. Samshad Alam Tipu Sultan

Through constituted Attorney

Mr. Tipu Sultan Shakur Miyan ...Respondent

Mr. Sandeep Mishra for the Appellant.

Mr. Rahul Singh a/w Ms. Pranchi Raut I/b Legal Catalyst for the
Respondent.

CORAM: K.K.TATED, J.
DATED : 10/10/2019

P.C.

1 Heard learned Counsel for the parties.

2 By this First Appeal, the Appellant is challenging the Judgment dated 17.08.2017 passed by the learned District Judge-7, Thane in Misc. Civil Application No. 94 of 2017 in Application under Sections 7, 10 and 25 of Guardian and Wards Act appointing Respondent father as guardian of his child Al Zuber Samshad Sultan and directed Appellant to handover the custody of the child.

3 The main contention of the Appellant is that the impugned judgment dated 17.08.2017 is ex-parte order. He submits that

neither the Appellant received any summons nor any intimation from the Trial Court.

4 After hearing for some time, both the Counsel submits that they have no objection if the impugned Judgment dated 17.08.2017 is set aside and the matter is remanded back to the Trial Court for deciding on its own merits after giving opportunity to both the parties to file their pleading within stipulated time and matter to be decided as early as possible.

5 Both the Counsel filed Consent Terms dated 10.10.2019 duly signed by the Appellant as well as Respondent.

6 The learned Counsel for the Appellant submits that he explained the contents of the Consent Terms to the Appellant in her own language i.e. in Hindi. Appellant as well as Respondent are present in Court. They also accepted the terms and conditions of the Consent Terms. Hence, Consent Terms is taken on record and marked "X" for identification. Same is accepted which reads thus:

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...Respondent

CONSENT TERMS

The Parties herein have agreed to file present Consent Terms since the impugned Order dated 17.08.2017 was Ex- parte. Hence the present Consent on following Terms:

- a) The impugned Order dated 17.08.2017 by consent be set aside without prejudice to the rights of the parties. The both the parties shall appear before the Trial Court on 17.10.2019 without notice.*
- b) Both the parties are at liberty to file fresh pleadings / Evidence before the Ld. Trial Court on or before 14.11.2019 and all contentions of parties are kept open.*
- c) The Ld. Trial Court shall decide the said proceeding on or before 06.02.2020.*
- d) The parties shall not take adjournments before the Ld. Trial Court and shall make every endeavor to dispose of the proceeding within timeline as agreed above.*
- e) The present consent terms shall not in any manner influence the Ld. Trial Court and Ld. Trial Court shall be free to pass appropriate order after hearing the proceedings on its own merits.*

Date: 10.10.2019

Place: Mumbai

Appellant

Respondent

*Mrs. Taibunnisha @
Akila Ibrahim*

*Samshad Alam Tipu Sultan
Through constituted Attorney
Mr. Tipu Sultan Shakur Miyan*

Adv. for the Appellant

Adv. for the Respondent"

7 First Appeal as well as Civil Application stand disposed of
in terms of Consent Terms.

8 Parties to act on authenticated copy of this order.

(K.K.TATED, J.)