

IN THE HIGH COURT AT CALCUTTA

CIVIL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

THE HON'BLE JUSTICE Kesang Doma Bhutia.

C.O. 2071 of 2021

Smt. Tamalika Bose

-VS-

Sri Mukut Bose

For the Petitioner : Mr. Partha Chakraborty,
Ms. Sharmistha China,

For the Opposite Party : Mr. Saurabh Guhathakurata,
Ms. Tanuka Basu,

Hearing concluded on : 21.12.2021

Judgment on : 19.01.2022

Kesang Doma Bhutia, J. - : This is an application under Article 227 of the Constitution of India filed by Smt. Tamalika Bose challenging the jurisdiction of Additional District Judge, Fast Track, Second Court, Howrah to hear Misc. Case No. 106 of 2019, under the Guardians and Wards Act, 1890 and has also challenged the order dated 18.11.2021 and whereby the learned Court below has rejected the application of the petitioner on the issue of jurisdiction of the said Court.

Sri Mukat Bose being the father of the child in-question has filed an application under Section 24 and 25 of the Guardians and Wards Act, 1890 in the court of learned District Judge, Howrah. Subsequently, such case was transferred by the learned District Judge, Howrah to the Court of Additional District Judge, Fast Track, Second Court, Howrah for disposal. The petitioner/father has also filed an application seeking permission to visit his minor child who is in the custody of the mother/the estranged wife/the opposite party. Against such application filed by the husband/petitioner, the opposite party/wife/mother of the child filed an application challenging the jurisdiction of the Fast Track Court to hear the matter on the ground that in view of provision of section, 4A of the Guardians and Wards Act, 1890 the Fast Track Court being a subordinate Court to a District Court and not being empowered by the Hon'ble High Court to hear matter under the Guardians and Wards Act, 1890 has no power to try the matter and thereby alleged the impugned order too suffers from illegality.

Let see, whether, the Additional District Judge, Fast Track Court is sub ordinate to a District Court and has no authority to hear any matter under the Guardians and Wards Act, 1890?

It is admitted position of law that Hon'ble High Court at Calcutta has not issued any general or special order empowering any officer

subordinate to the District Judge to hear and dispose of any proceeding under Guardians and Wards Act, 1890. Section 4-A of the Act, provides that it is the District Judge who has the original power to hear the matter under the said Act until and unless the High Court by any general or special order empowers any officer exercising original civil jurisdiction subordinate to a District Court to dispose of any proceeding under the said Act. The District Judge may by order in writing may transfer any case under the Guardians and Wards Act, 1890 at any stage of the proceeding pending before it for disposal to any officer subordinate to the District Court, empowered by the high Court under sub Section 1 of Section 4 A.

The learned Advocate for the opposite party has referred to ***Shirshna Nath Mallick Vs. Arun Kumar Sarkhel, reported in AIR 2010 Calcutta 26***, where a question has arisen whether Additional District Judge is competent authority to hear and dispose of matter under Guardians and Wards Act, 1890 or not.

The Hon'ble Co-ordinated Bench of this Hon'ble High Court after taking into consideration Section 24 of the Civil Procedure Code, Section 8(2) of Bengal, Agra, Assam Civil Courts Act, had held that Additional District Judge who discharges identical judicial functions like that of a District Judge in the District and in discharge of judicial functions Additional District Judges are not subordinate to District

Judge and competent to consider and hear the matter under the said Act. However, it has also been held that Additional District Judges cannot independently receive presentation of any such application, as no territorial jurisdiction is conferred upon them individually over which they can exercise their independent jurisdiction. Additional District Judge can only discharge only those functions which are assigned to them by District Judge under Section 8(2) of Bengal, Agra and Assam Civil Court Act or under Section 24 of the Civil Procedure Code. Jurisdiction to entertain application under the Act of 1890 has exclusively been vested upon District Judge being Principal Judge in Civil Court of original jurisdiction over local limits of its jurisdiction within District. When an application under the Act is transferred to Additional District Judge by District Judge, the Additional District Judge is competent to consider said application as a Judge of a District Court and his competence cannot be challenged for want of authorization under Section 4 A of the said Act.

In the present case the Court-in-question is not a regular Court of Additional District Judge, but a Fast Track Court. Fast Track Courts are created or set up by State Governments in consultation with concerned High Courts under a scheme for expeditious disposal of long pending old criminal and civil cases initially for a period of Five years sometime in the year 2000. Considering the huge pendency the

tenure of Fast Track courts were extended from time to time. Now, in West Bengal, the Fast Track Courts have become Permanent Courts.

In West Bengal Fast Track Courts are presided over by Judicial Officers, who belongs in the cadre of Civil Judge (Senior Division). They are appointed as a Fast Track Courts Judge on ad hoc promotion. They are absorbed in regular post or in permanent cadre of Additional District Judge on passing the limited departmental examination or on promotion on merit-cum-seniority basis. So, here one may think that a Judge of a Fast Track Court is subordinate to a District Judge. So far judicial function of a Fast Track Court is concerned, it discharges identical judicial functions like that of a regular court of Additional District and Session Judge or that of a District Judge in a District.

However, like Additional District and Session Judge a Fast Track Court cannot independently receive presentation of any application under the Guardians and Wards Act, 1890. It is only the District Judge who can receive the application under the Guardians and Wards Act, 1890 and the District Judge by order in writing transfer the cases under the Guardians and Wards Act to the Court of a Regular Additional District Judge and as well as to the Court of Additional District Judge, First Track Court for disposal at any stage of the proceeding upon compliance of the requisite formalities.

Therefore, it cannot be said that First Track Court is subordinate to District Court so far the judicial function is concerned.

It is true that Judge of a Fast Track Court is appointed as Additional District Judge on the basis of Ad hoc promotion and their service is subject to regularization in the cadre of District Judge entry level on their passing limited competitive examination or on promotion on the basis of seniority-cum-merit, but like a District Judge or regular Additional District Judge it has power to hear all the cases both civil and criminal which a District Judge or a regular Additional Judge can hear and dispose of. Therefore, this Court is of view that Additional District Judge, Fast Track Court is not a subordinate to District Court so far as judicial function is concerned and as such Additional Fast Track Court is competent to hear matter under Guardian and Wards Act and there is no need of any general or special order from the High Court to empower Fast Track Court under Section 4 A of the Guardians and Wards Act, 1890 to dispose of any proceeding under the Act.

Therefore, this Court is of view the Additional District Judge, Fast Track, Second Court, Howrah is competent to consider the application under Section 24 and 25 of Guardians and Wards Act, 1890 and dose not find any illegality or material irregularity in the

order impugned and or impugned order being passed without jurisdiction.

Accordingly, **C.O. 2071 of 2021** is dismissed.

Interim order, if any, stands discharged.

There will be no order as to costs.

In view of the order made above affidavits are not invited. Allegations made shall be deemed to be denied.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent Xerox certified photocopies of this judgment, if applied for be given to the parties upon compliance of the requisite formalities.

(Kesang Doma Bhutia, J.)