

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

FAMILY COURT APPEAL NO.10 OF 2014

Ratan S/o Anandrao Suradkar
Age 53 years, Occu. Service,
R/o. Newasa (Tahsil Office), Tq. Newasa,
Dist. Ahmednagar.

.. APPELLANT
(Orig. Petitioner)

VERSUS

Smt. Bharati W/o Ratan Suradkar,
Age 34 years, Occu. Household
R/o – C/o Satish Nathaji Sasane,
Plot No..391, 392, Eknath Nagar,
Aurangabad.

.. RESPONDENTS
(Orig. Respondent)

Mr. P.S. Paranjape, Advocate for Appellant;
Mr. Rahul O. Awasarmal, Advocate for Respondent.

**CORAM : R.M.BORDE &
P.R.BORA,JJ.**

DATE : 13th July, 2015.

Per Court:

1) Judgment and order passed by the Principal Judge, Family Court at Aurangabad in Petition No.D-13/2010 on 05.03.2014 is questioned in the present Appeal.

2) The said Petition was filed by the Appellant seeking custody of his two minor children invoking the provisions under section 25 of the Guardians and Wards Act . It was the contention of the Appellant before the Family Court that, for the welfare of the

children it was necessary to give him the custody of his minor children. The Petition was opposed by the Respondent. Both the parties adduced evidence before the Family Court. The learned Judge of the Family Court after assessing the oral and documentary evidence, brought before him, dismissed the Petition.

4) On 08.07.2015, when the present appeal was taken for hearing, we felt, the minor children should be heard before deciding the appeal, since their welfare was the paramount consideration. As such, to ascertain the wishes of both the minor children, they were directed to be kept present in the Court on 13.07.2015. Accordingly, both the children were brought before us and we tried to ascertain from them as to with whom they would like to reside in future. Both the children were independently interviewed by us. We noticed that, both are reluctant to reside with their father i.e. the present Appellant and desire to be with their mother. Elder child Ku. Sumedha is presently of 16 years of age and is studying in 12th standard. She appeared to be capable of forming an opinion and possesses the adequate maturity to take the decision also. Son Jeevak is also 13 years old and it transpired from the talk with him that, he had never stayed with his father in the past and as such, he was also found to be unwilling to stay with his father in future.

5) In view of the fact that, both the minor children are not at all willing to go and stay with their father, we do not see any propriety in compelling them to reside with their father, even if it is assumed that, in comparison to the respondent-mother, the appellant can better maintain the children. The question is not of providing better clothes, better food or better education facilities, the paramount consideration is, with whom the children will be more happy and comfortable. After having interviewed the children, there is no doubt in our mind that, children will not be comfortable and happy in the company of their father.

6) In the above circumstances, without going into the merits of the issues raised in the present appeal, we dismissed the present appeal.

(P.R.BORA)
JUDGE

(R.M.BORDE)
JUDGE

S.P. Rane