

HIGH COURT OF CHHATTISGARH AT BILASPUR**FIRST APPEAL (M) NO. 48 OF 2015**

• Vinod Kumar Sahu, aged about 34 years, S/o Antram Sahu, by cast-Sahu, R/o Village- Tusma, Police Station- Sheorinarayan, Tahsil-Nawagarh, District Janjgir-Champa (C.G.) **... Appellant**

versus

• Smt. Ramin Bai, aged about 29 years, W/o Vinod Kumar Sahu, D/o Gita Sahu, by caste- Sahu, R/o Village- Dhardei, P.S. and Tahsil- Pamgarh, District Janjgir-Champa (C.G.) **... Respondent**

For Appellant	:	Mr. Ashok Swarnakar, Advocate.
For Respondent	:	Mr. Anand Kesharwani, Advocate.

Hon'ble Shri Justice P. Sam Koshy
Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

[16/11/2021]

Per, P. Sam Koshy, J.

1. Present is a First Appeal filed by Appellant/Plaintiff aggrieved by the Order dated 29.1.2015 passed in Misc. Civil Suit No.31/2013 by the Family Court, Janjgir, District Janjgir-Champa.

2. Vide the impugned Order, the Court below had rejected the Application preferred by the Appellant, under Section 7 of the Guardian and Wards Act, 1890 (henceforth shall be referred to as, "the Act").

3. Brief facts relevant for the adjudication of the First Appeal are that the Appellant and the Respondent are husband and wife. The Appellant and the Respondent were married in the year 1999 and from their wedlock, they have two daughters namely Laxmi and Durga and a minor son namely Gyaneshwar. The two elder daughters Laxmi and Durga are presently living with their father, the Appellant, and by efflux of time both of them have crossed the age of majority.

4. It is said that from 10.6.2012, the Respondent-Mother has left the company of the Appellant-Husband and is living at her parental home at Village Dhardei, Tahsil Pamgarh, District Janjgir-Champa and since then the minor son, Gyaneshwar, is also in the custody of Respondent-Mother.

5. The Appellant-Father had filed an Application under Section 7 of the Act before the Family Court, Janjgir on various grounds, for custody of his minor son who is presently in the custody of the Respondent-Mother. The Family Court, taking into consideration the pleadings that were brought before the Court, framed the issue as to:-

“whether the welfare and the all-round development of minor, Gyaneshwar, would be best in the custody of his father Vinod Kumar Sahu or in the custody of his mother Smt. Ramin Bai.”

6. The Family Court finally vide the impugned Order, after appreciating the entire evidence adduced by the either side, dismissed the said Application holding that it is in the larger interest and the welfare of the minor, Gyaneshwar, that he remains in the custody of his mother, Smt. Ramin Bai.

7. It is this Judgment dated 29.1.2015 which has been assailed by the Appellant-Father in the present First Appeal.

8. Learned Counsel for Appellant submits that the minor son, Gyaneshwar, can be brought up in a better circumstances and atmosphere in the custody of the Appellant as he has some source of income with which he could manage the family unlike the Respondent who does not have any source of income and is totally dependent upon her parents for her sustenance, therefore, the custody of the minor son should be handed over to the Appellant.

9. At the same time, learned Counsel for Appellant also contended that the fact that the Appellant would be in better position in taking care of his minor son is also established from the fact that the two elder daughters are living with him all along and they have never expressed any dissatisfaction so far as their living standards are concerned nor have they ever wanted to be in the company of their mother. Thus, the minor son also would be taken

care of equally well and which would be in the welfare and the larger interest of the minor son. This fact has not been considered and properly appreciated by the Court below while deciding the claim for custody and the impugned Order therefore deserves to be set-aside on this ground alone.

10. Per contra, learned Counsel for Respondent opposing the Appeal submits that the plain reading of the impugned Order by itself would clearly reflects that it is a well reasoned and speaking order taking into consideration all the facts and circumstances in respect of the Appellant and the Respondent and while deciding the case, the learned Family Court has also taken into consideration the opinion expressed by the minor son in respect of his custody.

11. Learned Counsel for Respondent also submits that the Appellant in terms of the earlier Order 29.1.2015 passed by the Court below in Misc. Criminal Case No.43/2013, in a proceeding under Section 125 of the Code of Criminal Procedure (Cr.P.C.), is already providing Rs.2000/- per month for the upbringing of the minor son and with the aid of which the minor son is being taken care of well and therefore it does not warrant any interference.

12. Having heard the contentions put forth on behalf of either side and on perusal of records, the admitted facts which come out from the pleadings are the facts that the Appellant and the Respondent are husband and wife, married in the year 1999. Out of their wedlock, three children are born to them. Two of the elder children are daughters and the third is the son. After about 13-14 years of their married life, in June, 2012 because of some strained relationship between them, they started living separately. The Respondent-Wife is said to have left the company of the Appellant-Husband and started residing at her parental home along with the minor

son, Gyaneshwar. The two elder daughters however stayed back with the Appellant.

13. The Respondent-Wife meanwhile had filed a maintenance application under Section 125 of Cr.P.C., seeking maintenance for herself and for her two daughters and the minor son. The concerned Court below, however, vide Order dated 29.1.2015 decided the Application under Section 125 of Cr.P.C., partly to the extent that the maintenance would be payable only to the minor son, Gyaneshwar, and as regards the claim of maintenance to the Respondent-Wife and two daughters the same stood rejected. This by efflux of time has attained finality.

14. Meanwhile, the two elder daughters have since crossed the age of majority and as of now they are residing with the Appellant-Father. The Appellant thereafter moved an Application under Section 7 of the Act which stood rejected vide the impugned Order dated 29.1.2015.

15. As regards the claim for custody of minor son, under the Guardian and Wards Act, the learned Presiding Judge has to see the welfare of the child as the paramount consideration. The requirement under the Act also is that the concerned Court has to see as to who among the father and the mother would be the best person for the all-round development of the minor. It is always the settled proposition of law that in a dispute pertaining to the claim for custody of the minor, while deciding the issue as to who should be the custodian of the minor, the paramount consideration for the Courts to consider is welfare of the child. This, in other words, means that the welfare of the minor has to be given more weightage as compared to the rights of the parents of the child. The desire of the child, suitable environment in which the child would be brought up, the capability of the parents to take care of the child are the needs and requirements which

have to be taken into account before making a final decision. In the instant case, the minor son was born on 16.10.2005, which in other words means that on the date when the suit for custody was filed, i.e., on 27.11.2013, he was around 8 years old and today when the First Appeal is being decided finally he is roughly around 16 years of age and is quite grown up and is also in a position of logically appreciate his needs and requirements.

16. Undoubtedly, the Appellant-Father is providing Rs.2000/- per month for the maintenance of the minor son in terms of the Order dated 29.1.2015 passed by the Family Court, Janjgir in Misc. Criminal Case No.43/2013. The Court below had called upon the minor, Gyaneshwar, to know his view and on enquiry he is said to have expressed his view that he intends to live with his mother. From the pleadings and evidence, it has also been found that the minor was put in a school and he is being educated properly by the Respondent-Mother. Taking all these facts and circumstances, the Court below reached to the conclusion that the Appellant-Father can be given the visiting rights to the minor son in order to ensure that he can meet his father and the father can also meet his child in spite of the minor being in the custody of his mother.

17. Further, the Court below also found that there was no ample evidence to show that the Respondent-Mother has forcefully taken the custody of the minor son from the Appellant. For the betterment of the child and the parents, the view of the Court below in the given facts and circumstances of the case cannot be said to be either contrary to evidence on record nor can it be said to be perverse in any manner. Moreover, the findings have been given keeping in consideration the opinion of the minor son, the environment under which he is presently living and the environment in which he may live after the custody is given to the

Appellant-Father and in the all-round development of the child the view of the Court below that the minor should continue staying with the mother and the father was given the visiting rights for visiting the minor every week cannot be said to be bad.

18. During the course of hearing when this Court had also expressed the opinion of calling the minor son before this Bench to ascertain his view as on date, the reaction of the Counsel for the Appellant was that the same would yield no result as the minor always preferred staying with the mother alone and which may not be necessary for deciding the present Appeal.

19. As regards the judgment cited by learned Counsel for Appellant, i.e., the case of “Smt. Kamla Bai Dansena & Others v. Subran Dansena” decided by this Court on 25.9.2017 in F.A.(M) No.163/2015, the same is quite distinguishable on its facts itself where the conduct of the mother was taken into consideration by the Court and also comparing the financial condition of the wife was another factor reaching to the decision in that Appeal unlike the present. The said judgment therefore cannot be applied in the present case in a straightjacket formula.

20. Thus, for all the aforesaid reasons, this Court does not find any strong case made out by the Appellant calling for interference with the impugned Order passed by the Family Court.

21. As a consequence, the First Appeal deserves to be and is accordingly dismissed being devoid of merits.

Sd/-
(P. Sam Koshy)
JUDGE

Sd/-
(Parth Prateem Sahu)
JUDGE