

## Sayeedur Rahman Vs Noushaba Shaheen

**Court:** Jharkhand High Court

**Date of Decision:** Oct. 16, 2008

**Citation:** (2008) 4 JCR 582

**Hon'ble Judges:** M.Y. Eqbal, J; Dilip kumar sinha, J

**Bench:** Division Bench

**Final Decision:** Dismissed

### Judgement

1. We have heard learned Counsel for the appellant at the admission stage.

This appeal is directed against the judgment and decree dated 27.5.2006, passed by the Principal Judge, Family Court, Ranchi in Guardianship

Case No. 18 of 2004, whereby the learned Court-below dismissed the application filed by the appellant against his wife-respondent for his

appointment as guardian of his minor son.

2. The facts which are not in dispute are that both the parties are muslim and are governed by the Muslim Personal Law. Appellant was married

with the respondent in 1997 and out of their wedlock a male child, namely, Shand-Bin-Sayeed was born in 1998. Since relationship between both

the parties did not remain normal, the appellant divorced the respondent on 4.11.1998.

3. Appellant's case was that respondent is unemployed and is living in the house of her retired father. Due to financial difficulties, respondent is

unable to provide better food, clothes, books and educational facilities to the minor child. Appellant is living in Kuwait and wants to give good

education to the minor son by getting him admitted in a Boarding School. The said application was opposed by the respondent on various grounds.

4. Court-below after considering the evidence adduced by the parties recorded following finding:

On the above interpretation of law involved in the case, I find that a Muslim father has got preference in the matter of custody of his child unless he

is found unfit by the Court. The evidence on record clearly go to show that the child was born in April, 19% and the Plaintiff was present in India

at that lime. Even after setting information about the birth of the child, he did not try to ace the newly born child or to give the expenses of the

delivery of the child. Even if it is presumed that he urns in Kuwait at the time of delivery, still, he did not send any letter of congratulation or any gift

or article for the newly born child although it is expected from a father to show his love and affection to his first child by bestowing him with gifts

and toys to show his live and affection. The only evidence which has been led from the side of the Plaintiff is that he is earning more than the

Defendant and he is in a better position to give education and better atmosphere. However, the fact remains that the family members of the

Defendant are more educated and cultured than the family of the Plaintiff. Even the Plaintiff himself is a sports teacher whereas the Defendant is

herself teaching in a School, besides , giving private tuition to students. This clearly go to show that she, is also teaching her son to the best of her

capacity. Her determination to give best education to her child is demonstrated by the fact that she has got him admitted in St. Thomas School,

Ranchi which is undoubtedly one of the best Schools of the State. The evidence on record also go to show that the entire expenses of the

education of the child is being met by the Defendant alone without any help from the Plaintiff or his family. Moreover, it cannot be lost sight of the

fact that since the birth of the child 08 years ago, neither the Plaintiff nor any member of his family, ever tried to see the child or give any article to

show that they had sincerity for the child. Till today, not a single paise has been paid by the Plaintiff and he has left the child at the mercy of his

mother who has brought him up to the best of her ability and resources. The School certificate and the certificate granted by different Organizations

like CARE and other cultural competition go to show that his mother has given him not only best education but also the strength and capacity to

compete with other children of his age and there can be no doubt that he has come out with flying colours.

5. On the other hand, the Plaintiff, while residing in Kuwait, developed intimacy with another woman with whom he subsequently solemnized

second marriage. Therefore, the conduct of the Plaintiff is not above board. He never cared for the child and was merry-making with his second

wife in Kuwait with whom he solemnized second marriage and now he claims that the welfare of the child shall be safe in the custody of the

stepmother.

6. The child was produced before the court and I had an opportunity to talk to him alone without the presence of any of the party. I found the

child healthy and with intelligent frame of mind. He appeared to be happy in the custody of his mother and the atmosphere of the house where gets

the love and affection of his maternal grandmother and maternal uncles. When I told him that his fattier wanted to have his custody and take him to

Kuwait for his better education and welfare, the child appeared to be in a state of shock and trauma. He started pleading that he had never seen

his father and he should not be deprived of the company of his mother to whom he was so attached that he is not ready to leave her at any cost.

7. The paramount consideration for the court in the matter of appointment of a guardian of the child is to see the welfare of the child. As discussed

above, I find that the Plaintiff is unfit to be appointed as guardian of the child and to have his custody. The child is being brought up in a healthy

atmosphere and is being given proper training and education so that he may become a good citizen of the society. If his custody is forcibly given to

the father, he may go in shock and trauma from which he may not recover and his future may be jeopardized. Therefore, I have no hesitation to

hold that the Plaintiff is not entitled to be appointed as guardian of minor Shand-Bin-sayeed @ Asadur Rahman and to get his custody.

8. In course of argument, learned Counsel for the appellant does not dispute the fact that appellant while residing in Kuwait, developed intimacy

with another woman and subsequently solemnized second marriage with her. It has also not been disputed by the learned Counsel for the appellant

that since the child was born appellant did not even provide any financial assistance either to the respondent or to the child.

9. In our considered opinion, the Court-below rightly dismissed the application filed by the appellant for being appointed as guardian of the minor,

10. This appeal has no merit and is accordingly dismissed.