Form No.J(1)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jyotirmay Bhattacharya
And
The Hon'ble Justice Debi Prosad Dey

F.M.A. 2822 of 2013
With
CAN 1633 of 2014
With
CAN 6692 of 2014

Sri Koustav Dey
Versus
Sri Sudhir Chandra Das

For the Appellant	**: Mr. Sanjib Chakraborty, Adv.,** **: Mr. Rahul Karmakar, Adv.**
For the plaintiffs/ Respondents	**: Mr. Jiban Kumar Bhattacharyya, Adv.,** **: Mr. A.K. Bera, Adv,** **: Mr. A. Bera, Adv.**
Heard on	**: 08.04.2015**
Judgment on	**: 28.04.2015**

Debi Prosad Dey, J. :-

This appeal is directed against the judgement passed by the learned District Judge of Paschim Medinipur in case no. 15 of 2009 of Act VIII, wherein

learned District Judge has been pleased to appoint the petitioner/respondent(herein after referred to as respondent only) as the guardian of the person and property of minor Master Shreyan Dey.

Being aggrieved by and dissatisfied with such judgement of learned District Judge, Paschim Medinipur, the opposite party/appellant, being father of Shreyan Dey, has preferred this appeal on amongst other grounds that the findings of learned District Judge in law as well as in fact are not correct and that learned Trial Judge acted in excess of its jurisdiction by not adhering to the order of remand Dated August 14, 2012 passed by this Hon'ble Court in FMA No.655 of 2012.

The further grounds of appeal are that learned Trial Judge did not adhere to the principles for adjudicating an application under section 7 of Act VIII of 1890 and the principles as enunciated under Section 19 of the said Act. In short, learned Trial Judge without having specific observation/finding, about the fitness of the appellant, in having the custody of the minor, has erroneously repeated the earlier order passed by learned District Judge, Paschim Medinipur.

The fact of the case is that Somarani and Koustav(appellant) got married in the month of December, 2007. Soma was a school teacher. Soma gave delivery of a male child on 4th December, 2008 out of her wedlock with Koustav. Admittedly, Soma and Koustav were residing in a rented house at Suranankar in the House of one Adwitya Jana within PS-Panskura. It has been alleged that Soma was subjected to mental torture by her husband, mother in law, sister of her mother in law and the husband of the sister of her mother in law since her

marriage but somehow Soma tried to adjust herself and used to stay with her husband.

On 05.06.2009 the father of Soma was informed over telephone by the wife of Adwitya Jana, the landlord of Soma and Koustav that his daughter has fallen ill. On receipt of such information the respondent visited the rented premises of Soma and found her dead with ligature mark on her neck. The further case of the respondent, as has been unfolded in the petition of guardianship, that Soma committed suicide or she has been compelled to commit suicide being unable to bear with the torture meted out to her by her husband and in laws or she might have been killed by her husband and her in laws.

The respondent lodged a written complaint at Panskura Police Station on that very date and on the basis of that written complaint Panskura PS case no.114 of 2009 dated 05.06.2009 under section 498A/306 IPC was started against the appellant and his relatives. The said case was ultimately ended in charge sheet and the appellant was committed to the Court of learned Sessions Judge for trial along with other accused.

The respondent specifically stated in his application before the learned District Judge that Shereyan aged about seven months was found lying in the bed in the rented house of Soma and the appellant fled away leaving behind that baby in that rented house. The father in law of Soma and other family members of Koustav did not take any information about the baby and they did not make any sort of arrangement for the maintenance of the baby. The respondent, being an M.A. (B.ED.), teacher and having sufficient means to maintain the baby has

prayed for appointment of himself as the guardian of the person and property of the minor.

The case was filed before the learned District Judge, Paschim Medinipur on 04.09.2009. The appellant appeared before the learned District Judge and filed written statement on 01.12.2009. The appellant denied the material allegations contained in the petition of the respondent. The specific case of the appellant is that the appellant is an M.B.A. degree holder. The appellant fell in love with Soma (who was also a teacher) and thereafter they got married. The father of the appellant is a retired Civil Engineer. The mother of the appellant is a retired school teacher (M.S.C. in Mathematics). The brother of the appellant is B.Tech. At the time of marriage the appellant used to work in one of the companies of Tata group. The respondent and his family however did not accept the marriage between Soma and Koustav and they used to threat Soma and Koustav with dire consequences. On 05.06.2009 when the appellant was at his service place in Kolkata, Soma locked the house from inside and hanged herself and thereby committed suicide. The landlord informed all concerned about such death of Soma. The respondent had been to the rented house of appellant and falsely lodged a case against the appellant. The officer in charge of Panskura Police Station suddenly became so active that he handed over all the articles of the rented house of the appellant to the respondent along with the baby. It is submitted that the cultural, social and educational environment of the family of the appellant is much more congenial for the up -bringing of the minor. The

respondent is an old man and the educational background of the wife of respondent is also not forthcoming in the pleadings on record. The appellant has thus prayed for rejection of the petition.

The written statement of the appellant in the Court below was amended with the leave of the Court and Para '6' was added. The appellant has further stated that the respondent after receiving the custody of the minor did not keep the minor in his custody and transferred the minor to Raiganj, in the custody of one Sankar Das, which is 600 kilometer away from their present residence. Sankar Das is the son in law of Sudhir Das, respondent. Sudhir Das, being appointed as guardian by learned District Judge, had had no authority to transfer the custody of such minor without the leave of the Court and the interest of the minor was not at all protected in the hands of Sankar Das. Secondly, the appellant has had two show rooms for different types of goods at Balichowk and at Loada. The appellant is also earning a lot in order to maintain his own son. The intention of the respondent in transferring the minor to Raiganj is only to deprive the appellant and his family members to look after the child.

The appellant is competent enough, to maintain the child and to give proper education to the child. On careful scrutiny of the paper book, we do not find any rejoinder against such amendment of the written objection on behalf of the respondent. Finally, learned District Judge, Paschim Medinipur allowed the application of the respondent Sudhir Ch. Das and appointed him as guardian of the person and property of the minor. Being aggrieved by and dissatisfied with

such order/judgement of learned District Judge, Paschim Medinipur, this appeal was preferred before this High Court being FMA No. 2822 of 2013.

It may be mentioned here that the appellant was prevented from executing the right of his visitation, as granted by learned District Judge and accordingly the matter was agitated before this High Court. The Division Bench of this High Court ultimately appointed a special officer for executing the right of visitation of the appellant. After hearing both sides the Division Bench of this High Court in FMA No.2822 of 2013 set aside the judgement of learned District Judge and sent back the case on remand to learned District Judge, Paschim Medinipur with specific observation, which runs as follows:-

"Having heard the learned Advocates for the respective parties and having considered the materials on record, placed before us, we are of the view that the Learned Court below did not come to any finding that the appellant is unfit for obtaining the custody of the child. At least, no proper reason has been assigned as to why the appellant may be considered to be unfit for obtaining the custody of the child. Mere pendency of a criminal proceeding against the appellant cannot be the sole consideration for declaring the appellant to be unfit to have the custody of his own child.

No one knows at this stage as to what would be the ultimate fate of the said criminal proceeding. In the event, the said criminal proceeding is concluded by way of conviction of the appellant, the respondent can always seek for

appropriate order before the appropriate forum for the proper custody of the child in case the custody remains with the father of the child at that point of time.

This Court, of course, is not making any observations at this stage as to whether or not the father of the child, that is, the appellant, is fit or unfit to have the custody of the child since this Court is of the view that question should be first decided by the learned Court below upon proper evidence.

The learned Court below has not come to any conclusion as to what is the actual income of either the appellant or the respondent and whether or not the appellant would be able to bring up the child in a proper way considering the status of the respective family. It has to be borne in mind that the appellant is the father of the child and he has preferential right of custody over the right of the respondent. It does not appear from the impugned judgement that any special circumstance has been established to deprive the appellant of such right. Section 19 of the said Act of 1890 will have an important bearing in the decision of this matter."

It appears to us that the fact that a criminal proceeding was pending against the appellant and the fact that the appellant could not take care of the child immediately after the death of his wife persuaded the learned Court below to come to the conclusion that the custody of the child should be given to the respondent herein.

It further appears to us that the learned Court below did not address the question as to whether or not there exist special circumstances in the facts of this case to deprive the appellant herein of his preferential right.

In view of the discussions made above, we are of the considered opinion that the impugned order should be set aside and the matter should be sent back to the learned Court below for a fresh consideration keeping in mind the principles of law involved in this matter."

The parties to the proceeding adduced further evidences before learned District Judge, Paschim Medinipur. Learned Trial Judge again reiterated his earlier order and appointed the respondent Sudhir Ch. Das as guardian of the person and property of minor Shreyan Dey.

Legality of the judgement passed by learned District Judge, Paschim Medinipur in case no.15 of 2009 of Act VIII dated 19.06.2013 is under challenge before us.

Learned Advocate for the appellant contended that learned Trial Judge did not adhere to the directions given by the Division Bench of this Court and did not make any specific observation as regards the competency of the appellant in having the custody of the minor Shreyan Dey. Learned Advocate for the appellant further contended that the judgement of learned Trial Judge is devoid of any special reasons for appointment of the respondent as the guardian of the minor Shreyan Dey.

Per contra, learned Advocate for the respondent contended that the appellant never tried to take the custody of the minor and virtually left the minor

without any care and fled away immediately after the death of the mother of the minor. Learned Advocate for the respondent further contended that Shreyan was brought up by the respondent for the last 5/6 years and thereby Shreyan has developed special attraction to his grand- parents, which should not be disturbed for the welfare of the minor.

It appears from the judgement of learned Trial Judge that learned Trial Judge has given emphasis on the factum of pendency of a criminal case against the appellant. Learned Advocate for the appellant drew our attention that the appellant has been "acquitted" by a competent Sessions Court that is by learned District Judge, Purba Medinipur at Tamluk from the case which was started at the behest of the respondent. That clearly goes to show that no criminal case is at present pending against the appellant. We are told by learned Advocate of the respondent that an appeal has been preferred before this Court against such order of acquittal passed by learned District Judge, Purba Medinipur. However, pendency of that appeal, even if be accepted, in no circumstances, will change the present scenario to the effect that the appellant has been acquitted from the charges leveled against him by the respondent.

Moreover, it appears from the judgement of learned Trial Court that learned Trial Court has heavily relied on the decision reported in 2008(9) Supreme Court cases 413(NIL RATAN KUNDU AND ANOTHER versus AVIJIT KUNDU).

Unfortunately, learned Trial Court did not consider the ratio enunciated in the aforesaid decision of our Apex Court. Hon'ble Supreme Court has been

pleased to evolve the principles governing custody of minor in the aforesaid decision and specifically observed in paragraph 52 of its judgement, as follows:-

"In our judgment, the law relating to custody of a child is fairly well settled and it is this: in deciding a difficult and complex question as to the custody of a minor, a Court of law should keep in mind the relevant statutes and the rights flowing therefrom. But such cases cannot be decided *solely* by interpreting legal provisions. It is a human problem and is required to be solved with human touch. A Court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and well-being of the child. In selecting a guardian, the Court is exercising *parens patriae* jurisdiction and is expected, *nay* bound, to give due weight to a child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot be ignored. They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the Court must consider such preference as well, though the final decision should rest with the Court as to what is conducive to the welfare of the minor."

It is therefore apparent from such principle enunciated by the Apex Court that all round development of a minor has to be considered at the time of selecting the guardian. Hon'ble Court further has been pleased to observe that over and above physical comforts, moral and ethical values cannot be ignored.

The custody of a minor being a human problem is required to be solved with human touch and while doing so the hands of the Court are not tied with strict rules of evidence or procedure nor by precedence. The factual aspect of the case under reference is altogether different from the factual aspect of the case decided by Apex Court referred to here- in- above. The Apex Court refused to give the custody of the minor to the father on the ground that one criminal case was pending against the father and secondly that the minor was reluctant to go with his father.

The certified copy of the judgement wherein the appellant has been acquitted from the charges leveled against him, has been filed with the paper book. We have been taken through the judgement of the learned Sessions Judge whereby and where under learned Sessions Judge has been pleased to acquit the appellant from the charges leveled against him, at the behest of the respondent. We are constrained to observe that learned Trial Judge ought not to have held that the appellant was guilty for such unfortunate death of Soma. In our view learned Trial Judge acted beyond his jurisdiction and he should have restrained himself from making any comment with regard to the merit of the criminal case pending against the appellant. However, it is apparent from the judgement of learned Sessions Judge Purba Medinipur (sessions trial no.08/March/2011/sessions case no.169/July/2010) that the appellant along with other accused were acquitted from the charges leveled against them. We do not want to make any comment on the merit of the judgement passed by learned

Sessions Judge. However, it is settled principle of law that the findings of the Trial Court in case of acquittal shall not be disturbed by any higher forum unless the judgement is declared perverse or devoid of reasons. After going through the judgement passed by the learned Sessions Judge, Purba Medinipur we found that the judgement of learned Sessions Judge, Purba Medinipur is fortified with cogent reasons. Therefore, pendency of any appeal before the higher forum would in no way be an obstacle for the appellant in getting the custody of the minor. This fact was presumably not considered by learned Trial Judge since the judgement was pronounced by learned Sessions Judge, long after passing of the impugned judgement by learned Trial Judge.

Unfortunately, Soma committed suicide leaving behind her minor son. The reasons for such commission of suicide cannot be ascertained with the help of direct evidence. The neighbour or landlord of the appellant did not subscribe to the view that there was bitter relationship between Soma and Koustav. Admittedly, Soma and Koustav used to reside in a separate residence in order to attend their respective place of work conveniently. Therefore, we are to depend on circumstantial evidence about such un-natural death of Soma. On the contrary, there is absolutely no scope to venture on such point in this case for want of jurisdiction and sufficient evidence. The respondent tried to establish before learned Sessions Judge that Soma was subjected to torture by the appellant but such case has been rejected by learned Sessions Judge. There may be various reasons for committing suicide by Soma. Such reasons have not been translated into evidence and as such we cannot come to a definite conclusion about such

reasons for commission of suicide by Soma. Therefore, pendency of a criminal appeal at the behest of the respondent against the appellant, in our view, cannot be a bar for the appellant in getting custody of the minor. Learned Trial Judge had no occasion to consider such factum of acquittal of the appellant since the judgement was delivered by learned Sessions Judge, Purba Medinipur long after the judgement delivered by learned Trial Judge. We also find support for such conclusion from the judgement given by other Division Bench while sending the case on remand to learned Trial Judge.

We have been taken through the evidences on record. On the basis of the evidences on record we may make a comparative study with regard to the welfare of the child keeping in mind the rival contention of the parties to the appeal. Admittedly, the respondent is a retired school teacher and his monthly income is Rs.16,750/ only. We do not find any evidence on record about the income and educational qualification of the wife of the respondent. On the contrary, we find that the respondent is supposed to maintain the child with his meagre income of Rs.16,750/-only. The evidence on record further reveals that the mother of the appellant is also getting Rs.16,750/- towards her pension. She is also a retired school teacher. The father of the appellant is the retired civil engineer and he is getting Rs.6,740/- towards pension. Admittedly, the appellant was working in one of the companies of Tata Group, having an M.B.A. degree. The appellant has atleast been able to prove that he has had some sort of income from the shop rooms. Absence of any income tax return would not nullify that the appellant

has had no income. An educated person having an M.B.A. degree is competent enough to earn his livelihood either by service or by business. The appellant being father of the minor is also duty bound to maintain his own son by resorting to any sort of profession. In the case under reference, we find that the appellant has some sort of income though such income may not be taxable.

The sister of the mother of the appellant has been residing in the house of the appellant. She has got properties of her own and she has also got income from her properties. The daughter of the sister of the mother of the appellant is an educated lady and she has been residing in the family of the appellant. Thus, we find that atleast there are 4-5 educated persons having sufficient means, if not, more than that of the respondent, to take care of the minor. While hearing the appeal, we also heard the special officer appointed by this Court and came to know that she has been paid by the appellant. The appellant has been pursuing this case since 2009 and we all know that litigation is a costly affair now a days. Therefore, the income or the capacity of expenditure of the appellant, cannot be ruled out only on the ground that the appellant could not file his income tax return in Court. It has been elicited from the cross examination of the appellant that his monthly turn over per shop room is about Rs.3,00,000/-. This sort of cross examination has virtually lend credence to the claim of the appellant that he has got sufficient income to maintain the minor. The relatives and other members of the family of the appellant have been examined on dock on oath and they have clearly stated to get back the minor in their family. The report of the

special officer also assumes great importance in deciding the custody of the minor.

The special officer found that the environment in the residence of the maternal grand- parents of Shreyan was not conducive to his well- being. In particular the special officer found two photographs in the room, which according to her, was harmful for a child of tender age. The special officer, submitted that one of the photographs was of the dead body of Soma, hanging from the ceiling. It is really unfortunate that the minor is being exposed daily to the photograph of the dead body of his mother, hanging from ceiling. The respondent, admittedly, has got the custody of the minor by the order of learned Trial Judge. Admittedly, the house of the appellant is about two and half kilometers away from the house of respondent. Despite having an order of visitation of the minor child, the respondent took various pleas to deprive the appellant from executing the order of visitation. Ultimately, other Division Bench of this Court appointed special officer and with the help of the special officer, the right of visitation of the appellant was finally executed. We find from the report of special officer that the minor was happy with his father during his stay in the house of the appellant and he assured his father to come again while leaving the house of the appellant.

Learned Advocate for the respondent contended that the appellant had no intention to take the custody of the minor and never tried to take the custody of the minor. It is apparent from the materials on record that a criminal case was started against the appellant and definitely he was busy in getting himself acquitted from that case. The appellant also suffered shock and trauma at the

death of Soma. Naturally, it was next to impossible on the part of appellant and his family members to get the custody of minor at the relevant point of time. It may safely be stated that they were busy in defending themselves against the criminal charges that was started against them at the behest of the respondent. It appears from the lower Court record that despite having such pendency of criminal case the appellant appeared and filed written objection at the first available opportunity and contested the case for the last five years in order to get back his own son.

That clearly indicates that the appellant was diligent enough in getting the custody of his own son. The report of special officer gave a horrific picture towards the psychological and moral world of the minor. The respondent filed objection against such report of special officer but ultimately did not press the same at the time of hearing of the appeal.

The intention of a person cannot be translated with the help of direct evidence. The intention of a person however can be gathered from the attending circumstances. The respondent kept one photograph of the dead body of the minor's mother on the wall obviously to make an indelible mark in the mind of such minor. The intention of the respondent is to remind the minor daily about the death of his mother and probably to remind him that his father was the author of such crime. This sort of picture would definitely cause serious impact in the tender mind of the minor and would not be congenial / comfortable for the proper up- bringing of such minor.

We also find from the evidence of the respondent that the minor was removed to Raiganj and he was admitted in a school there, under the care of one Sankar Das. The minor stayed at Raiganj for about seven months. The defence of the respondent, on that score, is that on account of the illness of his other daughter, the respondent was compelled to go to Raiganj and stayed there. During his stay at Raiganj, the minor was admitted in a school at Raiganj. It is apparent from the evidence on record that Sankar Das signed on the papers of admission of the minor in a school for the guardian. Admittedly, Sankar Das is not in speaking terms with the appellant and has got inimical interest and relationship with the appellant. Therefore, Sankar Das is not an ideal person to have the custody of the minor without having any sanction from the Court of law. The respondent has had no authority to transfer the custody of such minor in the hands of Sankar Das who has got inimical interest against appellant. The respondent has failed to produce a scrap of paper in the Trial Court as regards the illness of his daughter. The respondent has also failed to produce any sort of paper or evidence in the Trial Court about his own stay at Raiganj. The evidence of respondent clearly indicates that without having any sanction of law and without having any authority, the respondent dared to transfer the custody of the minor to Sankar Das, at a far-away place, obviously in order to feed fat his grudge against the appellant. Had the respondent been present at the Raiganj, in that event, Sankar Das would not have signed on the form of admission of the minor at Raiganj. The respondent or his wife could have signed on the form of admission of such minor in the school at Raiganj. Therefore, the plea of the

respondent that he used to stay at Raiganj along with the minor, is not only incorrect but also depicts the actual intention of the respondent in dealing with the minor.

It is unfortunate that Soma, the daughter of respondent committed suicide for the reasons best known to Soma. The respondent being father of Soma has definitely suffered pain and sorrow at the death of Soma.

It is equally unfortunate that respondent has tried to feed fat his grudge**,** on that score, against the appellant by playing with the tender mind of the minor. Children are asset of the Nation. They are the future citizen of India. Revengeful attitude of such minor would ultimately be counter productive to the society. Proper up-bringing of the minor, would one day, satisfy the dreams of Soma. The respondent being father of Soma (since deceased), should be satisfied with the proper up-bringing of the minor and would visualize Soma through the minor instead of settling his own score with the appellant. We do expect that good sense will prevail upon both the families for the sake and welfare of the minor Shreyan.

It is therefore crystal clear from the discussions made in the foregoing paragraphs that the custody of child in the hands of the respondent is not at all safe and is not congenial for the proper up-bringing of the minor.

Learned Trial Judge also failed to provide any special circumstances by which the preferential right of custody of the appellant may be denied. Learned Advocate for the respondent has further contended that the minor has been brought up by the respondent since he was aged about seven months and

change of custody at this stage may create serious impact on the mind of the minor. We find from the evidences on record that the house of the appellant is almost in the close vicinity of the house of the respondent. Minor would be residing in the same locality and would be reading in the same school. He would be with his friends in the same school. The respondent must have the right of visitation and thereby the minor would get the required care, affection and love of his maternal grand- parents also. On the contrary, he would be getting the dignified company of his father, paternal grand- parents along with other family members of the family of the appellant. Shreyan would be the only minor in the family of the appellant, who would grab the attention of all the family members of the appellant and who are eagerly waiting and who are equally intending to have him in their family.

Hon'ble Supreme Court in the decision referred in (2008)(9) SC case 413 (Nil Ratan Kundu and Another versus Avijit Kundu), observed that the wish of the minor has had an important role in deciding the custody of the minor.

We did not ask the minor about his preference to stay with the parties to this case as we find from the learned Special Officer's report that the child was very much comfortable in his father's family during the period when he was with the members of his father's family at their residence to celebrate his birthday function. Admittedly, the respondent despite having the custody of the minor has treated the minor in such a manner so as to inject a sense of revenge in his tender mind against his father and thereby tried to train the minor to be the most hostile person on the earth against the appellant. This state of affair is not at all

congenial to the proper mental development of the minor. The minor may appear to be safe in the custody of the respondent but deep in his mind, he would be psychic /revengeful person in near future. The report of special officer appointed by this Court may be of great help in this regard. Secondly, the respondent removed the minor from his own custody and sent him to far-away place at Raiganj under the custody of Sankar Das ignoring the immediate impact on the mind of such minor in view of such illegal, unauthorized change of custody. The respondent being father of Soma would not have transferred the minor under the custody of Sankar Das, who has got inimical interest against the appellant. Therefore, the wish of the minor pales into in-significance in the given facts and circumstances of this case for the welfare and proper up-bringing of the minor.

Learned Advocate for the respondent has relied on two decisions reported in AIR 1979 Rajasthan 29 (Smt. Dr. Snehlata Mathur. Appellant v. Mahendra Narain, Respondent) and AIR 1979 SC 1359 (Smt. Mohini *vs*. *Virender Kumar)*. We have duly considered the decisions cited by learned Advocate for the respondent. Factual aspect of the case under reference is altogether different from the cases referred to herein above and we do not find any relevancy of such decisions in determining the custody of the minor in the given facts and circumstances of this case.

To sum up the aforesaid discussion and having regard to the facts and circumstances of this case, we are of considered view that the custody of the minor should be with the appellant and not with the respondent. The respondent could not do justice to the well - being of the minor after getting the

custody of the minor. On the contrary, the subsequent developments clearly indicate that the respondent could not do justice and could not honour the verdict of the Court even after getting the custody of the minor. However, we do not want to deprive the respondent from having the right of visitation of the minor. It is settled principle of law that in selecting proper guardian of a minor the paramount consideration should be welfare and well- being of the child. In selection of the guardian, the Court is exercising "*Parens Patriae* jurisdiction and is expected, *nay* bound, to give due weight to a child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings." It is a human problem and is required to be solved with human touch.

We do expect that both the parties to this appeal being near and close relation of the minor would give preference to the proper development and up-bringing of the minor. No one is immortal in this world. The posterity of Soma and Koustav would remember his maternal grand-parents as well his own parents, as ideal persons of the society and then only, the minor on attaining majority, would be able to contribute towards the development of the society. We do expect that both the parties to the appeal would keep their problems away from the development of the minor and they would settle their scores/disputes, keeping the minor away from their own problems.

Considering all aspects of the case under reference we dispose of the appeal with the following terms:-

The judgement passed by learned Trial Judge in case no. 15 of 2009 of Act VIII is set aside.

The petition of respondent/Sudhir Das is rejected.

The custody of minor Shreyan shall be with the appellant, father of Shreyan.

The father/appellant being natural guardian of the minor shall take proper steps towards the education and welfare of the minor and if required, the father/ appellant may also change the school of Shreyan in the self - same locality for the better education of Shreyan.

The respondent is permitted to meet the minor with prior notice to the appellant in every fortnight, preferably on Sundays. Considering the relationship between the parties, we do appoint the self- same special officer Miss Dipannita Ganguly to supervise the change of the custody of the minor within fortnight from date and the fees of special officer is assessed at 200 gems to be paid by the appellant.

Liberty is given to the parties to move this Court for modification of this order and/or seeking any direction regarding the well- being of the minor in case of any adverse order passed by this Court in respect of pending criminal appeal against the appellant.

The appellant thus steps into the shoes of natural guardian of minor Shreyan and he would automatically be the natural guardian of the minor and his properties.

We therefore dispose of the appeal with the above direction but without any cost.

Having regard to the fact that the appeal itself has been disposed of, no further order need be passed on the interlocutory applications. Accordingly those applications are all deemed to be disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible.

(Jyotirmay Bhattacharya , J.) **(Debi Prosad Dey, J.)**

I agree

(Jyotirmay Bhattacharya , J.)

later

After delivery of the judgment Mr. Bhattacharyya, learned Advocate for the plaintiffs/respondents prays for stay of operation of the order as his client wants to challenge this order before the higher forum. Such prayer for stay is opposed by Mr. Chakraborty, learned advocate for the appellant.

After considering such submissions made by the learned Counsel of the parties, we stay the operation of the order for a period of four weeks .

(Jyotirmay Bhattacharya , J.) **(Debi Prosad Dey, J.)**

I agree

(Jyotirmay Bhattacharya , J.)