

IN THE COURT OF ADDITIONAL DISTRICT JUDGE-II
AIZAWL JUDICIAL DISTRICT, AIZAWL, MIZORAM.

Present : Shri Vanlalenmawia, MJS
Additional District Judge,
Aizawl Judicial District, Aizawl.

Regular First Appeal No. 13 of 2015
A/O Guardianship Case No. 678 of 2014

Smt. Lalrinsangi
W/o Ramnghaka,
R/o Upper Republic, Aizawl, Mizoram.Appellant

-versus-

Shri Lalnelsona
R/o Mualcheng North,
Serchhip District, MizoramRespondent.

APPEARANCE

For the Appellant	:	Shri Raymond Lalbiakzama, Advocate.
For the Respondent	:	None.
Hearing	:	22.3.2016
Order delivered on	:	19.4.2016

ORDER

1. An appeal made under Section 17 of the Mizoram Civil Courts Act, 2005 read with Section 97 of the Civil Procedure Code, 1908 has been filed against the Judgment & Order dated 11.9.2015 in Guardianship Application No. 678 of 2014 passed by Shri Thomas Lalrammawia, the learned Civil Judge, Aizawl.

2. The Appellant and the Respondent used to be husband and wife. With the appellant the respondent has a son, namely, Steven Lawmsangpuia, born on 24.9.2011 out of the wedlock. According to the appellant, they got divorced by way of SUMCHHUAH due to cruelty of the respondent inasmuch as he had used to drink alcohol and led unchaste life.

3. The learned Civil Judge took evidence of the rival parties and passed the Judgment & Order dated 11.9.2015 declaring the appellant custodian of minor Steven Lawmsangpuia with the following conditions;

- a) The respondent would visit his son anytime he wishes;
- b) The respondent would be allowed to take away his son for a night or two;
- c) The appellant and the respondent would cooperate in upbringing of their son for his welfare; and
- d) If the respondent does not agree, the appellant should not take the child to Israel.

4. I heard the learned counsel Shri Raymond Lalbiakzama only, as the respondent failed to appear for hearing. I also perused the records of the learned Trial Court.

5. According to the learned Counsel Shri Raymond Lalbiakzama, the respondent used to drink alcohol and behaved cruel towards the appellant. He submitted that the respondent had admitted the fact that he used to drink liquor in the evidence taken before the learned Civil Judge. Hence, frequent visit to the residence of the appellant and to take out their child from her custody is not safe and healthy.

6. The grievance of the appellant, as it appear from the submission made by the learned Counsel is that the Id. Civil Judge passed order giving right to the respondent to visit his son without making strict conditions. It is also the grievance of the appellant that the respondent was allowed to take out his son from the custody of the appellant for a single or two nights in a month.

7. The first point of issue raised by the Id. Counsel is considered. The Id. Trial Court did not consider how the physical and mental health of the child would be affected if the child is visited by the respondent with smell of alcohol. It is found in the evidence taken before the Id. Civil Judge that the respondent had admitted the fact that he used to drink a liquor. Accordingly, it is ordered that the respondent would visit his son anytime he wishes but without smell of liquor.

8. The second point raised by the Id. Counsel is also considered. The Id. Trial Court has also failed to consider the welfare of the child. It would be best if the respondent is not allowed to take out his son from the custody of the appellant in view of the evidence that the appellant has a great care to her son. Accordingly, it is hereby ordered that the respondent normally would not be allowed to take out his son from the custody of the appellant. But, if the Id. Civil Judge-I thinks and finds necessary on application filed by the respondent, the Id. Civil Judge-I would allow him to take out the child with the accompany of the appellant. However, the expenses of both the child and the appellant should be borne by the respondent.

9. Other conditions shall remain the same as it is shown in the Judgment & Order dated 11.9.2015.

10. Hence, interference of the order passed by the Id. Civil Judge-I dated 11.9.2015 calls for.

11. In view of the aforesaid, the appeal is partly allowed.

12. Send back the case record of the learned Civil Judge-1, Aizawl along with a copy of this Order.

13. With the above order, the appeal stands disposed off.

Sd/- VANLALENMAWIA
Addl. District Judge,
Aizawl Judicial District.
Aizawl, Mizoram.

Memo No.:_____/ADJ(A)/2016 : **Dated Aizawl, the 19th April, 2016**
Copy to: -

1. Lalrinsangi through Counsel Sh. Raymond Lalbiakzama, Advocate.
2. Lalnelsona R/o Mualcheng, Serchhip District.
3. The District Judge, Aizawl Judicial District, Aizawl.
4. Civil Judge-I, Aizawl District, Aizawl.
5. Registration Section.
6. Guard File.
7. Case Record.
8. Calendar Judgment.

P E S H K A R