

**HIGH COURT FOR THE STATE OF TELANGANA**  
**THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN**  
**AND**  
**THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

**C.M.A.No.386 OF 2019**

Date: 29.03.2019

Between:

Syed Shah Aliuddin Iftequar Nizami  
and another

...Appellants

And

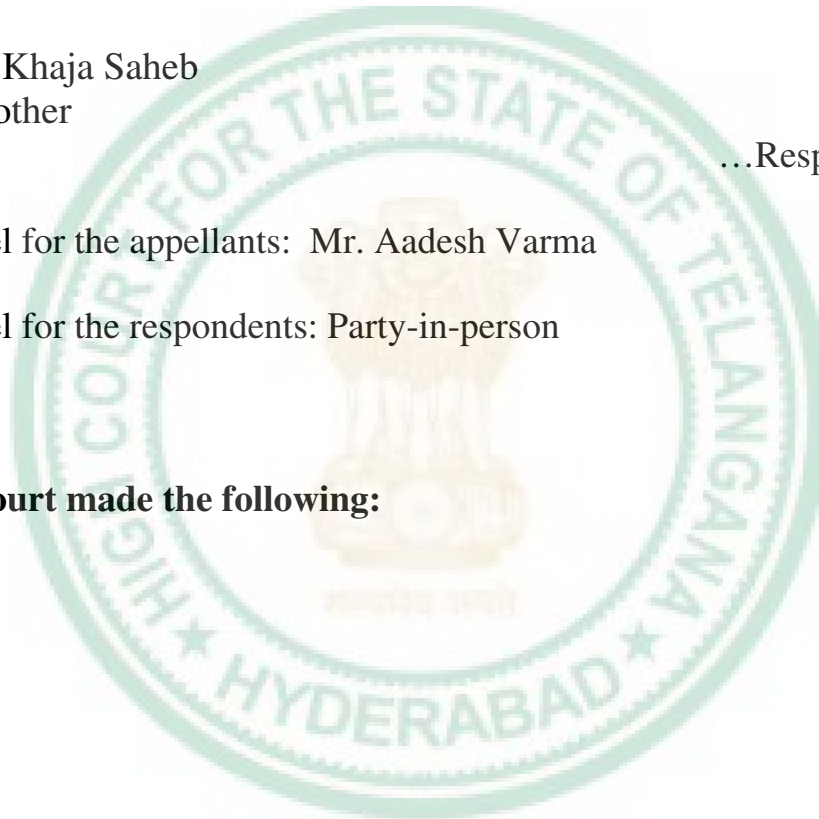
Mohd. Khaja Saheb  
and another

...Respondents

Counsel for the appellants: Mr. Aadesh Varma

Counsel for the respondents: Party-in-person

**The Court made the following:**



**JUDGMENT:** *(Per the Hon'ble Sri Justice Raghvendra Singh Chauhan)*

The appellants have challenged the legality of the order, dated 21.01.2019 in G.W.O.P.No.1756 of 2018, passed by the learned IX Additional Chief Judge, City Civil Court, Hyderabad, whereby the learned Judge has dismissed the petition filed by the appellants under Section 7 of the Guardians and Wards Act.

The learned counsel for the appellants submits that appellant No.2, Mrs.Kahkashan Nizami, happens to be the real sister of the respondent No.1, Mohd.Khaja Saheb. Baby Malkan Nizami happens to be the daughter of the respondent No.2, Afshan Jabeen Mehdi. However, after the birth of Baby Malkan Nizami (henceforth referred to as 'the child'), the respondent No.2 suffered psychological defects. Therefore, the respondent Nos.1 and 2 found it difficult to look after the needs of the child. In these circumstances, both the respondents agreed that the child should be brought up by the appellants, who were settled in Canada. According to the learned counsel for the appellants, the child continues to be in Canada in the custody and in the care of the appellants.

The learned counsel for the appellants further submits that before the trial Court, the respondents had submitted a compromise entered into between the parties, wherein the respondents have clearly given an undertaking that they would have no objection if the appellants were to continue to have the custody of the child.

Moreover, before the learned trial Court, the appellants have submitted a certified copy of the passport of the child which clearly revealed that the respondents are the biological parents. Even the certified copy of the Birth Certificate was submitted by the appellants before the trial Court.

Briefly the facts of the case are that the appellant No.2, Mrs. Kahkashan Nizami and the respondent No.1, Mohd. Khaja Saheb, happened to be real sister and brother. Baby Malkan Nizami happens to be the daughter of respondent No.1, Mr. Mohd. Khaja Saheb and respondent No.2, Mrs. Afshan Jabeen Mehdi. However, after the birth of the child, the respondent No.2 suffered psychological defects. Therefore, the respondent Nos.1 and 2 found it very difficult to look after the needs of the child. In such circumstances, both the respondents agreed that the child should be brought up by the appellant No.2 and her husband, appellant No.1, who were settled in Canada. Presently, the child continues to be in the custody of the appellant Nos.1 and 2 in Canada.

The appellants had filed an application under Section 7 of the Guardians and Wards Act for being declared as the guardians of the child. The respondents had submitted a compromise, which was entered into between the appellants and the respondents before the learned trial Court. In the compromise, the respondents have clearly given an undertaking that they would have 'no objection' if the appellants were to continue to have the care and custody of the child.

But despite the documents and the compromise submitted before the learned trial Court, by order dated 21.01.2019, the learned trial court had dismissed the application filed by the appellants. Hence, the present appeal before this court.

The learned counsel for the appellants has vehemently pleaded that the finding of the trial court that no documents were submitted to show that the respondents were the biological parents, is highly misplaced. For, in order to prove the fact that the respondent No.2 was the biological mother of the child, the Birth Certificate of the child was placed before the learned trial court. Moreover, even the child's passport, issued by the Government of United States, was also submitted before the trial court. Therefore, the conclusion drawn by the learned trial court is highly misplaced.

Secondly, since the child is studying in Canada, but as the appellants are not her biological parents, her school requires that *"No Objection Certificate be issued by the natural parents"*. If the No Objection Certificate is not produced, or if the impugned order is not set aside by this Court, the child will have to be deported from Canada. Such a step would not only jeopardize the academic year of the child, but most importantly, it jeopardizes her life.

Lastly, that both the respondents are present before this Court and this Court is at free to ask their consent and to record the same.

The respondent No.1, Mr.Mohd. Khaja Saheb, is present before this Court. He has submitted a copy of his voter identity card in order to establish his identity. Similarly, the respondent No.2, Mrs.Afshan Jabeen Mehdi, has submitted a copy of her voter identity card in order to prove her identity. The photostat copies of identity cards shall be taken on record.

This Court asked both the respondents whether they would have any objection if the child were to be brought up, and to be looked after by the appellants, who are staying in Canada? To this query, both the respondents have categorically and clearly stated that they have no such objection if the appellants were to have the custody and care of the child.

Heard the respondents in person, examined the impugned order and perused the record.

A bare perusal of the record clearly reveals that the certified copy of the Birth Certificate was produced before the learned trial Court. According to the Birth Certificate, Afshan Jabeen Mehdi is the mother of the child. The said Birth Certificate has been attested by one Rajdeep Randhawa, a notary public in and for the Province of British Columbia. Thus, according to the Birth Certificate, the respondent No.2 happens to be the natural mother of the child.

The certified copy of American passport, bearing No.530778838, has also been produced before this Court. The same

was duly produced before the trial Court. In the said passport, Syed Hashim Nizami has been shown as the legal guardian. Mr.Mohd. Khaja Saheb, respondent No.1, informs this Court that since the child was born in New York, USA, she is an American citizen, and she has an American passport in her name. Moreover, she is brought up by her grandfather Syed Hashim Nizami. Thus, the passport shows him as the legal guardian.

But notwithstanding the fact that the passport shows Syed Hashim Nizami as the legal guardian of the child, before the learned trial Court, the parties had submitted a memorandum of compromise. The said memorandum was signed by both the respondents. Both the respondents agree even before this Court that they have signed the said memorandum. Thus, the authenticity of the said compromise cannot be doubted. According to the terms of compromise, both the respondents have agreed that the custody of the child shall be with the appellants. Even the said document was filed before the learned trial Court. Therefore, the finding of the learned trial Court that there is no documentary proof that the respondents are, indeed, the natural parents of the child, that there is no document to show that the respondents have agreed to handover the custody of the child to appellants, such a conclusion is highly misplaced.

For the reasons stated above, this appeal is hereby allowed. The order dated 21.01.2019 is set aside; the guardianship of Baby Malkan Nizami, daughter of Mr.Mohd. Khaja Saheb, is granted

to the appellants viz., Mr.Syed Shah Aliuddin Iftequar Nizami and Mrs.Kahkashan Nizami. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any pending, stand closed.

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**(RAGHVENDRA SINGH CHAUHAN, J)**

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**(T. AMARNATH GOUD, J)**

29<sup>th</sup> March, 2019

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