

IN THE HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

CIMA No.152/2014
IA No.02/2018

Reserved on: .05.2019
Pronounced on:30.05.2019

Mohammad Qasim Mir
.../Appellant(s)

Through: Mr. Syed Manzoor, Advocate

V/s

Rashida Akbar
...Respondent(s)

Through: Mr. R. A. Jan, Sr. Advocate

CORAM:

Hon'ble Mr Justice Rashid Ali Dar, Judge.

i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

JUDGMENT

1. In terms of IA No.02/2018, prayer has been made for appropriate orders and allowing/permitting the applicant to place on record the material of clinching effect filed herewith as Annexure-A hereto and be taken on record and bestowed consideration that it deserves in law while adjudicating upon the application preferred in the matter by the applicant registered MP No. 01 of 2018 as well as the above titled Statutory Appeal Registered as CIMA No 152 of 2014.

2. On hearing of the IA, it was felt expedient to consider the main matter. Accordingly, with the consensus of counsel for the parties, main matter has been taken up for consideration. It appears from the perusal of main case that same is an appeal the appeal filed against the order dated 23.08.2013, passed

by learned Sub-Judge, Chadoora, while holding the Lok Adalat. The order impugned dated 13.08.2013, in terms of appeal reflects that the case under Section 25 of Guardian and Wards Act, 1977, had been pending before the said Court in file No.9. The learned Sub-Judge having referred therein that it was resolved in Lok Adalat that minor girl would remain with mother up to 30.08.2014. Some other observations/instructions/directions have also been passed in the order. The parties have been asked to appear before the “Sessions Judge” Budgam, where the file was transmitted. Along with impugned order, copy of Divorce Deed & Compromise have been also brought on record. At clause 6 of the divorce deed, it is stated that the custody of minor shall remain with the father (appellant herein). The compromise arrived at before the learned Additional Sessions Judge, Srinagar, is also on record. It reveals the parties have made an arrangement regarding the custody of minor. Party No. 1, i.e., respondent herein has decided to gift an amount of Rs. 1.50 lacs towards minor girl and appellant herein, who has been shown as guardian. Some other documents are also brought on record and it is being canvassed that the relationship between the parties have come to an end from the year 2013-14 arrangement devised by the parties could not be disturbed in terms of impugned order.

3. Mr. R. A. Jan, learned counsel for the respondent submits that the matter in hand had a human aspect and same requires examination in the light of documents annexed with the IA. Distress messages sent by minor necessitate the jurisdiction to be exercised by this Court for passing appropriate orders. Same is being refuted by other side by stating that order passed by the learned Sub-Judge is not within the parameters of law. The order

impugned thus according to learned counsel for the appellant is required to be set aside.

4. Considered the rival arguments.

5. Ongoing through the order impugned, it is evident that same is not happily or properly worded. It makes a mention of various actions required to be taken. The appellant herein had to give the custody of the ward to the respondent up to 30.08.2014. Another act was that the case is being sent to the Court of Wards (District Judge), Budgam, for its consideration 30.08.2014 and one more act was regarding date sheet of the ward in school.

6. Be it so, the order with regard to custody of which the appellant is aggrieved, has outlived its life. Same is not appealable even otherwise. The order has been passed under the colour of powers under Legal Services Authorities Act, as suggested by its nomenclature. Having been passed by a Lok Adalat, the remedy, if available, had to be examined in this backdrop. It is pertinent to refer herein to Section 20(2) of the Legal Services Authorities Act:

“20. Award of Lok Adalat.—(1) xxx xxx xxx

(2) Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any Court against the award.”

7. However, taking an overall view of the matter, I am of the opinion that the power under Section 104 of the Constitution of J&K is required to be exercised. The impugned order creates a confusing situation. Despite the fact that Id. Sub Judge is vested with the power under the provisions of Guardian

and Wards Act, the matter has been directed to be submitted to Principal District Judge for consideration. If the matter had been settled by the parties through the intervention of Lok Adalat, as suggested by the text of the order, the award was required to be passed on these lines. Same, admittedly, has not been done. In absence of any final settlement with regard to subject matter in terms of provisions of Legal Services Authorities Act, the learned Sub Judge, if assumed has exercised powers under Guardian and Wards Act, any order so passed initially about visitation rights of the parties needed in fairness to be supplemented with reasons. The reasons are, admittedly, missing in the impugned order. Furthermore, the ld. Sub Judge could not exercise powers both as a Presiding Officer of Sub Judge Court and Chairman of Lok Adalat. The order impugned having not been passed within the bounds of lawful authority and so is quashed. Learned Sub Judge is directed to proceed in the matter in accordance with the provisions of Guardian and Wards Act. The question about visitation rights shall also be considered after providing an opportunity of being heard to both the parties.

8. Appeal along with connected applications is, accordingly, disposed of.

9. A copy of this order be sent to the Court of Sub Judge, Chadoora, for information and compliance.

(Rashid Ali Dar)
Judge

Srinagar
30.05.2019
"Bhat Altaf, PS"