173 Ind. Cas. 229

Calcutta High Court

Case No: None

Muhammad Ibrahim		APPELLANT
	Vs	
Muhammad Abdul Bashar		RESPONDENT

Date of Decision: April 7, 1937

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Section 115#Guardians and Wards Act, 1890 â€" Section 43

Citation: 173 Ind. Cas. 229

Hon'ble Judges: B.K. Mukherjea, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

B.K. Mukherjea, J.
This Rule is issued upon an application u/s 115, Civil Procedure Code, and is directed against an order passed by the

District Judge of 24-Parganas on September 21, 1936, issuing distress warrant upon the petitioner who is a minor to recover from him a sum of

Rs. 445-5.0 alleged to be due by him to the ex-guardian who is the opposite party in this case and who is a Pleader practising in the Alipore

Court. It appears that originally one Hanifa Bibi was appointed guardian of the infant. Later on, on June 13, 1934, this Hanifa Bibi was removed

and in her place the Pleader opposite party was appointed guardian against this order appointing the opposite party as guardian, an appeal was

taken to this Court. On May 31, 1934, this Court set aside the order of the District Judge appointing the opposite party as guardian and held that

having regard to the age and intelligence of the minor, it was not necessary to appoint a guardian at all. The opposite party thus ceased to be

guardian and on July 9, 1936, the petitioner filed an application praying that the ex-guardian might be directed to submit amounts in respect of his

dealings with the petitioner''s estate.

2. On August 6, 1936, the ex-guardian did file some accounts and the matter was ultimately set down for hearing on August 26, 1936. On that

date neither the minor nor his guardian appeared and the Court passed order to this effect: ""No appearance on either side (12-30 P. M.). The

accounts are filed and the matter closed"". The guardian, it is stated, did not file accounts from August 1935, but furnished accounts from August

1936. So a day after, that is to say on August 27, 1936, the minor filed a petition for reasons stated therein that the ex-guardian might be directed

to submit proper accounts from August 1935 with necessary details of expenditure incurred by him. The application was simply directed to be filed

with a note that the ex-minor did not appear on the previous day. Then on September 7, 1936, a notice was issued on ex-minor directing him to

deposit the euro of Rs. 445-5-0 in the Court, this amount being due by the minor to the ex-guardian on the basis of the accounts submitted by the

latter. The minor again filed a petition on September 19, 1936, in which he stated that if proper accounts were taken from the ex-guardian that sum

would not be due to the guardian but on the contrary a sum of Rs. 6,000 would be due to the minor petitioner from the ex-guardian. But this

application was not considered and on September 21, 1936, the learned Judge passed the order issuing a distress warrant upon the petitioner,

against which this Rule is directed.

3. The point for consideration in this Rule is whether this order passed by the District Judge is with or without jurisdiction. The learned Advocate

for the petitioner has contended before me that there is no provision in the Guardians and Wards Act empowering the Court to pass such an order.

I asked the learned Advocate for the opposite party to satisfy me as to whether there is any provision in the Act which may empower the Court to

pass an order like this. He invokes the supplementary jurisdiction whereby the Court can exercise certain powers under the provisions of Section

43, Guardians and Wards Act. But reading that section carefully I am unable to hold that the section really helps the opposite party in this case. I

myself went through the provisions of the Act and failed to find out any section under which an order of this description could be passed. In my

opinion the order is without jurisdiction and must be set aside.

4. The Rule is accordingly made absolute. No order is made as to costs. I express no opinion as to the merits of the controversy between the

minor and the ex-guardian, who can prosecute their respective rights under law, in such way as they are advised.