

Rohit Ghuge

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**FAMILY COURT APPEAL NO. 111 OF 2026**

ROHIT  
RAMDAS  
GHUGE

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ROHIT RAMDAS  
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Date: 2026.09.23  
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Rashmi Ravindra Joshi  
Age: 45 years, Occupation: Service,  
Residing at C/o. Ravindra Joshi  
D-36, Suvarna Apartments,  
S. No. 80/90, Lokmanya Housing,  
Colony, Kothrud, Pune – 411 038

And

Presently R/a Flat No. 4, Ground  
Floor Bldg. No. 25, Renuka Hsg. Soc.,  
Scheme 10, Sector 21, Yamunanagar,  
Nigdi PCMC, Pune 411 044

...Appellant

**Versus**

Niranjan Satish Oak  
Age: 47 years, Occupation: Service,  
Residing at Sangita Satish Oak,  
B-1/501, Yellow Blossom Society,  
B.T. Kawde Road, Ghorpadi,  
Pune 411 036.

...Respondent

**WITH  
INTERIM APPLICATION NO. 6612 OF 2026  
IN  
FAMILY COURT APPEAL NO. 111 OF 2026**

Rashmi Ravindra Joshi  
Age: 45 years, Occupation: Service,  
Residing at C/o. Ravindra Joshi  
D-36, Suvarna Apartments,  
S. No. 80/90, Lokmanya Housing,  
Colony, Kothrud, Pune – 411 038

And

Presently R/a Flat No. 4, Ground  
Floor Bldg. No. 25, Renuka Hsg. Soc.,  
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Nigdi PCMC, Pune 411 044

...Applicant

*Versus*

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Age: 47 years, Occupation: Service,  
Residing at Sangita Satish Oak,  
B-1/501, Yellow Blossom Society,  
B.T. Kawde Road, Ghorpadi,  
Pune 411 036.

...Respondent

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Ms. Seema Sarnaik, Senior Advocate i/b Adv. Sangeeta Salvi a/w Ms.  
Pooja Chettier and Ms. Sangita Kalsekar, Advocates for the Appellant.

Ms. Padmini Pathak a/w P. K. Hartalkar i/b Mr. Tejas P. Hartalkar a/w Mr.  
Mehul P. Hartalkar, Advocate for Respondent.

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***CORAM: BHARATI DANGRE &  
ASHISH S CHAVAN, JJ.***

***DATE : 11<sup>th</sup> SEPTEMBER 2026.***

***JUDGMENT (Per Ashish S. Chavan, J.):***

1. By way of this Appeal, the Appellant mother has assailed the order of the Family Court, Pune dated 1.07.2026 (“**impugned order**”) which *inter alia* directs the Appellant to handover custody of her minor daughter aged 14 years to the biological father-Respondent within a period of 2 months from the date of order. Although, the Family Court has passed several other directions, the challenge in the present Appeal is to the limited extent of the custody of the minor daughter being handed

over to the Respondent.

2. A brief background along with a short chronology of events which are germane to decide the controversy that arises before us is as follows:

2.1. The marriage between the Appellant mother and Respondent father was solemnized on 17.01.2012. On 13.10.2012, their minor daughter was born. Although, it is the case of the Appellant that she was constrained to leave the matrimonial house on 19.09.2012, it is an undisputed position that since her birth, the daughter was in the custody of the Appellant-mother.

2.2. On 10.06.2013, the Respondent-father filed a Petition for divorce u/s 27 (1) (d) of Special Marriage Act, invoking Sec 38 thereof to seek custody of his daughter.

2.3. On 15.12.2016, the Appellant and the Respondent, *inter se* resolved their disputes and executed consent terms. The consent terms stipulated that permanent one time alimony of Rs. 3,00,000/- was to be paid by the Respondent father to the Appellant mother and the visitation rights of the Respondent father were set out while mutually agreeing that the custody of their daughter shall be with the Appellant-mother until she attained majority. By judgment and decree dated 18.01.2017, the Family Court, Pune granted divorce to the Appellant and the

Respondent in terms of the aforesaid consent terms and the marriage stood dissolved between them.

2.4. On 08.02.2019, Respondent father sought modification of the judgment and decree dated 18.01.2017 and also sought custody of his minor daughter by way of an Application numbered as PD No. 8/2019 before the Family Court. On 10.07.2019, the Appellant mother filed Civil Miscellaneous Application No. 67/2019 seeking to modify the judgment and decree dated 18.01.2017 to the extent of the access clause. Both these applications were clubbed by the Family Court and heard together.

2.5. On 06.07.2023, the Appellant mother filed an application u/s 125 of CrPC. claiming maintenance for the minor daughter.

2.6. On 16.03.2026, the Appellant got married for the second time. It is pertinent to note that after her marriage, the Appellant has moved to the house of her husband along with the minor daughter.

3. The Family Court has decided all the pending applications and passed a composite order on 01.07.2026. The Appellant mother by way of this Appeal has taken exception to the aforesaid impugned order to the extent of laying a challenge to Clause Nos. 1 & 4 of the order which

are reproduced as under:

*“1. “D” Petition No. 8/2019 is allowed.*

*XXX*

*4. Respondent/quondam wife/Mother Rashmi is hereby directed to hand over the custody of minor daughter Mihika to the biological father- Niranjan Oak, within a period of two month from the date of this Judgment.”*

4. Since, the Appellant mother is essentially challenging the handing over of the custody of her minor daughter to the Respondent father, we do not deem it appropriate to advert to the other disputes between the parties.

5. On behalf of the Appellant mother, the impugned order is assailed on several grounds. It is contended that, the Family Court has erred in holding that the Respondent father is entitled for permanent custody of minor Daughter only on the premise that the Appellant has re-married and that the present husband already has two daughters from his earlier marriage. It is also contended that, the Family Court has not considered the fact that the Respondent father had not led any evidence on the aspect of the second marriage of the Appellant and more particularly his allegation that the minor child was unsafe in the changed atmosphere in the new house and in the company of the new family. It is also urged that there was no material produced before the Family Court to demonstrate that the minor was under pressure or unhappy with the Appellant and

her new family. It is also contended that on the contrary, prior to her getting married for a second time, the Appellant had taken into confidence her daughter and the daughters of her prospective husband to ensure that the transition of her daughter into the new family would be smooth and natural.

The Ld. Senior Advocate for the Appellant also criticized the order of the Family Court on the ground that the primary consideration of the Family Court in granting the custody to the father is not the welfare of the child but the fact that he is the biological father and only for this reason, the welfare of the minor child would necessarily be taken care of by him. The Ld. Senior Advocate also pointed out that during her interview with the Family Court on 04.02.2026, the daughter had informed the Judge that she wished to stay with her mother and her new family and that she and her step sisters were sharing the same bedroom and that she was happy with her new family. It was further contended that the Family Court was in error in not considering the fact that the Respondent father is staying with his aged father who is himself 74 years old. There is no female member in the house to take care of the adolescent daughter. The Respondent's sister who is staying in the same complex is at present suffering from cancer and has admitted her own daughter to a hostel. It was contended that these aspects would disentitle the Respondent father from claiming custody of the daughter as he

would not be able to give her a conducive atmosphere for her overall growth. Lastly, the reasoning of the Family Court is assailed on behalf of the Appellant on the ground that speculative, extraneous and frivolous justifications were given by the Family Court to modify the divorce decree which was granted by consent.

6. On behalf of the Respondent-father, the impugned order is defended on the strength of various submissions. It is contended that that the re-marriage of the Appellant was an emotionally disturbing event for the daughter, who is an adolescent. It is also contended that she was not taken into confidence by the Appellant before taking this important step which would have multiple ramifications on the emotional aspect of her life. It is also argued that the Appellant mother is not concerned about the well-being of the daughter and this was sought to be highlighted through an incident of May 2026 when allegedly the daughter informed the Respondent father that she was having pain in her leg from 4-5 days and her mother did not take her to a doctor. It is also sought to be contended that the daughter is having difficulty in coping with the new family and due to this mental and psychological disturbance, she is suffering academically. Lastly, it is contended that the handing over of custody to the Respondent father is justified since it is in the best interest of the daughter and during the course of an interaction with the Judge of the Family Court, the daughter expressed a wish to stay

with the father.

7. Before proceeding to deal with the reasoning of the Family Court in the impugned order, it would not be out of place to set out the broad contours of the jurisdictional authority conferred upon the Family Court vide Section 38 of Special Marriage Act, 1954 to make, revoke, suspend or vary the decree and orders pertaining to custody, maintenance and education of minor children. Section 38 is reproduced as under:

*“38. Custody of children- In any proceeding under Chapter V or Chapter VI the District Court may, from time to time, pass such interim orders and make such provisions in the decree as it may seem to it to be just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes wherever possible, and may, after the decree, upon application by petition for the purpose, make, revoke, suspend or vary, from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending.”*

From a plain reading of Section 38, one thing that stands out with clarity is that the overarching consideration in invoking Section 38 is to ensure the welfare of the minor child in consonance with their wishes wherever possible. In the present case, since the daughter whose custody forms the bone of contention between the parties is an adolescent young girl aged 14, the underlying principle of the welfare of the minor child being in consonance with the wishes of the child wherever possible

assumes significance.

8. Although the impugned order covers other disputes set out hereinabove between the parties, since the Appeal has taken exception only to the handing over of the custody of the daughter to the Respondent father, we also deem it appropriate to restrict our findings to examine whether the aforesaid change of custody was based on sound, cogent and logical reasoning and whether it was in the best interest of the minor child and in consonance with her wishes.

9. The Family Court has on one hand observed that the fact that the Appellant mother has married again by itself would not be a factor to determine the custody of the minor child. The impugned order observes that, the conduct of the parties, the reasons which compelled them to dissolve the marital tie, allegations of ill treatment against each other are not important to decide the application for modification of the conditions of custody of the minor child. It also observes that change in school of the child by itself is not a factor to determine the custody, neither is the financial capacity of either of the parties. The tenor of the Judge in the impugned order seems to be that the most important factor in determining the balance of convenience between the contesting parties is the welfare of the minor child. However, we fail to see any *rationale* behind the ultimate finding of the Family Court to handover the custody of the minor daughter to the Respondent father. The only justification

that the Family Court gives in arriving at this conclusion seems to be based on speculative inferences, stereotypical categorization of human relationships, and conjectures. The Family Court concludes that the daughter definitely will experience feelings of insecurity, jealousy or divided loyalties, without assigning any reasons for coming to such a finding. The Judge further observes that parents transition to a new relationship is not easy to accept for children, without any factual finding to support the same. Some of the observations and conclusions of the Family Court given illustratively are as under:

*“47...Judge is also a human being and part of the Society. We need to see the present situation by putting our leg into the shoes of the party. We need to hear unspoken words. Am of the view, if the court deeply consider the entire factual matrix, it would definitely hear the inner voice....Today the personality of Resp. (Appellant) is divided in two parts; one as a mother and another of wife as a wife of Mr. (husband of Appellant mother) ....However, now the core and important issue arose. Now, she has to merge and blend herself in different character. Now, she has to dilute and submerge in another relation. All are stranger to her. We need to consider the emotional clutches faced by her in associating with three strangers...”*

*“48...Would stranger act as a biological father? I may be wrong but, I am of the view that Mr. (husband of Appellant mother)’s love towards his own two daughters definitely would not be the same to (the minor child). In the same line there, is distinction between love of petitioner being biological father towards the (minor child) and love of (husband of Appellant mother) towards the minor child. I reiterate that blood is thicker than water.”*

XXX

*“50...Am not doubting the character of three stranger + divided mother as a well wisher of child but all that glitters is not a gold. Am of the firm view that in such changed situation, bright future of the minor child set only in the lap of her biological father.”*

XXX

*“55. I conclude by way that, in the lap of biological father, I see bright future of young girl. Rather in the company of three stranger/s, she would sleep peacefully in the company of her Dad. Am not suspecting the mother’s love but owing to change circumstances, extended members of the Family, who are totally stranger to the minor child, for the remaining four years period, if she resides with her biological father I see her future safe.”*

10. It is evident from the aforesaid observations that the Family Court was persuaded to hold that the custody ought to be handed over to the Respondent father predominantly on the basis of the fact the minor child would be more comfortable in the company of her biological father and her newly formed family could not give her the same warmth and love. The Family Court seems to have lost sight of the fact that the ingredients of Section 38 of the Special Marriage Act, 1954 rest on the foundational fact of the interest and welfare of the minor child in consonance with their wishes where ever possible. Although the Family Court refers to interacting with the daughter, it does not set out its impressions and observations on interacting with the child. It also seems to have disregarded the settled position of law that post-divorce modifications are to be seen in the perspective of “substantial change in circumstances”.

This is the guiding principle in determining whether alteration of terms ought to be granted or not. In the facts of the present case, the impugned order does not reflect any substantial change in circumstances to necessitate a change in custody of the minor child, especially in the background of the fact that the daughter was staying with the Appellant mother and the Respondent father was granted adequate access and visitation to her as per the consent terms.

11. In order to ascertain the wish of the daughter, we had interacted with her in chambers on 02.09.2026. We noted that she is a mature girl, who was fairly articulate in expressing herself. She expressed her wish to continue staying with the Appellant mother and her new family, whilst continuing to meet her father (Respondent) from time to time. She with clarity expressed before us that she had no difficulty in adjusting or coping with her father, sisters or any other members of the new family and rather she is happy in the new family.

12. In the wake of the aforesaid discussion, we have no hesitation in coming to a conclusion that the impugned order deserves to be set aside.

13. Hence the following order:

i. Family Court Appeal No. 111 of 2026 is allowed.

Impugned order passed by the Family Court, Pune dated 01.07.2026 to the extent of Clauses 1 and 4 is

set aside.

- ii. Since the custody of the minor daughter Mihika is already with the Appellant mother, she is permitted to retain the same. In addition thereto, overnight access/access during school/college vacation may be given to the Respondent father keeping in mind the convenience of the minor daughter .
- iii. The Appellant to continue to grant access of the minor daughter Mihika to Respondent father in terms of the consent terms dated 15/12/2016 .

The accompanying Application for stay does not survive, hence, disposed off.

*ASHISH S. CHAVAN, J.*

*BHARATI DANGRE, J.*