

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 5 OF 2015

IBRAHIM SHAH.

... Petitioner

Versus

SAMIRA IBRAHIM SHAH AND ANR.,

... Respondents

Mr. Shashikant Narayan Joshi, Advocate for the Petitioner.

Coram:- N. M. JAMDAR, J.

Date:- 28th January, 2015

ORAL ORDER:

The petitioner challenges the order dated 28/11/2014 passed by the learned Civil Judge, Sr. Division, Margao, recalling the earlier order dated 20/9/2013.

2. By the order dated 20/9/2013, the respondent, who is the wife of the petitioner was directed to hand over the custody of the child to the petitioner. Thereafter, an application was made by the respondent no.1 to the learned Civil Judge for recalling the order on the ground that it was passed ex pare. The learned Civil Judge found that the petition was filed on 16/9/2013, the respondent no.1, who resides in Gulf was to show cause on 17/9/2013 and thereafter, on 19/1/2013, it was recorded that she was duly served by e-mail. The order came to be passed on the next date i.e. on 20/9/2013. The order was passed on

the Affidavit of the petitioner that the respondent is served by e-mail of her employer. In the circumstances, the learned Civil Judge recalled his order dated 20/9/2013. Considering the nature of the proceeding and that the petitioner is the mother of the child, whose custody is at stake, no perversity or error is found in the approach of the learned Civil Judge.

2. The learned counsel for the petitioner submitted that by the impugned order what is done is only recalling of the earlier order, however, there is no positive direction to the petitioner to hand over the custody of the child to the respondent. In spite of the same, the respondent has applied for police protection to take custody of the child from the petitioner. A perusal of the impugned order shows that there is no direction as to with whom the custody shall remain. The learned Civil Judge will have to consider the issue of custody of the child on merits and pass an appropriate order to that effect after considering in whose custody the child shall remain either with the petitioner or the respondent no.1. The learned Civil Judge will have to consider the rival contentions and welfare of the child, which from the record it appears that no direction is given.

3. In view of the above position, no interference is called for in the impugned order. All the contentions of both the parties as regards custody of the child are kept open to be agitated before the learned Civil Judge. Revision application is accordingly dismissed.

4. Authenticated copy of this order be issued to the parties.

N. M. JAMDAR, J.

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