

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA**

FAMILY COURT APPEAL No.51 OF 2022

JUDGMENT: (Per Hon'ble Dr.SA,J)

This appeal, under Section 19(1) of the Family Courts Act read with Section 47 of the Guardian and Wards Act, is filed by the appellant/father aggrieved by the docket order, dated 31.12.2021, passed in O.P.No.618 of 2018 by the learned Judge, I Additional Family Court, City Civil Court, Hyderabad, whereby, the subject O.P. filed by the appellant/father, under Section 7(B), 10 and 25 of the Guardian and Wards Act read with Section 7(g) of the Family Courts Act and Rule 32 of the Family Court Rules, to declare the appellant/father as guardian of the minor child, by name Khaja Qutubuddin Shaik @ Shaik Sayeed, and grant permanent custody of the minor child to the appellant/father, was dismissed.

2. Heard the learned counsel for the appellant/father, learned counsel for respondent Nos.1 and 3 and perused the record.

3. Notice sent to respondent No.2 returned with an endorsement 'left without instructions'.

4. The impugned docket order, dated 31.12.2021, reads as follows:

"Petitioner absent. No representation. Respondent present. In spite of sufficient opportunities and conditional order petitioner failed to commence enquiry and failed to pay costs. Posted for dismissal. Hence petition is dismissed."

5. As seen from the material placed on record, the subject matter relates to custody of the minor child, by name Khaja Qutubuddin Shaik @ Shaik Sayeed. In view of the circumstances narrated, an opportunity is to be given to the appellant/father to adduce evidence and proceed with the subject O.P., to determine the entitlement of the custody of the minor child. It is also borne by record that the appellant/father has not paid the costs imposed. The appellant/father has to pay the costs imposed. Under these circumstances, the impugned docket order, dated 31.12.2021, is liable to be set aside.

6. Accordingly, the appeal is allowed and the impugned docket order, dated 31.12.2021, passed in O.P.No.618 of

2018 by the learned Judge, I Additional Family Court, City Civil Court, Hyderabad, is set aside. Consequently, the subject O.P. is restored to its file for disposal, in accordance with law. The appellant/father is directed to pay the costs imposed by the Court below before commencement of the enquiry. Further, the Court below has to commence the enquiry within thirty (30) days from the date of receipt of a copy of this order. The Court below is directed to dispose of the subject O.P., in accordance with law, expeditiously.

Miscellaneous Petitions, if any, pending in this appeal shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

NAGESH BHEEMAPAKA, J

Date: 17.10.2022
MD