

**8 SCOB [2016] AD 134****APPELLATE DIVISION****PRESENT:**

**Mr. Justice Surendra Kumar Sinha,**  
**Chief Justice**

**Ms. Justice Nazmun Ara Sultana**  
**Mr. Justice Syed Mahmud Hossain**  
**Mr. Justice Hasan Foez Siddique**

CIVIL PETITION FOR LEAVE TO APPEAL NO.1474 of 2015

(From the order dated 12.05.2015 passed by the High Court Division in Civil Revision No.8 of 2015.)

**S.A.M.M. Mahbubuddin**

...Petitioner

Versus

**Laila Fatema**

...Respondent

For the Petitioner : Mrs. Fawzia Karim Firoz, Advocate instructed by Shahanara Begum, Advocate-on-Record.

For the Respondent :Mr. Yusuf Hossain Humaiyun, Senior Advocate with Mr. A. M. Aminuddin, Advocate instructed by Mr. Taufique Hossain, Advocate-on-Record.

Date of hearing and judgment : 28.05.2015.

**Custody of Minor:**

**Considering the facts and circumstances- especially the facts that minor S.A.M.M. Zohaibuddin has already attained the age of almost 7 years and he is now residing along with his ailing elder brother in his father's house and is being taken good care of by his father, grandfather and grandmother, we are inclined to allow the prayer of the leave-petitioner to retain the custody of his minor son S.A.M.M. Zohaibuddin till disposal of Family Suit. ... (Para 6)**

**Judgment****Nazmun Ara Sultana, J:**

1. This Civil Petition for Leave to Appeal is directed against the order dated 12.05.2015 passed by the High Court Division in Civil Revision No.8 of 2015 rejecting an application of this leave-petitioner S.A.M.M. Mahbubuddin praying to retain the custody of his minor son S.A.M.M. Zohaibuddin till disposal of Family Suit No.175 of 2010 pending in 5<sup>th</sup> Court of Additional Assistant Judge, Dhaka.

2. The facts necessary for disposal of this civil petition for leave to appeal, in short, are that the petitioner and the respondent Laila Fatema got themselves married on 21.10.2000 and out of their wedlock two sons were born. But their conjugal life was not happy and ultimately they got separated and the leave-petitioner divorced her also. It has been stated that she has already got herself married again with one Wares Ahmed on 08.09.2009. Their elder son has been residing with the leave-petitioner, but the younger one S.A.M.M. Zohaibuddin was in custody of his mother. The leave-petitioner then filed Family Suit No.175 of 2010 praying for custody of his minor son S.A.M.M. Zohaibuddin which is still pending. Ultimately in Writ Petition No.2966 of 2010 filed by this present leave-petitioner an order was made by the High Court Division allowing the parents of this leave-petitioner to take minor S.A.M.M. Zohaibuddin at 11.00 A.M. and keep him in their custody till 6.00 P.M. everyday which was ultimately affirmed by the Appellate Division in Civil Petition for Leave to Appeal No.400 of 2011 with modification that

the said order will remain in force till disposal of the Family Suit No.175 of 2010. In the meantime, in Family Suit No.175 of 2010, the defendant Laila Fatema prayed for an order for keeping the minor S.A.M.M. Zohaibuddin in the custody of his father for two months which was refused by the courts below but ultimately in Civil Revision No.8 of 2015, the High Court Division, by the order dated 13.01.2014, gave the custody of the minor son to his father-the leave-petitioner for a period of 2 months. While the minor son thus was in the custody of his father-the leave-petitioner by the order of the court this leave-petitioner filed an application before the High Court Division in that Civil Revision No.8 of 2015 praying for retaining the custody of his minor son S.A.M.M. Zohaibuddin till disposal of Family Suit No.175 of 2010, but the High Court Division, by the impugned order, rejected that application on the ground that the dispute with regard to the custody of the minor S.A.M.M. Zohaibuddin has already been decided by the Appellate Division in Civil Petition for Leave to Appeal No.400 of 2011.

3. Being aggrieved by this order of the High Court Division the father of the minor has preferred this civil petition for leave to appeal.

4. Mrs. Fawzia Karim Firoze, the learned Advocate appearing for the leave-petitioner has made submissions to the effect that the minor S.A.M.M. Zohaibuddin is quite happy with living with his father and the elder brother, who is now sick due to mental agony for the separation of his parents and that having his younger brother with him he is also happy now and that the grandfather and grandmother of these minor sons also have been residing with them and taking good care of the minors. Mrs. Fawzia Karim Firoze has made submissions also to the effect that under the changed circumstances, where the mother of the minor herself kept the minor son in the custody of his father and where this minor son and also his elder brother are very much happy residing together with their father and grandfather and grandmother in the same house, they may be allowed to remain as such for the sake of their own welfare. Mrs. Fawzia Karim has made submissions to the effect also that the minor S.A.M.M. Zohaibuddin has attained the age of about 7 years by now and considering the changed facts and circumstances he may now be allowed to reside in his father's house under his custody till disposal of the family suit.

5. We have also heard Mr. Yusuf Hossain Humaiyun and Mr. A. M. Aminuddin, the learned Counsel for the respondents Lila Fatema.

6. Considering the facts and circumstances- especially the facts that minor S.A.M.M. Zohaibuddin has already attained the age of almost 7 years and he is now residing along with his ailing elder brother in his father's house and is being taken good care of by his father, grandfather and grandmother, we are inclined to allow the prayer of the leave-petitioner to retain the custody of his minor son S.A.M.M. Zohaibuddin till disposal of Family Suit No.175 of 2010 pending in the 5<sup>th</sup> Court of Additional Assistant Judge, Dhaka.

7. So, minor S.A.M.M. Zohaibuddin will remain in the custody of his father-the leave-petitioner till disposal of Family Suit No.175 of 2010 pending in the 5<sup>th</sup> Court of Additional Assistant Judge, Dhaka. However, the respondent Laila Fatema-the mother of the minor shall have liberty to take the minor S.A.M.M. Zohaibuddin at 10.00 A.M. on Friday and keep him in her custody till 6.00 P.M. of Saturday every week till disposal of Family Suit No.175 of 2010.

8. The previous order of this Division dated 26.05.2011 passed in Civil Petition for Leave to Appeal No.400 of 2011 thus stands modified.