

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6889 of 2013

Smt.Gayatri Gajanan Kulkarni ... Petitioner

V/s.

Gajanan Mahadeo Kulkarni ... Respondent

Mr.S.R.Ganbavle, Advocate for the petitioner.

Mr.Anand Patil, Advocate for the Respondent.

CORAM : SMT.R.P.SONDURBALDOTA,J

DATE : 24th DECEMBER, 2013.

P.C.:-

1 The petitioner wife approaches this Court under Article 227 of the Constitution of India against the order dated 14th May 2013 passed by the Family Court, Kolhapur on her application at Exhibit-6 for interim reliefs. She has filed petition demanding custody of the minor children i.e. daughter aged 12 years and son aged 6 years under section 25 of the Guardians and Wards Act, 1890. The Family Court while dismissing the application has noted that both the

children are properly maintained by their father and also the parents of the petitioner. The parents are residing with the respondent – their son-in-law.

2 The petitioner was married to the respondent on 28th April 2000. From the wed-lock, two children today aged 12 and 6 years are born. The respondent has filed a petition for divorce on the ground that the petitioner is living in adultery. The co-respondent to the petition is the person with whom she has been living. Admittedly, the decision of the petitioner to leave the house was her own decision. Though there is dispute as regards the reason for leaving the house. According to the petitioner, she left the house because it was impossible for her to continue to live in the house with the respondent and suffer harassment from him. Per contra, the case of the respondent is that the petitioner left the house because she wanted to live with the co-respondent to the petition for divorce. For more than one year since then, the children have been living with their father and being looked after by him. There is no dispute that the parents of the petitioner disapprove of her behaviour and have been supporting the respondent. The person with whom the petitioner is allegedly residing is already a married man and having three children. It

appears that he had filed a petition for divorce against his wife. But, that petition was later dismissed for want of prosecution.

3 Considering the situation where the natural mother of the children desires to have their interim custody, I had considered it appropriate to interview the children so as to know their inclination. From the interview, it became glaringly clear is that the children have no desire whatsoever to even meet the petitioner. It appears that they are witnesses to the conduct on the part of the petitioner as alleged by the respondent. The younger child, son aged 6 years was present in the house when the petitioner left the house. In these circumstances, in my opinion, the Family Court has taken a correct decision of dismissing the petitioner's application for interim custody of the children. The Writ Petition is therefore, dismissed in limine.

(SMT.R.P.SONDURBALDOTA,J)