

07.11.2022
SL No.38
Court No.8
(gc)

FMA 3394 of 2015

**Surojit Senko
Vs.
Arjun Kumar Bagui & Anr.**

The appellant is not represented even in the second call. On the earlier occasion, the matter was adjourned at the instance of the appellant.

The appeal is arising out of an order passed by the learned Additional District Judge, 5th Court at Barasat, North 24-Parganas in connection with an application under Section 25 of the Guardians and Wards Act, 1890 filed by the applicant/appellant praying for an order directing the opposite parties to return his daughter, Annyasha to him. The impugned order was passed on 19th December, 2014. The learned Trial Judge on consideration of the fact held that the child is a witness to the alleged death of her mother and the fact that the upbringing of the child in the custody of the father is not desirable the custody was not allowed to the father. It transpires that the mother of Annyasha died on 20th May, 2009 and on her death, a criminal case was instituted against the applicant and his parents and married daughters. The applicant was arrested and remanded to judicial custody. Annyasha was in the custody of the appellant before 20th May, 2009. It is the unchallenged testimony that Sanchita died on 20th May, 2009 and

thereafter on the basis of the complaint lodged by the opposite party No.1 amongst others, the husband was arrested and remanded to judicial custody. The appellant contended before the Trial Court that after the death of Sanchita, his daughter, Annyasha was forcefully taken away from his custody when the child was only three and half years' old. After he was released on bail, he made several attempts for the custody of the child. At the time when the impugned order was passed, Annyasha was nine years of age and was comfortable with her maternal grandparents. The Trial Court was convinced with the evidence of D.W.1 and D.W.2 that the respondents have taken care of the child since she was only three and half years' old and a bonding has developed between the grandparents and child. Moreover, there was an allegation of murder of the wife of the appellant and it was urged that the minor is one of the vital witnesses in the case and her custody to her father during the pendency of the trial may not be safe. The Trial Court was satisfied that the grandparents have given proper education to the child and having regard to the allegations levelled against the appellant and the fact that Annyasha is one of the witnesses and the crime alleged to have been committed by the appellant/applicant denied the custody of the child to the appellant who was the natural guardian of the child. The Trial Court has also interacted with the child and has recorded in the order that the child also wanted

to stay with her grandparents as she was living peacefully with the opposite parties.

The welfare of the minor is of paramount consideration and, in our view, the Trial Court has complied with the correct tests and yardsticks in denying the custody of the child to the appellant.

Accordingly, the appeal being FMA 3394 of 2015 stands dismissed.

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)