

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR.**

**C.R.A. No.13 of 2015**  
**(Manik s/o. Narayanrao Ladekar .vs. Harshal s/o. Ganesh Ladekar and**  
**anr.)**

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's Orders.

Court's or Judge's orders.

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**CORAM** : A.P.BHANGALE, J.

**DATED** : 8<sup>th</sup> JUNE, 2015.

Heard.

This application was filed by the applicant (original respondent) in the Petition No.C-63/2013 pending before the Family Court No.4, Nagpur. The revision applicant seeks to challenge legality, propriety and correctness of the order dt.17.10.2014, which appears to be an ad interim order rejecting the application moved by respondent no.1 in the Family Court. According to respondent no.1 (revision applicant herein), the maternal grandfather who is in de-facto custody of minors Harshal s/o.Ganesh Ladekar and Jotsana d/o. Ganesh Ladekar, the revision applicant is paternal grandfather of minors while the petitioner in the Family Court appears maternal grandfather of minors. According to the revision applicant, maternal grandfather who filed petition for maintenance of minors did not obtain prior permission from the Family Court to file the petition. It is also contended that the maternal grandfather obtained

custody of minor children by illegal means and with mala fide intention and therefore, the petition was not maintainable.

The learned Counsel for the revision applicant relied upon Sections 21, 22 and 23 of the Hindu Adoption and Maintenance Act, 1956. He did not dispute that minors Harshal and Jotsana are dependents within the meaning of Section 21 of the Act after they lost their father. Further, according to the revision applicant, maintenance of Harshal and Jotsana cannot be insisted upon from the revision applicant because he had not inherited estate of deceased Ganesh and therefore, the petition was not maintainable. Provision of sub-section (1) of Section 22 of the Hindu Adoption and Maintenance Act, 1956 is subject to sub-section (2) thereof. Sub-section (2) of Section 22 is by way of clarification that where the dependent has not obtained any share in the estate of the Hindu who died after 1956 (after the date of commencement of the Act), the dependent shall be entitled for maintenance amount from those who take the estate. The right of minors to be maintained is subject to the provisions of the Hindu Adoption and Maintenance Act, 1956. The amount of maintenance is discretionary and the Family Court can grant the amount by exercise of discretion as contemplated u/s.23 of the said Act. Thus, according to the learned Counsel for the revision applicant, the Family Court ought to have dismissed the petition on the ground

that the petitioner did not obtain prior permission from the Family Court before filing of the petition in the Family Court and also while challenge to the legality of custody of minors with the petitioner was raised.

Learned Counsel for the respondent supported the impugned order, which is interim in nature and prayed for dismissal of this Revision Application on the ground that the minors are entitled to remain in custody of their maternal grandfather; particularly when minor Harshal is reportedly to be suffering from HIV. It is further submitted that, according to the revision applicant, the property purchased in the name of minor Harshal is in possession and used by the revision applicant. Under these circumstances, as long as it is minor's property (though assuming that it is benami purchased in the minor's name), a legal obligation to maintain the minors out of the property belonging to minor cannot be avoided.

The learned Judge of the Family Court appears to have noted that the provisions of Sections 21 to 23 of the Hindu Adoption and Maintenance Act do not apply in the facts and circumstances of the case. Learned trial Judge proceeded further to consider the admitted facts between the parties to the petition including the fact that the agricultural land situated at mouza Radhapur, Tq.Hinganghat, District Wardha admeasuring about 3.53 HR was purchased for valuable consideration in the year 2006 in the name of

minor Harshal. Learned trial Judge was satisfied that the minors are students studying in 6th Std on the basis of Certificate issued by school concerned and that they are in the custody of their maternal grandfather. It being the fact that the revision applicant is in possession and use of the land belonging to Harshal or purchased in the name of Harshal (minor), the revision applicant ought not to fight shy of making payment of maintenance at interim stage of the petition, if so awarded by the learned trial Judge. The legal question as to whether the petition is maintainable in Family Court according to law and whether the maternal grandfather can continue to have custody of minors in their best interest or their welfare are the questions which can be gone into by the learned trial Judge on the basis of evidence adduced by the parties to the petition and on merits. It cannot be said that maternal grandfather who was in custody of minors was disabled to file a petition in the Family Court for maintenance of minors; particularly, when the minors had lost their parents. The dispute as to whether the paternal grandfather is entitled to custody of minors or the maternal grandfather - will have to be answered by the learned Family Court Judge considering the evidence before the Court and welfare of minors. That being so, in revisional exercise of jurisdiction, there is nothing to prima facie satisfy this Court to call for record of the case in the pending petition before the Family Court. Prima facie, there is nothing to believe

that the interim order in the pending petition was without jurisdiction or in the exercise of jurisdiction illegally or with material irregularity. That being so, no ground is made out to entertain this C.R.A. Hence, the C.R.A. is dismissed. No order as to costs.

Suffice it to say that the learned trial Court shall consider all the contentions between the parties on merits/ expeditiously and after receiving the evidence led by the parties.

JUDGE

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