
(2016) 11 JH CK 0087
In the Jharkhand High Court
Case No : F.A. No. 59 of 2016

Ms. Sheoli Hati

APPELLANT

Vs

Somnath Das

RESPONDENT

Date of Decision : 28-11-2016

Acts Referred:

Guardians And Wards Act, 1890 — Section 12, Section 7

Citation : (2017) 1 AIRJharR 346

Hon'ble Judges : Mr. H.C. Mishra and Mr. Dr. S.N. Pathak, JJ.

Bench : Division Bench

Advocate : Mr. Anurag Kashyap, Advocate, for the Respondent in F.A. No. 68 of 2016; Mr. Anurag Kashyap, Advocate, for the Appellant in F.A. No. 59 of 2016; M/s Vinod Kanth, Sr. Advocate and Vandana Singh, Advocates, for the Respondent in F.A. No. 59 of 2016; M/s. Vi

Final Decision : Allowed

Judgement

1. Both these appeals have been filed, challenging the common Judgment and Decree dated 31.3.2016, passed by the learned Principal Judge, Family Court, Jamshedpur, in Guardianship Case No. 11 of 2012, in which, both the side were at lis for the guardianship and custody of the only daughter born out of their wedlock.
2. Both the parties were married in the year 2003 at Jamshedpur and out of their wedlock, they have a daughter, namely Aditi, who is going to be 10 years of age on 9th of April, 2017. The marriage between the parties have been dissolved by an ex-parte decree of divorce, passed on 11.9.2009, in Matrimonial Case No. 3358 of 2008, by the learned Principal Judge, Family Court, Bengaluru. So far as the divorce is concerned, this is now the closed chapter, as even the wife Ms. Sheoli Hati has accepted the divorce between the parties and the ex parte decree of divorce has not been challenged by her.
3. The present case was filed under Sections 7 and 12 of the Guardian and Wards Act, 1890, by the husband Somnath Das, claiming himself to be the legal

guardian and also claiming the custody of his daughter, stating that the future of his daughter was being ruined at Jamshedpur, where she is living with her mother and she is reading in the school, in which, her mother is also a teacher. It is claimed that the father of the child is always ready to get the child admitted at any boarding school of repute in India, with the visiting rights to both the parents. The list of schools, in which, the father intended to get his daughter admitted, included the boarding schools like, Good Shephard International School, Ooty, [Tamil Nadu], Rishi Valley School, Madanapalli, [Andhra Pradesh], Shayadri School, Pune [Maharashtra] and other such reputed schools, in which, he agreed to bear all the expenses of the schooling of the child.

4. The Guardianship Case was decreed in part by the learned Principal Judge, Family Court, Jamshedpur, by judgment dated 31.3.2016, in which, it was noted that there was visiting right to the father of the child on the last Sunday of every month. The Court below has discussed the case of both the parties and partly allowed the Guardianship Case, finding that the child Aditi, is residing with her mother and admitted in the school namely, Motilal School, Jamshedpur, where her mother is also a teacher, in the hope that the mother can also provide excellent guidance to her daughter as teacher. The Court below has directed that the minor daughter, Aditi shall continue in the custody and guardianship of her mother till she reaches the age of 11 years and shall continue to pursue her education from Jamshedpur along with her mother. However, the father shall have the visitation rights, as was continuing during the pendency of the case and after attaining the age of 12 years, i.e., for the academic session 2019-20, she shall be sent to a Boarding School of repute, where she qualifies and is able to get the admission. The entire cost of such boarding school shall be borne by the father and once Aditi gets into the Boarding School, the mother shall have the right to visit her daughter, as permitted by the school calendar, and the cost of the visit shall be paid by the father, which shall include the travelling air-fare and other expenses in advance. It was also directed by the Court below that during the annual vacations in summer and winter, half of the each vacation period shall be utilized by the father, and the child Aditi shall be in the custody, care and guardianship of her father, and the remaining half of the vacation she shall be with her mother.

5. Both the parties being dissatisfied with the one or the other conditions, imposed upon by the Court below, filed these appeals in this Court. When the matter was taken up on the last occasion, i.e., on 17.11.2016, this Court, upon consideration of the facts of the case, as also coming to know that the child was not doing very well in the school, where she is presenting studying, proposed that the child should be admitted in Secret Heart School, Jamshedpur, which is admitted to be a very good school for girls at Jamshedpur, for the period of two years and upon getting the report from the school about the capabilities of the child, further schooling of the child in the boarding schools of repute in India was to be considered.

6. Learned counsels for the both sides have taken instructions from their respective clients in this regard. It is submitted by learned counsel for the mother that she is agreed to get the child educated in Secret Heart School, Jamshedpur, at the cost of the father, to which, the father also agreed. The mother is also agreed to the visiting rights to the father, as has been allowed to him by the Court below. Learned senior counsel for the father, upon seeking instructions, has also submitted that if the mother is not agreeable for getting the child admitted in the boarding schools, which are situated far away from Jamshedpur, the father has also suggested one school, namely, La Martiniere Girls School, Kolkata, West Bengal, which, it is submitted, is very near from Jamshedpur, and this is also one of the boarding schools of repute in India.

7. Learned senior counsel for the father has submitted that the father is always ready to bear all the expenses of the education of the girl child Aditi. It is, however, submitted by the learned counsel that the father had talked to the Managements of all the schools and it is stated that in all these schools, the admissions are taken in Class-IV only, but in the present case, as a special case, the child may be admitted in Class-V, after one year, but for that, the registration is to be made in December, 2016 or in early January, 2017. It is submitted by learned counsel that looking into the welfare of the child, it would not be appropriate for waiting for two more years, as the child is going to complete the age of 10 years on 9.4.2017 and upon attaining the age of 11 years, which she shall be attaining on 9.4.2018, she must be admitted in class-V in any of the aforesaid schools. Accordingly, it is submitted that the period of two years, which was suggested by us for educating the child at Secret Heart School, Jamshedpur, be reduced to the period of one year, so that the registration for admission of the child may be made in one of the schools in December 2016, or in early January 2017, and she may be admitted in Class-V upon attaining the age of 11 years from the session starting in the year 2018.

8. We find the suggestion given by the learned senior counsel appearing for the father to be very fair, though learned counsel for the mother has some reservations and he submits that he wants to seek instructions from his client on this point also. We find that the welfare of the child lies in her education in one of the best schools in India, and the father is eager and ready to bear the entire cost of the same. The welfare of the child demands that she cannot be allowed to be deprived of the same.

9. Since, the mother has agreed to the suggestion made by us for getting the child Aditi educated in Secret Heart School, Jamshedpur, we hereby, direct both the parties to get the child admitted in Secret Heart School, Jamshedpur, in the appropriate class, in which, she is able to get her admission, the entire cost of which shall be borne by the father, as agreed upon by him. We propose to keep the matter pending for one year for watching the overall development of the child in the meantime, and to decide the future action in the matter upon getting the report from Secret Heart School, Jamshedpur. In the meantime and the

father may get the registration done for admission of the child La Martiniere Girls School, Kolkata, situated in the state of West Bengal, which is situated nearer to Jamshedpur than all other boarding schools suggested by the father. This school shall also be convenient for the mother to visit from Jamshedpur, as and when so required.

10. We also direct that the visiting rights, as has been allowed by the Court below to the father during first half of every vacation, shall be allowed to be conveniently carried on by the mother without any hindrance by her. We are informed that this visiting right has not yet been allowed by the mother and the father was not allowed to take the child with him during the last vacation. Learned counsel for the mother agrees that the same shall be allowed to the father from this winter vacation. It is, accordingly, directed that during the winter vacation of 2016, the child, Aditi, shall be with her father at Bengaluru for the first half of the vacation and during the second half of the vacation, the child shall be with her mother. Learned counsel for the father agrees that if the mother feels, she herself, or her visiting counsel may also accompany the child Aditi, and the travelling and other necessary expenses shall be borne by the father.

11. We are also informed that presently the father is having the visiting rights to the child on every last Sunday of every month from 10.00 AM to 01.00 PM. We are also informed that the father is allowed to meet his daughter only in the stair case of the apartment, which is, in our considered view, is not the convenient place for the father to meet with his child. We accordingly, direct that these visiting rights shall be allowed either in the drawing room of the flat of the mother, or the father shall be allowed to take the child in the town of Jamshedpur, where ever it is convenient to him, along with the visiting counsels of both the sides.

12. It is also submitted by learned senior counsel for the father that presently the father has the visiting rights only on last Sunday of every month from 10.00 AM to 01.00 PM, and at times it becomes inconvenient to him to come up to Jamshedpur from Bengaluru on the last sunday of the month due to his preoccupations. It is also submitted that the time frame of 10.00 AM to 01.00 PM is again a very short duration considering the fact that the father comes to meet his daughter at Jamshedpur all the way from Bengaluru. It is requested that the father may be allowed the visiting rights either on second or last Sunday of every month, with a slight increase in duration, i.e., from 11.00 AM to 05.00 PM. We find the request to be very fair and nothing adverse is going to happen if the request is allowed.

13. We hereby, accordingly, direct that henceforth the visiting rights to the father shall be either on the second Sunday or on the last Sunday of the month, and the father shall be permitted to meet his daughter from 11.00 AM to 05.00 PM, during which, he shall be permitted to meet the daughter either in the drawing room of the flat or to take his daughter to another place, as may be convenient to him in the town of Jamshedpur, along with the visiting counsels of both the

sides. If the child is taken out, she shall be returned to the flat positively by 05.00 PM.

14. With these interim directions, we propose to keep the matter pending for the period of one year, during which, we propose to watch the overall development of the child, after her admission in the Secret Heart School, Jamshedpur, so that further orders for the schooling of the child may be passed, depending upon the report about the child to be submitted by the school.

15. Let this appeal be again listed on the 1st working Monday of the month of March, 2018, as a first case, subject to part heard, if any. On that day, both the parties are directed to be present in the Court in person along with the child Aditi, and also to bring on record the educational report of the child to be given by Secret Heart School, Jamshedpur.