

04.05.2022
SL No.22
Court No.8
(gc)

FMA 1861 of 2019
With
CAN 1 of 2019
(Old No: CAN 11375 of 2019)
With
CAN 2 of 2019
(Old No: CAN 11376 of 2019)

Sri Susanta Das
Vs.
Tarun Kumar Adhikari & Anr.

Mr. Mrinal Kanti Ghosh,
...for the Appellant.

Re: CAN 1 of 2019
(Old No: CAN 11375 of 2019)

The application for correction of cause title of the memorandum of appeal is allowed.

Accordingly, CAN 1 of 2019 (Old No: CAN 11375 of 2019) stands disposed of.

Re: FMA 1861 of 2019

The appeal is arising out of an order dated 20th June, 2019 in connection with an application under Section 10 of the Guardians and Wards Act, 1890. The father is the appellant. The father wanted the custody of the minor child Sudeshna Das. The wife of the appellant Smt. Priyanka Adhikary died within four years of her marriage by committing suicide. It is alleged that following her death, a sum of Rs.3,00,000/- was handed

over by the appellant to the opposite parties who happened to be the father-in-law and mother-in-law of the appellant for keeping the said money in RIP Policy Account with the United Bank of India for the benefit of the minor child. It was alleged that with a view to deceive the child, the respondents appointed themselves as nominees with a view to grab the said property. The opposite parties contended that the appellant was unhappy with the birth of a girl child and forced their daughter, Priyanka Adhikary, to consume poison. During marriage, the appellant demanded dowry of Rs.3,00,000/- and ornaments that were made over to the appellant. Priyanka Adhikary was unhappy in her matrimonial home. The appellant never looked after Priyanka Adhikary nor the child. However, no police complaint was lodged as the appellant agreed to return Rs.3,00,000/- to be utilized for the welfare and maintenance of Sudeshna Das. In the application, the appellant prayed for guardianship for Sudeshna Das and also to operate the fixed deposit account stood in the name of his minor daughter. During the pendency of the matter, the learned Judge interacted with the child. During interaction, the child expressed unwillingness to go back to her father and she even declined to recognize the appellant as her father. Finding of the learned Trial Court in this regard is stated below:-

“In course of hearing, the child was produced before this Court and this Court had occasioned to talk with her in isolation. It appears to this Court that the child is quite healthy and fit and she is absolutely normal in every respect. She stated further that she is unhappy with the company of the opposite parties. On being asked she expressed her unwillingness to go back to her paternal home and even, she declined to recognize the petitioner as her father.”

The purpose of the said application was to get help of Rs.3,00,000/- and the said intention was exposed during cross-examination when the appellant has stated “in order to grab this amount, I file this petition for natural guardianship”. It is clear that the petitioner/appellant has no affection for his daughter. It was on such consideration, we feel that the learned Trial Judge, keeping in mind the welfare of the child and property, refused to allow the prayer of the appellant. The evidence would show that the respondents are taking well care of the child. It is needless to mention that the amount of Rs.3,00,000/- shall only be utilized for the benefit and welfare of Sudeshna Das.

On such consideration, we do not find any reason to interfere with the order passed by the learned District Judge on 20th June, 2019.

Accordingly, the appeal being FMA 1861 of 2019 stands dismissed.

Re: CAN 2 of 2019
(Old No: CAN 11376 of 2019)

The dismissal of the appeal shall not prevent the appellant to apply for visitation right and in the event such application is made, it is needless to mention that the learned Trial Court shall consider the application on merits keeping in mind the welfare of the child.

The application being CAN 2 of 2019 (Old No: CAN 11376 of 2019) stands disposed of.

However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Sugato Majumdar, J.)

(Soumen Sen, J.)