

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

MISC. CIVIL APPLICATION NO.168/2015

Pitter Laxman Bhosale & Ors.

...Applicants

V/s.

Prashant Lucas Barve

...Respondent

Mr. Sandeep Ladda a/w. Shaver Mukri for the Applicant.

Mr. Udayan Jain with Pardhi Vora i/b. Jayashree Tripathi for the Respondent.

CORAM: K.K. TATED, J.

DATED : OCTOBER 29, 2015

PC. :

1. Heard the learned counsel for the parties. This Application is filed by the maternal grand father of minor child Aaran Prashant Barve, Aged 3 years, for transfer of custody petition filed by the Respondent-father before the District Court Pune being Application No.69/2015 under section 25 of the Guardians and Wards Act, 1890 to the District Court at Srirampur.

2. The learned counsel for the Applicant submits that the Respondent is facing trial under section 498-A, 306, 304-B, 329, 504 read with section 34 of the Indian Penal Code. He submits that the Respondent was in custody since 06/07/2013. He submits that from the date of accident which occurred on 05/07/2013, the minor Aaran is staying with the Applicants at Srirampur. He submits that the

Applicants filed an Application for maintenance on behalf of minor child being Misc. Civil Application No.491/2014 in the court of Judicial Magistrate, First Class, Srirampur and same is pending for final hearing and disposal on merits. He submits that the Respondent has been attending the said matter. The Respondent filed his reply in that matter. He submits that the Applicant Nos.1 and 2 i.e. maternal grand parents of minor Aaran are senior citizen. It is very difficult for them to travel from Srirampur to Pune to attend on each and every date in the custody petition filed by the Respondent. He submits that the minor Aaran is taking education at Srirampur, therefore, it is very difficult to take minor Aaran to Pune to attend the matter. Hence, in the interest of justice, this Hon'ble Court be pleased to transfer the custody petition filed by the Respondent at Pune to the District Court Srirampur for hearing on its own merits. He submits that if the Application is not allowed, irreparable loss will cause to the Applicant and particularly to the minor child of aged 3 years.

3. On the other hand, the learned counsel for the Respondent vehemently opposed the Application. The Respondent filed Affidavit-in-Reply dated 26/10/2015. The learned counsel for the Respondent submits that the Applicant filed the present Application for transfer with *mala fide* intention to prolong the custody petition filed by the Respondent in the District Court Pune. He submits that the distance between Pune and Srirampur is not more than 200 km. He submits that all transport facilities are available from Srirampur to Pune. He further submits that the Respondent being father of minor child is entitled to custody. He submits that the Applicant unlawfully taken the

custody of his minor child on 05/07/2013 when the Respondent's wife died at Pune. He further submits that the Applicants are not in a position to take proper care of the child. Hence, they filed an Application for maintenance. He submits that though the Trial Court has not passed any order directing him to pay maintenance charges, the Respondent on his own, paying Rs.1000/- pm to the Applicants as and when he attends the court at Srirampur. The Applicants have already issued receipts to that effect. He further submits that if the matter is transferred from Pune to the Srirampur, it will cause inconvenience to the Respondent. Hence, there is no substance in the Application and same be dismissed with costs.

4. Heard both sides at length. It is to be noted that the minor child Aaran is staying with the Applicants since 05/07/2013 who is taking education at Srirampur. The maternal grand parents of the minor are senior citizen.

5. Considering the reasons given by the Applicants in the Application and as the maintenance Application filed by the Applicants is already pending in Srirampur court where the Respondent is attending the matter, I am of the opinion that the custody petition filed by the Respondent can be transferred to Srirampur for hearing on its own merits.

6. Considering the rival contentions of both the parties, I am of the opinion that the hearing of the custody petition filed by the Respondent is required to be decided as early as possible.

7. Hence, the following order is passed:
- a. Office of District Court Pune is directed to transfer the custody petition being Application No.69/2015 filed by the Applicant Pitter Laxman Bhosale under section 25 of the Guardians and Wards Act, 1890 to the District Court at Srirampur for hearing and final disposal on its own merits.
 - b. Hearing of the Application No.69/2015 is expedited.
 - c. This court expects that the District Court Srirampur would decide the Application No.69/2015 filed by the Respondent under section 25 of the Guardians and Wards Act, 1890 as early as possible but in any case within 9 months from the date of receipt of copy of this order.
 - d. Misc. Civil Application stands disposed off accordingly.

(K.K. TATED, J.)