

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO. 30 OF 2011

Miss. Bushra D/o. Abdullah Shaikh ... Appellant

Versus

Zainul Haq Noorul Haq ... Respondent

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None for the Appellant.

None for the Respondent.

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CORAM : NITIN JAMDAR AND
SHARMILA U. DESHMUKH, JJ.

DATE : 9 NOVEMBER 2022

P.C. :

None appears for the parties. The Board is notified a week in advance. We have perused the record.

2. The Appellant-mother has challenged the order passed by the Family Court No.5, Mumbai dated 4 August 2008 directing that the custody of the minor daughter be handed over to the Respondent-father herein.

3. The Respondent -father had filed the petition bearing no. D-64 of 2007 in the Family Court, Mumbai praying that the custody of daughter Hafeeza Zainul Haq, born on 7 August 2006, be taken

from the Appellant-mother and handed over to him. According to the Respondent-father, the Appellant-mother had remarried and her husband did not accept the female child and the child was not being attended properly and hence, he had asked for the custody of the child.

4. It appears that the Family Court, Mumbai instead of issuing court notice asked the Respondent-father to send notice to the Appellant-mother. The Respondent-father placed an envelope before the Family Court, Mumbai returned with a remark that the Appellant had refused to accept the service. Thereafter, the Family Court proceeded further and coming to the conclusion that in the interest of welfare of the minor, the custody needs to be given to the Respondent-father. Accordingly, by the impugned order dated 4 August 2008, the Appellant -mother was directed to handover the custody of the minor daughter to the Respondent-father.

5. On 8 April 2010, in the civil application bearing no. 64 of 2010 taken out in this appeal by the Appellant -mother wherein the impugned order was stayed. Thus, the custody of the minor would have continued with the mother. The daughter, who was less than two years old when the impugned order was passed, now would be almost 17 years old.

6. Before proceeding exparte, the Family Court should have taken adequate measures to ensure that notices have been served on the

Appellant-mother to give her adequate opportunity to defend. Considering the passage of time post the interim order in this appeal, and that the daughter would have continued to stay with her mother, who now would be almost 17 years old on the verge of being major, we do not find any purpose in keeping the appeal pending. The appeal is accordingly dismissed.

(SHARMILA U. DESHMUKH, J.)

(NITIN JAMDAR, J.)

TRUPTI
SADANAND
BAMNE

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