

**(1934) 06 CAL CK 0007**  
**In the Calcutta High Court**

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|----------------------------------------|------------|
| Mir Abi Mohammad Ahasan and Another    | APPELLANT  |
| Vs                                     |            |
| Abu Nasar Mohammad Eusufali and Others | RESPONDENT |

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**Date of Decision :** 29-06-1934

**Acts Referred:**

Guardians and Wards Act, 1890 — Section 47

**Citation :** AIR 1935 Cal 223 : 155 Ind. Cas. 65

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**Judgement**

1. Two gentlemen of whom the appellant is one applied to be appointed guardian of the properties of a certain minor each to the exclusion of the other. The District Judge on taking evidence came to the conclusion that neither of these two gentlemen was fit to be so appointed and he accordingly refused their applications to be appointed as such guardian. He further observed thus:

I intend first of all to consult the Collector as to whether the personal properties of the minor can be taken over by the Court of Wards of this cannot be done, I shall endeavour to appoint a third party acceptable to all contestants.

2. From the order refusing his own application to be appointed guardian, the appellant has preferred this appeal. A preliminary objection has been taken to the competency of this appeal. Section 47, Guardians and Wards Act, lays down in Clause (a):

An appeal shall lie to the High Court from an order made by the Court u/s 7 appointing or declaring, or refusing to appoint or declare, a guardian.

3. The other clauses of this section are not relevant for the present purpose. The only sub-section of Section 7 which is relevant here is Sub-section (1). It runs thus:

Where the Court is satisfied that it is for the welfare of a minor that an order should be made, (a) appointing a guardian of his person or property or both, or (b) declaring a person to be such a guardian, the Court may make an order accordingly.

4. The order to which we have referred is not an order coming within the purview of Sub-section (1), Section 7 of the Act. By that order, no guardian has been appointed of the person or property of the minor, nor has a person been declared as such guardian. Nor have the proceedings relating to guardianship in respect of the minor that were started in the Court of the learned District Judge come to an end by any order appointing or declaring or refusing to appoint or declare a guardian of the minor. All that has been done by the learned Judge is that the proceedings have been kept pending and the applications of the appellant and of another gentlemen have been refused because they have been found incompetent. The order from which the appeal has been taken is in our opinion, an interlocutory order passed at an intermediate stage of the proceedings and we are of opinion that no final orders coming within the purview of Section 7, Sub-section (1) or Section 47, Clause (a) have yet been passed. We are of opinion therefore that the present appeal is incompetent. It appears that after this appeal was preferred to this Court there was certain correspondence between the District Judge and the Collector of the district, and from certain letters which appear to have been received by the District Judge from the Collector it would appear that the properties of the minor should be taken by the Court of Wards subject, of course, to the sanction of the Board of Revenue. It appears further that certain terms as regards the moneys which would be paid to the minor during the time that the estate remains under the management of the Court of Wards have also been proposed in one of these letters.

5. It has been stated on behalf of the appellant that there is some misapprehension as regards the amount which the minor has been drawing from the wakf properties the said amount is stated in one of the letters to be Rs. 300, but the appellant says that the amount is much, less. These are matters of detail which may very well be considered by the learned District Judge, and will certainly be taken into consideration by the Collector when the proposal for taking over the management by the Court of Wards proceeds further and on a proper application being made before the learned District Judge in that behalf. They are not matters which we are called upon to deal with at the present moment.

6. We therefore think that we must dismiss this, appeal and send the case back to the Court of the learned District Judge in order that the proposal to make over the properties to the Court of Wards may be proceeded with In the event of this proposal, falling through, and of the learned District Judge being required to proceed with the guardianship proceedings any further and in the event of his appointing or refusing a guardian in respect of the minor as the final result of such proceedings, it will be open of course to any party aggrieved to prefer an appeal to this Court from such final order.