

Assam Schedule VIII. Form No. 143
High Court Form No. (J) 13

ORDER-SHEET FOR CIVIL COURT

DISTRICT : SONITPUR

IN THE COURT OF THE DISTRICT JUDGE, SONITPUR, TEZPUR

Misc. (J) Case No. 33 of 2021 (Arising out of T.S. (M) No. 169/2019)

Smti Amrita Jaishi

Vs

Sri Sanjay Sharma

Serial No. of Orders	Date	Order	Signature
	<u>04-01-2022</u>	<p>This is an application u/s 38 of the Special Marriage Act, 1954 praying for a direction to second party to comply the judgment and decree passed by court on 05-11-2020 in respect of the custody of minor girl child Miss Ayesha Sharma.</p> <p>I have heard the learned counsel appearing for the petitioner and decided to dispose the petition today itself.</p> <p>The brief fact of the case is that the petitioner married with the respondent on 11-11-2011 in the Office of Marriage Officer, Tezpur under the provision of Special Marriage Act, 1954 and out of their union a female child was born to them christened as Miss Ayesha Sharma. Subsequently, differences cropped up between them following which petitioner filed an application in court u/s 28 of the Special Marriage Act seeking a decree of divorce on mutual consent.</p> <p>Acting on the said petition the court passed a final order on 05-11-2020 on condition that the daughter will remain in the custody of mother and father will pay Rs. 7,000/- (Rupees Seven Thousand) in the bank account to be managed by mother of the girl towards upkeep and education of the girl with further condition that father will</p>	

be at liberty to visit his daughter whenever he desires but wife shall not claim any maintenance.

However, it is alleged that after the decree of divorce on mutual consent on the aforesaid condition in one occasion the girl child was taken by the brother of her father (respondent) at the behest of her father and wrongfully kept her confined alone in the hostel in the name of providing her education without taking any consent from her mother. Therefore, mother filed the present petition u/s 38 of Special Marriage Act, 1954 praying for the direction to second party to comply the judgment and decree passed by court on 05-11-2020 in respect of the custody of minor girl child **Miss Ayesha Sharma.**

After filing the petition, notice was issued to the second party Sanjay Sharma (father) but in spite of having received the same by his brother none appeared in court to contest the case.

Now, having taken into consideration the facts highlighted in the petition it is apparent that in the face of the decree of the court the girl child has been taken by the father through his brother from the custody of the mother without her consent and put in a hostel without proper care and attention. In terms of judgment and decree of court the girl child is in the custody of her mother with a rider to her father to see her occasionally when he desires. But, taking the girl without the consent of the mother is against the order of the court. More so, the girl is in need of care and attention as she is still in the formative stage and under such circumstances mother is the right person to take care of all her need for all-round development. Father being in service and posted in far flung corner of the country do not have the opportunity to take personal

care of the girl.

In the above backdrop, the prayer of the petitioner is allowed. Accordingly, the second party is directed to give immediate custody of the minor girl Ayesha Sharma to her mother without causing any harm to her and continue to make payment of Rs. 7,000/- for upbringing and education of the girl under the custody of her mother with liberty to visit the girl as and when desired by him.

The petition is accordingly disposed off.

(C.B.Gogoi)
District Judge
Sonitpur, Tezpur.