

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

FAMILY COURT APPEAL No.454 OF 2018

JUDGMENT: (Per Hon'ble Dr. Justice Shameem Akther)

This Family Court Appeal, under Section 19(1) of the Family Courts Act, 1984, is filed by the appellant/father, challenging the order, dated 03.01.2018, passed in O.P.No.1208 of 2012 by the Judge, Additional Family Court, City Civil Court, Hyderabad, whereby, the subject O.P.No.1208 of 2012 filed by the appellant/father under Sections 10 and 25 of the Guardians and Wards Act, 1890, requesting the Court below to appoint him as the guardian of two minor children, namely, Nashwa Syed (daughter) and Syed Mustafa Zaid (son) and to grant their permanent custody in his favour was dismissed, granting visitation rights to the appellant/father to visit the children on every second Saturday of the English Calendar Month from 02:00 PM to 05:00 PM before the Superintendent of the Court below, till the children attain the age of majority.

2. We have heard the submissions of Mr. M.S.Anwar Siddiqui, learned counsel for the appellant/father, Mr.Mirza Shah Nawaz

Baig, learned counsel for the respondent/mother, and perused the record.

3. Learned counsel for the appellant/father would contend that the impugned order is contrary to law and the facts of the case. The Court below had not taken the interest and welfare of the children into consideration while passing the impugned order. In the facts and circumstances of the case, the appellant/father is the right person to have permanent custody of the minor children by name Nashwa Syed (daughter) and Syed Mustafa Zaid (son). There is ample evidence on record to substantiate the same. The Court below did not properly advert to the evidence on record and erroneously granted the custody of the children in favour of the respondent/mother. The respondent/mother was consistently showing indifferences and her approach towards the appellant/father was irresponsible. The respondent/mother is not capable of taking proper care of the minor children. The children are being ill-treated by the family members of the respondent/mother. The appellant/father is well educated and financially sound. The interest and welfare of the minor children, being of paramount importance, will be best served if their permanent custody is granted to the

appellant/ father. The Court below did not appreciate the evidence on record in proper perspective and grossly erred in granting the custody of the minor children in favour of the respondent/mother and ultimately prayed to allow the appeal by setting aside the order under challenge and grant the custody of the children in favour of the appellant/father. In support of his contentions, learned counsel had relied on the following decisions.

1. **Tatineni Mayuri Vs. Edara Balde**¹
2. **Manoj Anslem Rebeiro Vs. Candace Elizebath Rebeiro**²
3. **Tushar Vishnu Ubale Vs. Archana Tushar Ubale**³
4. **Vivek Singh Vs. Romani Singh**⁴
5. **Bushara Vs. Shibinu**⁵
6. **Dr. Ashish Ranjan Vs. Anupama Tandon and another**⁶
7. **Roxann Sharma Vs. Arun Sharma**⁷

4. *Per contra*, the learned counsel for the respondent/mother would contend that both the children, namely, Nashwa Syed (daughter) and Syed Mustafa Zaid (son) are now aged 16 years 15 years, respectively. They are in the care and custody of the respondent/mother, right from the date of their birth. A lot of bonding has been developed between the minor children and the respondent/mother. The minor children are inclined to stay with

¹ AIR 2016 SC 1775

² 2016 (5) Scale 638

³ AIR 2016 Bombay 88

⁴ (2017) 3 SCC 231

⁵ AIR 2015 Kerala 21

⁶ AIR 2011 SC (Supp.) 362

⁷ Decided by Hon'ble Apex Court on 17.02.2015 in Civil Appeal No.1966 of 2015

the respondent/mother only. The interest and welfare of the minor children, which is of paramount importance, would be best protected if the custody of the minor children is retained with the respondent/mother only. During the interaction of the Court below with the minor children, both the minor children were not even willing to speak with the appellant/father and stated in clear terms that they intend to live with the respondent/mother only. The Court below, having appreciated the evidence on record in correct perspective, rightly granted the custody of the minor children in favour of the respondent/mother. Further, the Court below was pleased to grant visitation rights to the appellant/father. There is no perversity or patent irregularity in the order under challenge. The impugned order does not warrant any interference by this Court and ultimately prayed to dismiss the appeal by confirming the impugned order passed by the Court below.

5. In view of the above submissions, the points that arise for determination in this appeal are as follows:

- 1. Whether the appellant/father is entitled for grant of permanent custody of the minor children, namely, Nashwa Syed (daughter) and Syed Mustafa Zaid (son)?*

2. Whether the impugned order, dated 03.01.2018, passed in O.P.No.1208 of 2012 by the Additional Family Court, City Civil Court, Hyderabad, is liable to be set aside?

POINTS:-

6. Though the learned counsel for the appellant/father had placed reliance on the aforementioned decisions in support of his contentions, it is settled law that a Court, while dealing with cases of custody of minor children, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. While determining the question as to which parent the care and custody of the child should be committed, the paramount consideration is the welfare and interest of the child and not the rights of the parents under a statute. The word 'welfare' must be taken in its widest sense and the Court should give due weight to the circumstances such as a child's ordinary comfort, contentment, intellectual, moral and physical development, his/her health, education and general maintenance and favourable surroundings.

7. In the instant case, as seen from the material placed on record, both the children, namely, Nashwa Syed (daughter) and Syed Mustafa Zaid (son), who are aged 16 years and 15 years

respectively, are living with the respondent/mother, right from their birth. Ms. Nashwa Syed, who is present before this Court, stated before this Court that she is presently pursuing Intermediate Second Year at Sindhu Junior College, Hyderabad, which is a reputed college. She also stated that her brother (Syed Mustafa Zaid) is studying 10th standard at Delhi Public School, Hyderabad, which is also a reputed school. She stated in clear terms that she and her brother are inclined to live with the respondent/mother. In paragraph No.7 of the impugned order, the Court below observed as follows:

"PW1 admitted that during the interaction by court the children were not willing to go to him atleast for one day custody. He has also admitted that interim custody petition was dismissed. In fact the children were produced in court on 09.12.2017 at which time court interacted with them. They reported that they want to live with respondent only. Children were not even willing to speak to petitioner. It is the complaint of petitioner that the respondent brainwashed the children and not allowing them to speak to petitioner. No doubt there is possibility for tutoring of children by respondent. However, the will and wish of the children should also be respected by court. All these years the children are living with respondent-mother. Suddenly they cannot be shifted to petitioner-father. No material evidence is filed by petitioner to show that there is danger to the children in the hands of respondent. On the other hand, evidence of RW.1 establishes that she is providing all the necessitates to the minor children including education, by staying in her parental house."

Further, though the learned counsel for the appellant/father contended that some time back, a little amount was paid

towards maintenance to the children by the appellant/father, nothing is placed before us or before the Court below to substantiate the same. The material placed on record reveals that both the children are in care and custody of the respondent/mother right from the date of their birth and the respondent/mother is providing education to them in reputed school and college, apart from taking care of their other necessities/comforts for their overall development. The children are also inclined to reside with their mother, i.e., the respondent. In the facts and circumstances of the case, if the custody of the minor children is given to the appellant/father, it may lead to unwelcome consequences and would jeopardize the interest and welfare of the children. In view of the facts and circumstances of the case, we are of the considered opinion that the Court below, after adverting to several instances and evidence on record, rightly held that the interest and welfare of the minor children would be best served, if their custody is retained with the respondent/mother. Further, the Court below was also pleased to grant visitation rights to the appellant/father allowing him to visit the children on every second Saturday of the English Calendar Month from 02:00 PM to 05:00 PM before the Superintendent of the Court below, till the children attain the

age of majority. The findings recorded and the conclusions reached by the Court below are in tune with the oral and documentary evidence on record. We do not see any merit in the submissions made on behalf of the appellant/father. There is no flaw in the impugned order. The appeal is devoid of merit and is liable to be dismissed.

8. Accordingly, the appeal is dismissed. No costs.

Miscellaneous petitions, if any, pending in this appeal, shall stand closed.

Dr. SHAMEEM AKTHER, J

NAGESH BHEEMAPAKA, J

01st November, 2022
DSU / BVV