

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR.**

**FAMILY COURT APPEAL (FCA) NO. 12 of 2020**

Sashanka W/o Prakash Naidu  
Aged 37 years, Occ. Nil,  
R/o D. no. 4-457/A, Nava Bharat Nagar,  
Near Bommuru Junction, Rajahmundry, (Rural)  
East Godavari District, Andhra Pradesh.

... Appellant

*// Versus //*

Prakash S/o Balkrishna Naidu  
Aged 45 years, Occ. Legal Practitioner,  
R/o 244, Chhatrapati Nagar, Nagpur.

... Respondent

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Shri S. S. Dhengale, Advocate for the appellant  
Shri V. V. Bhangde, Advocate for the respondent  
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**CORAM : A. S. CHANDURKAR AND**  
**N. B. SURYAWANSHI, JJ.**

**DATE : 27/11/2020**

**JUDGMENT (Per :N. B. SURYAWANSHI, J.)**

Admit.

2. This appeal arises out of the judgment rendered by the learned Judge, Family Court No. 4, Nagpur in proceedings filed under Sections 7, 12 and 25 of the Guardians and Wards Act, 1890 for the custody of minor daughter Sameera by the respondent Prakash. By the impugned judgment, the application filed by Prakash (father) for custody of Ku. Sameera was allowed and respondent Sashanka (mother) was directed to handover custody of Ku. Sameera to Prakash. From Winter 2020 onwards, during 50% of the Winter and Summer School Vacations, Sashanka was given interim custody of Ku. Sameera. Sashanka was directed to remain at Nagpur while having interim custody and Prakash was directed to bear journey expenses of Sashanka from the place of her residence to Nagpur and vice versa.

3. Though Prakash and Sashanka have made various rival allegations against each other, only relevant contentions of both sides, which are necessary to decide the custody of minor Ku. Sameera are being taken into consideration here.

4. Brief facts which are necessary to decide the controversy are as follows.

(i) Prakash (father) filed Petition No.D-1/2017 under Sections 7, 12 and 25 of the Guardians and Wards Act. In short, contending that after marriage with Prakash on 23.11.2001, Sashanka came to reside at Nagpur with Prakash and his parents. Sashanka had habit of smoking and consuming liquor daily. Sashanka was never doing any household work and has never performed her duties of housewife. She was not inclined to have children. She used to watch adult American Serials on YouTube till late night. Daughter Sameera was born on 03.08.2010 at Nagpur. However, Sashanka never took care of Ku. Sameera. Ku. Sameera was admitted in play school. But Prakash (father) only was looking after her and no duties which a mother performs for a child were ever performed by Sashanka towards Ku. Sameera.

ii) Brother of Sashanka namely Siva got married with Gita. Huge dowry was taken from Gita's family by father of Sashanka. Dowry was even taken in the name of Sashanka and Prakash. Gita wife of Siva, due to ill treatment at the hands of Sashanka's father and brother Siva, lodged First Information Report (FIR) against Sashanka, Siva and their father and mother under Section 498A of the Indian Penal Code (IPC).

(iii) Siva, brother of Sashanka filed divorce proceedings (Original Petition No. 122 of 2010) against his wife Gita at Rajahmundry. Siva and father of Sashanka were given loan of Rs. 40,00,000/- by Prakash to settle the matter between Siva and Gita. The said amount was obtained by Prakash as a hand-loan from his friend through bank transactions. However, the said dispute was not settled and the said amount was utilized by Siva and his father for themselves. When Prakash asked Siva and his father to repay the loan, the same was not repaid. On the contrary, father of Sashanka started poisoning mind of Sashanka against the family of Prakash. Sashanka due to the instigation of her father started behaving badly with the family of Prakash. She used to beat Ku. Sameera and used to forcibly stuff food in her mouth. Unhealthy atmosphere was created by behaviour of Sashanka in the family of Prakash. He came to know that father of Sashanka has a concubine at Rajahmundry and he used to visit her daily at 7 O'clock in the evening and used to return at 10 O'clock in the night.

On 18.11.2016, Prakash and Sashanka along with Sameera went to C. P. Club, Nagpur to witness the live show of singer Papon. Sashanka consumed liquor and got heavily intoxicated. Due to the

cocktail consumed by her, she started yelling. When Prakash tried to advise her, she started behaving hysterical and was beyond control. Anyhow Prakash drove home. After reaching home Sashanka called her father. Her father demanded that his daughter be sent back to Rajahmundry forthwith. Though Prakash refused, Siva brother of Sashanka came to Nagpur on 20.11.2016. Sashanka and Ku. Sameera left for Rajahmundry along with Siva on 21.11.2016. After reaching Rajahmundry, Sashanka switched off her mobile phone and was not communicating with Prakash or his parents. She was not accepting the calls of Prakash and his family members. Prakash then called on Siva's phone to talk to Ku. Sameera. While talking to Prakash, Sameera told that the phone is on loudspeaker mode. Prakash rushed to Rajahmundry on 26.11.2016. Prakash was threatened with life by father of Sashanka. He was also asked to forget about the money advanced. Sameera was admitted in the school at Rajahmundry. Sameera on phone informed Prakash that she was beaten in the school by scale and was locked up in the bathroom of the school. Criminal cases were filed against father and brother of Sashanka and they are financially weak. Sashanka does not have any source of income and, therefore, taking into consideration welfare of Sameera, her custody be given to him.

5. Sashanka appeared in the matter and resisted the claim of Prakash. She denied all the allegations of Prakash. She claimed to have filed proceedings for maintenance, for divorce, for domestic violence and FIR under Section 498A of the Indian Penal Code. She claimed that Prakash and his family treated her with cruelty. She claimed that she used to assist her father in jewellery business when daughter Sameera used to attend the school. Sameera was admitted in the finest and topmost school at Rajahmundry. She claimed that she has always treated Sameera with love and affection and Sameera is physically and mentally safe in her custody. Prakash has no time for Sameera. Only because Prakash wants Sashanka to join him, the daughter is being used for that purpose and she is the fittest person to meet needs of minor Sameera.

6. During the pendency of proceedings before the learned Family Court, Prakash was granted interim custody of Ku. Sameera from 27.04.2019 to 11.05.2019, but the custody of Ku. Sameera was actually handed over to him only on 01.05.2019. When Ku. Sameera was in the custody of Prakash, he noticed serious abnormality in the legs of Ku. Sameera, therefore, he rushed Ku. Sameera to pediatrician Dr. Charuhas Akre. On his advice, various medical tests were conducted,

which revealed that Ku. Sameera was suffering from deficiency of Vitamin-D. Vitamin-D Count of Ku. Sameera was 7.06, which normally should be over and above 30. Prakash therefore, submitted an application Exhibit 258-A for interim custody of Sameera for medical treatment, in which he also contended that during custody of Ku. Sameera, her mother Sashanka since last about 3 years has failed to take proper care of Ku. Sameera health-wise, ethically and morally and Sashanka is not concerned for her welfare. Ku. Sameera was referred to Pediatric Orthopedic Dr. Viraj Shingade. On examination of Ku. Sameera, he expressed serious concerns about her health. He diagnosed that Ku. Sameera has already developed knock knee problem and distance between her ankles has gone upto 12.5 Cms, which should never exceed 5 Cms. This has occurred on account of acute deficiency of Vitamin-D. Due to this disease, abnormality is caused in the legs leading to soft bones and skeletal deformities. The said application was vehemently opposed by Sashanka.

7. The learned trial Court taking into consideration the fact that Ku. Sameera was suffering from knock knee and genu valgum and only orthopedic surgeon could suggest treatment to Ku. Sameera, passed order

below Exhibit 258-A on 31.05.2019 and directed Sashanka to handover interim custody of Ku. Sameera to Prakash for her medical treatment at Nagpur on 03.06.2019, however, Sashanka did not handover interim custody of Ku. Sameera on 03.06.2019 or any time thereafter.

8. Prakash moved an application Exhibit 303 stating therein that Sashanka has flouted the orders passed by the learned Family Court and has not given interim custody of Ku. Sameera as directed. He further mentioned that he got call from Ku. Sameera's school i.e. Ganges Valley School, Nizampeth twice on 07.09.2019 and he was informed to pay the part of school fees due and outstanding of Rs.70,000/-. Thus instead of complying the orders, Sashanka has deliberately admitted Ku. Sameera in the school in a village Nizampeth. She has also refused to furnish her address to Prakash. The due date of payment of fees was 10.08.2019 and Prakash expressed apprehension that Ku. Sameera would be subjected to unwarranted mental trauma and she might lose her studies on account of non payment of fees by mother Sashanka. Prakash, further, stated that health of Ku. Sameera is being deteriorated. He, therefore, prayed for enforcement of the orders of interim custody through Superintendent of Police, Nizampeth. Prakash also filed application Exhibit 304 under

Section 45 of the Guardians and Wards Act for contumacy. The learned Trial Court passed common order on both these applications on 03.09.2019. The learned Family Court has observed in the order that Sashanka has not disclosed the name of School in which Ku. Sameera was admitted, she has also not furnished the address of Ku. Sameera to Prakash. Sashanka was directed to file affidavit giving the name and address of the school, in which Ku. Sameera was admitted, the date of her admission, fee structure and other expenses of Ku. Sameera and from where Sashanka is arranging to meet the expenses, details of food so also medical treatment provided to Ku. Sameera along with progress in respect of her health was also directed to be given in the affidavit. Sashanka was also to state in affidavit, the address of Ku. Sameera where she is residing for education. Sashanka did not comply with these directions.

9. Before the Family Court, Prakash examined himself and also examined his sister Preeti Iyer, his two friends, namely, Rohit Jaiswal and Ramesh Chandak and his father Balkrishna Naidu in support of his case. Sashanka entered the witness box and also examined Dr. Shamama Subuhi as her witness.

Learned Family Court, after considering the evidence on record and after hearing both sides, granted Prakash permanent custody of Sameera and gave interim custody to Sashanka during 50% of Summer and Winter Vacations. Hence, the mother Sashanka has filed the present appeal.

10. We have interacted with Ku. Sameera in Chamber to ascertain her wishes. Sameera is presently of 10 years age and we found her to be intelligent and understanding. She has promptly responded to all the questions put to her and we found her comfortable during the interaction. She has stated that she is comfortable at her father's place but her attachment with mother was also explicit. She has shown willingness to meet her mother.

11. Heard learned Advocates for the parties. The learned advocate for the appellant has assailed the impugned judgment of the Family Court on various grounds. He submitted that the learned Family Court has taken into consideration only the financial position of Prakash. Ku. Sameera being a girl, her mother in a better position to look after her welfare treatment of Ku. Sameera can also be done at Nizampeth and

Nizampeth has better education facilities than Nagpur. Mother Sashanka has ample time to look after Ku. Sameera and she is in a better position to take care of Ku. Sameera than father Prakash. He further submitted that the learned Family Court has erred in granting custody of Ku. Sameera to father Prakash. He, therefore, prayed for allowing the appeal and grant the custody of Ku. Sameera to mother Sashanka.

The learned advocate for the respondent, on the other hand supported the judgment of the Family Court. He submits that the learned Family Court has properly appreciated the evidence and has rightly come to the conclusion that welfare of Ku. Sameera will be better taken care of by her father Prakash and the learned Family Court was right in granting custody to father Prakash.

Perused the impugned judgment and the record. We have also gone through the notes of evidence and the written notes of arguments filed by both the sides. The material point for determination is :

- (i) Whether the learned Family Court was legally justified in granting custody of Ku. Sameera to Prakash ?

12. It is revealed from the evidence of Prakash that after marriage, Sashanka started residing at Nagpur with him and his parents. She was never doing any household work. She was addicted to smoking and used to drink liquor daily. She was reluctant to have any issue initially. After the birth of Ku. Sameera, she never looked after her, she never took care of Ku. Sameera. Ku. Sameera was taking education in 1<sup>st</sup> Std. at Central Point School in Nagpur during the academic year 2016-17. Only Prakash was looking after Ku. Sameera and preparing her for school, taking her to school and bringing her back. On 18.11.2016, when Prakash, Sashanka and Ku. Sameera along with their friends visited C. P Club, Nagpur to witness live show of singer Papon. Sashanka got heavily intoxicated as she had consumed cocktail i.e. whisky, wine and beer. She started yelling. When Prakash tried to advise her, she became hysterical and was beyond control. After reaching home, Sashanka talked over telephone with her father, who demanded that his daughter be sent back to Rajahmundry forthwith. Though Prakash refused to send Sashanka, on 20.11.2016, Siva brother of Sashanka came to Nagpur and on 21.11.2016, Sashanka along with Ku. Sameera went to Rajahmundry with brother Siva. During her stay at Rajahmundry, Sashanka has failed to take proper care of Ku. Sameera, due to which Ku. Sameera developed

deficiency of Vitamin-D and suffered from genu valgum/knock knee disease. In spite of this, Sashanka did not take proper care of Ku. Sameera or took her to expert Doctor for proper treatment. Sashanka was totally irresponsible mother. He stated that Sashanka so also her father and brother are not even 10<sup>th</sup> Std. Passed. Father and brother of Sashanka are facing criminal cases and atmosphere at the maternal home, Sashanka is not good for proper upbringing of Ku. Sameera. On the other hand, he resides with his parents and he along with father and mother are in a position to take care of Ku. Sameera. He has sufficient means to look after his daughter. He is also giving proper treatment to Ku. Sameera for her knock knee problem. He, therefore, prayed that custody of Ku. Sameera be given to him. In spite of detail cross-examination, nothing damaging to the case of Prakash is brought on record by the other side.

13. Prakash in support of his case, examined his sister Preeti and his friends Rohit Jaiswal and Ramesh Chandak, they deposed about the initial disinclination of Sashanka to have children, the drinking and smoking habits of Sashanka and that Sashanka was not looking after Ku. Sameera. Prakash also examined his father Mr. Balkrishna Naidu, who

also reiterated these facts about Sashanka. He has also stated that he has made arrangements for the secured future of Ku. Sameera. He has shown willingness to add name of Ku. Sameera to Fixed Deposit of Rs.20,00,000/- to Rs.25,00,000/-. He has also stated that total security amount of fixed deposit can be more than Rs.40,00,000/- in future and he has shown willingness to deposit Rs.30,00,000/- to Rs.40,00,000/- to show his *bona fides* in the name of Ku. Sameera, if the custody is handed over to Prakash. He has also shown his willingness to bequeath the properties owned by him to Ku. Sameera and to make arrangements for higher education of Ku. Sameera, preferably at UK or America. Evidence of these witnesses examined by Prakash could not be shattered in cross-examination by the other side.

14. Sashanka in her evidence has alleged mental harassment at the hands of Prakash. She stated that Prakash was addicted to smoking and drinking. She has also stated that on 18.11.2016, herself, Prakash and Ku. Sameera went to C. P. Club, Nagpur along with friends. Prakash had excessive drinks and was not in a position to walk or talk. She requested Prakash to allow her to drive the car, however, Prakash did not allow her and he drove the car in rash manner. He banged his car to a

big stone outside Pratap Nagar Police Station, then she sought help from policemen of the Police Station. The policemen asked her to drive car back home. However, Prakash did not sit in the car and Prakash reached home after sometime of Sashanka and Ku. Sameera. Sashanka narrated the incident to his parents, they scolded him for his irresponsible act. Prakash left home and came back only after two days. In those two days, he sent lot of messages, apologies for his act and other wrongs. Sashanka thanked god for mercy and for saving her life. She decided to leave the house for her safety and for the future of her child and for self respect. She contacted her father immediately who sent his son Siva to Nagpur and brought her back to Rajahmundry. She stated that she had no other option but to come back to her parents house. Her father and brother are carrying out their business at Rajahmundry and she lives there with them. She admitted Ku. Sameera in the best school in town. She has further stated that Prakash is not paying regular maintenance, she felt that she is burdening her parents and now she decided to move to Hyderabad. She finalized a good school for Ku. Sameera at Hyderabad and had initiated the admission process. She also decided to do a decent job so as to add up the meager maintenance amount. According to her, Ku. Sameera being a girl child, she needed care and custody of her

mother rather than father. She has filed following cases against Prakash at Rajahmundry (A.P)

- (a) Petition for grant of maintenance bearing M.C. No. 1/2017 before IV Additional J.M.F.C. Rajahmundry.
- (b) Petition for grant of divorce bearing D.O.P No. 7/2017 before Principal Senior Civil Judge, Rajahmundry.
- (c) Domestic Violence Case (lodging) Sr. No. 2894/2017 before 6<sup>th</sup> Additional J.M.F.C. Rajahmundry.
- (d) Report with Rajmahendravaram Urban Woman Police Station vide Receipt No. 264/2017 under Section 498A of IPC.

15. In cross-examination, Sashanka could not give the quantity of rice, potato, onion, garlic, ginger etc., required by the family in a week/month. She was unable to tell the rates of these items so also the the rates of milk, eggs etc. She denied that her parents, her brother and she herself have not passed even 10<sup>th</sup> Std. Examination. She stated that she is unable to produce on record her certificate of 10<sup>th</sup> Std. Examination. She stated that she did not know about the education and qualification of her brother as well as her parents. Sashanka stated that

Ku. Sameera was admitted in Trip's International School at Rajahmundry on 01.12.2016.

Sashanka has stated in cross-examination that she never found Ku. Sameera suffering from any illness. In the night of 07.05.2019, Ku. Sameera talked over mobile to her and informed that Doctor had advised her surgery. She had seen medical certificate and blood report of Ku. Sameera. In spite of receiving various e-mails from Prakash on 08.05.2019 onwards wherein Prakash asked her to send medical papers of Ku. Sameera, till that date Sashanka did not send medical papers as she did not have any. As per her knowledge, Ku. Sameera has Vitamin D-3 deficiency which she came to know on 10.05.2019. That is the only ailment of Ku. Sameera as per her knowledge. She did not take Ku. Sameera to Doctor at Rajahmundry or at Hyderabad. During her cohabitation with Prakash, she admitted that Ku. Sameera was taking treatment of Dr. Charuhas Akre and three other pediatricians. She did not remember if she had read the report of Dr. Charuhas Akre. She claimed that she had seen report of Dr. Shingade, however, she could not understand the medical language in it. She feigned ignorance as to whether there is any pediatric surgeon at

Rajahmundry. She denied that she was totally irresponsible towards Ku. Sameera as her tiffin box used to be filled with fungus during her attendance in Trip's School at Rajahmundry.

16. Sashanka has further stated that she does not know that Ku. Sameera has knock knee (genu valgum) problem. She did not agree that said knock knee/genu valgum problem of Ku. Sameera was aggravated and her both legs are deformed. She did not agree that there is already a gap of 12.5 Cms between ankles of Ku. Sameera. She did not know that bones of Ku. Sameera are soft and not properly developed as per her age. She did not agree that spinal cord of Ku. Sameera has started becoming curve. She denied that there is a cracking noise from knees of Ku. Sameera whenever she folds her legs. She also denied that Dr. Shingade had informed her that Ku. Sameera needs immense physiotherapy then only there are chances of her recovery. Sashanka however, volunteered that Dr. Shingade had informed her that Ku. Sameera needs physiotherapy.

17. Sashanka admitted that Prakash had filed Special Civil Suit No. 471/2017 against her claiming compensation for making false allegations of impotency against him and the said suit was decreed and

Prakash was granted compensation of Rs.10,00,000/-. She further admitted that Special Civil Suit No. 33/2017 was filed by Prakash against her father Ravva Narsingarao, her brother Siva and one J. Pawan Kumar for recovery of Rs.40,00,000/- which was given as a hand loan to her father and brother and for which J. Pawan Kumar stood as a guarantor, was decreed in favour of Prakash on 26.06.2019.

18. Sashanka further stated that Geeta wife of her brother Siva has initiated proceedings under Section 498-A IPC against Siva, her parents and herself. She further accepted that her brother Siva is charge-sheeted under Sections 420, 467, 468, 471 of IPC in the matter of huge property scam, which is sub-judice.

19. Sashanka also admitted in her cross-examination that she did not allow Ku. Sameera to talk over mobile or to meet with Prakash for about four months. She also admitted that only after order of the Court in the month of March, 2017, she allowed Ku. Sameera to talk with Prakash on mobile.

20. Sashanka has also admitted that Prakash had sent clothes, shoes, toys, accessory, laptop, tiffin, water bottles, school bags for Ku. Sameera as gifts. She volunteered that laptop was gifted by the father of Prakash.

21. Sashanka has admitted that in her cross-examination that in May - 2017, learned Family Court had granted custody of Ku. Sameera to Prakash for one month. She challenged that order in the High Court and the High Court in view of mutual consent directed 15 days day custody of Ku. Sameera be given to Prakash. However, Sashanka had given day custody of Ku. Sameera to Prakash only for five days. She further admitted that in spite of orders passed by the learned Family Court about handing over interim custody of Ku. Sameera to Prakash in a month of July and August, 2018, she did not hand over the custody of Ku. Sameera to Prakash. She further admitted that in spite of order of learned Family Court granting interim custody of Ku. Sameera to Prakash from 27.04.2019 to 11.05.2019, she did not hand over interim custody of Ku. Sameera to Prakash on 27.04.2019.

22. During cross-examination, Sashanka was asked about one Mr. Pawan residing at her maternal house. She denied that Pawan resides in the house of her father, but she volunteered that Pawan is a guest. She denied that during stay of Prakash and his parents in hotel at Rajahmundry, Pawan used to drop Ku. Sameera to Hotel where Prakash was staying for handing over custody of Ku. Sameera to Prakash. She also denied that she left Ku. Sameera alone at Hyderabad with Pawan and one Suri. She volunteered that Pawan and Suri are her friends. She denied that she and Ku. Sameera used to go for shopping at Hyderabad in different malls with Pawan and Suri. Sashanka admitted that on 27.04.2019, when Prakash had come at Hyderabad, she and Ku. Sameera had gone to Hyderabad in a car with Pawan and Suri.

23. Dr. Shamama Subuhi was examined by Sashanka as her witness who deposed that she examined Ku. Sameera at the instance of Sashanka on 11.05.2019. Sashanka had shown pathology reports of Ku. Sameera which were suggestive of rickets. On examination of Ku. Sameera, she was of the opinion that Ku. Sameera was suffering from genu valgum. So she advised Vitamin D supplementation for three months. She also advised calcium supplementation for three months. In

her cross-examination, she was confronted with Exhibit 318, a prescription given by her to Ku. Sameera wherein a clinical note was : “VITAMIN D3 LEVEL IS LOW-7.06 RIGHT genu valgum +” and diagnosis “[1456] RICKETS O”. She admitted that on examination of Ku. Sameera and diagnosing her to be suffering from genu valgum, she noticed bowing of legs of Ku. Sameera which is called as knock knees. Bowing of right knee was more. She also admitted that if the problem of genu valgum and rickets and knock knees is not treated properly then it may lead to difficulty in walking. She was also shown Exhibit 316 which was medical certificate issued by Dr. Viraj Shingade, M.D. (Pediatric Ortho). She agreed with the medical certificate. She admitted that except prescribing calcium supplement and medicines for deficiency of Vitamin-D, she did not prescribe any other medicine for Ku. Sameera. So also, she did not prescribe any physiotherapy. She did not refer Ku. Sameera to Pediatric Ortho as she had already come with reports of Pediatric Ortho. She accepted that Ku. Sameera was required to be referred to and to be under supervision of Pediatric Ortho. She admitted that Ku. Sameera is also suffering from Ortho deficiency and only Pediatric Ortho can decide whether genu valgum or knock knee require any surgical management or not.

24. The learned Family Court on appreciating evidence came to the conclusion that both the parties tried to create suspicious circumstances about family background of each other. It is also observed that father and sister of Prakash had shown their willingness to perform pecuniary and non pecuniary obligations towards Ku. Sameera. On the other hand, no family member of parental side of Sashanka entered into witness box to show their readiness and willingness to perform at least non pecuniary obligations towards Ku. Sameera. Taking into consideration the cross-examination of Sashanka, particularly, in respect of her thinking of shifting to Hyderabad for job, the learned trial Court was convinced that Sashanka was not happy to reside at her parental house at Rajahmundry. Learned trial Court found favour with the evidence of Prakash and his witnesses that Prakash was taking care of Ku. Sameera by preparing her, by dropping and picking her up at school. Prakash used to encourage her to participate in sporting activities such as Swimming, Lawn Tennis and Squash. His witness i.e. his father, sister and two friends Rohit and Ramesh supported his case that he was performing the non-pecuniary obligations also towards Ku. Sameera during cohabitation with Sashanka. The evidence of Prakash and his witnesses that Sashanka was reluctant to perform her duties towards Ku.

Sameera during their cohabitation at Nagpur was also accepted by learned trial Court. The learned trial Court, therefore, taking into consideration the fact that Ku. Sameera needs proper medical treatment for knock knee and genu valgum under the continuous supervision of Paediatrics, Paediatrics Ortho and Physiotherapist, came to the conclusion that in the interest of welfare of Ku. Sameera, her custody needs to be given to Prakash, her father. Hence, the learned Trial Court has granted her custody to father Prakash.

25. Though number of Judgments of Supreme Court as well as various High Courts are cited by the appellant on the point that in the matters of custody welfare of minor is paramount consideration, it is not necessary to refer to each and every decision as this legal position is well settled by the Hon'ble Supreme Court in catena of decisions. The Hon'ble Supreme Court in ***Gaurav Nagpal ..Vs.. Sumedha Nagpal, 2009(1) SCC 42***, set out the principles in relation to the custody of minor child in following terms ;

*43. The principles in relation to the custody of a minor child are well settled. In determining the question as to who should be given custody of a minor child, the paramount consideration is the "welfare of the child" and not rights of the parents under a statute for the time being in force.*

44. *The aforesaid statutory provisions came up for consideration before Courts in India in several cases. Let us deal with few decisions wherein the courts have applied the principles relating to grant of custody of minor children by taking into account their interest and well-being as paramount consideration.*

45. *In Saraswathibai Shripad Ved v. Shripad VasANJI Ved, the High Court of Bombay stated : (AIR p. 105)*

*"... It is not the welfare of the father, nor the welfare of the mother, that is the paramount consideration for the Court. It is the welfare of the minor and the minor alone which is the paramount consideration...."*

*(emphasis supplied)*

46. *In Rosy Jacob v. Jacob A. Chakramakkal, this Court held that object and purpose of 1890 Act is not merely physical custody of the minor but due protection of the rights of ward's health, maintenance and education. The power and duty of the Court under the Act is the welfare of minor. In considering the question of welfare of minor, due regard has of course to be given to the right of the father as natural guardian but if the custody of the father cannot promote the welfare of the children, he may be refused such guardianship.*

47. *Again, in Thrity Hoshie Dolikuka v. Hoshiam Shavaksha Dolikuka, this Court reiterated that the only consideration of the Court in deciding the question of custody of minor should be the welfare and interest of the minor. And it is the special duty and responsibility of the Court. Mature thinking is indeed necessary in such situation to decide what will ensure to the benefit and welfare of the child.*

48. *Merely because there is no defect in his personal care and his attachment for his children--which every normal parent has, he would not be granted custody. Simply because the father loves his children and is not shown to be otherwise undesirable does not necessarily lead to the conclusion that the welfare of the children would be better promoted by granting their custody to him. Children are not mere chattels*

*nor are they toys for their parents. Absolute right of parents over the destinies and the lives of their children, in the modern changed social conditions must yield to the considerations of their welfare as human beings so that they may grow up in a normal balanced manner to be useful members of the society and the guardian court in case of a dispute between the mother and the father, is expected to strike a just and proper balance between the requirements of welfare of the minor children and the rights of their respective parents over them.*

49. *In Surinder Kaur Sandhu v. Harbax Singh Sandhu, this Court held that Section 6 of the Act constitutes father as a natural guardian of a minor son. But that provision cannot supersede the paramount consideration as to what is conducive to the welfare of the minor. [See also Elizabeth Dinshaw v. Arvand M. Dinshaw, Chandrakala Menon v. Vipin Menon (Capt)].*

50. *When the court is confronted with conflicting demands made by the parents, each time it has to justify the demands. The Court has not only to look at the issue on legalistic basis, in such matters human angles are relevant for deciding those issues. The court then does not give emphasis on what the parties say, it has to exercise a jurisdiction which is aimed at the welfare of the minor. As observed recently in Mousami Moitra Ganguli's case, the Court has to due weightage to the child's ordinary contentment, health, education, intellectual development and favourable surroundings but over and above physical comforts, the moral and ethical values have also to be noted. They are equal if not more important than the others.*

51. *The word "welfare" used in Section 13 of the Act has to be construed literally and must be taken in its widest sense. The moral and ethical welfare of the child must also weigh with the Court as well as its physical well being. Though the provisions of the special statutes which govern the rights of the parents or guardians may be taken into consideration, there is nothing which can stand in the way of the Court exercising its parens patriae jurisdiction arising in such cases.*

26. The evidence on record reveals that Sashanka has failed to take proper care of Ku. Sameera since beginning. The admissions given by Sashanka in her cross-examination disclose her irresponsible behaviour. She is oblivious about ailments suffered by her daughter Sameera. She has not taken care to take Ku. Sameera to any Pediatric Ortho Doctor even after coming to know that Ku. Sameera is suffering from knock knee problem. Even during her stay at Rajahmundry for a period of about three years, she failed to take proper care of Ku. Sameera, she also failed to provide proper medical treatment to Ku. Sameera. Father and brother of Sashanka don't seem to be well educated and they are facing criminal cases. The atmosphere at the maternal home of mother Sashanka does not seem to be conducive for proper upbringing of Ku. Sameera. Repeated flouting of Court orders to hand over interim custody of Ku. Sameera to Prakash by Sashanka also weighs against her.

It is a matter of record and accepted position by Sashanka in cross-examination in that she has disobeyed the orders of the Family Court to hand over the interim custody of Ku. Sameera to Prakash. The directions issued by the Family Court to disclose on affidavit the name

and address of the school in which Ku. Sameera has been admitted, date of her admission, fee structure and other expenses of Ku. Sameera from where Sashanka is arranging to meet the expenses, to give the details of food provided to Ku. Sameera and medical treatment provided to Ku. Sameera along with progress in respect of her health, the address where Ku. Sameera is residing are not complied by Sashanka. These are material aspects in respect of welfare of Ku. Sameera, however, Sashanka has disobeyed the orders of the Family Court. These factors also according to us go against her while deciding the custody of Ku. Sameera. This is despite the fact that the appellant is the mother of the minor.

27. On the other hand, Prakash and his father Balkrishna are lawyers and they are financially well off. We are not basing our conclusion only by taking into consideration the better financial position of father Prakash but it is one of the factors amongst others. Prakash and his parents seem to be well educated and they can give better upbringing to Ku. Sameera and give her better education and look after her physically as well as mentally. Prakash has provided expert medical treatment through Pediatric Ortho Doctors to Ku. Sameera to treat her knock knee problem. Welfare of Ku. Sameera is dependent on provision

for expert medical treatment. Ku. Sameera cannot be allowed to be neglected on this score. The health and comforts of Ku. Sameera can be better looked after by father Prakash and his parents. On comparative assessment of the rival claims for custody of Ku. Sameera invariably points out that welfare of Ku. Sameera would be better sub-served by father Prakash.

Taking into consideration the evidence on record and after applying the principles in the case of *Gaurav (supra)* to the facts of the present case, we are of the considered view that in the interest of welfare of Ku. Sameera, her custody needs to be with her father Prakash.

28. On a re-appreciation of the entire material on record, we find that the learned Family Court has properly appreciated the evidence and has rightly granted custody of Ku. Sameera to father Prakash. The judgment of the learned Family Court does not suffer from any infirmity and the learned Family Court, according to us was justified in granting custody of Ku. Sameera to father Prakash keeping in mind the welfare of Ku. Sameera. The point is answered accordingly.

29. We hope and trust that grandfather of Ku. Sameera namely Advocate Balkrishna Naidu will honour his statement made before the Family Court about depositing Rs.30,00,000/- to Rs.40,00,000/- in fixed deposit in the name of Ku. Sameera to show his *bona fides*, if her custody is handed over to Prakash and that he will also stand by the statement that he will make arrangements for higher education of Ku. Sameera preferably at UK or America.

30. Taking into consideration the inclination of Ku. Sameera to meet her mother frequently, we are inclined to give additional visiting rights to Sashanka to meet Ku. Sameera every fortnight, for which father Prakash will bear her traveling and staying expenses at Nagpur. Hence, we pass the following order :

**ORDER**

i) The finding recorded by the Family Court of granting custody of Ku. Sameera to Prakash is maintained.

ii) While maintaining the directions issued with regard to the interim custody of Ku. Sameera granted by the learned Family Court during 50% of the Winter and Summer vacations, Sashanka will be entitled to meet Ku. Sameera on the 2<sup>nd</sup> and 4<sup>th</sup> Sunday of every month

between 10.00 am to 5.00 pm at Nagpur.

iii) Prakash will bear the expenses of traveling and accommodation of Sashanka for this purpose.

iv) Sashanka will also be entitled to have video calling and telephonic conversation with Ku. Sameera on every evening, subject to availability of Ku. Sameera.

v) The Family Court Appeal is dismissed subject to aforesaid modifications. Pending civil applications are also disposed of. Parties shall bear their own costs.

(N. B. SURYAWANSHI, J.)

(A. S. CHANDURKAR, J.)

TAMBE