

Sequeira

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

WRIT PETITION NO. 6725 OF 2016

Sou.Geeta Prashantkumar Salunkhe & anr. .. Petitioners

Vs.

Shri Prashantkumar Chandrakant
Salunkhe & ors.

.. Respondents

Mr.Ravi P.Kadam, for Petitioners.

Mr.P.P.Kakade i/b Pranali P.Kakade, for Respondents.

***CORAM : N.M.Jamdar, J.
Tuesday, 18 October 2016.***

P.C. :

Not on board. Taken on production board by way of praecipe.

2. At the joint request of the learned counsel for the parties taken up for disposal forthwith.

3. This Writ petition arises from the application filed by the Respondent-husband under section 6 of the Hindu Minority and Guardianship Act 1956 and section 7 and 25 of the Guardians and Wards Act, seeking custody of the girl child aged four from the Respondent-mother. By the impugned order the learned Judge has framed the preliminary issue as under -

'1. Does the Non-applicant No.2 proves that, the applicant attempted to have unnatural sex, or molested, or attempted to molest, or indulged in similar type of conduct, like showing pornography-films to the Non-applicant No.1?'

The hearing of application as to the preliminary issue was deferred. Looking at the nature of the litigation and the relief that is sought such hyper-technical approach as regards the procedure is not warranted. The issues of custody of a child must be decided on priority basis as such issues if kept pending and undecided, affects the child. What is pending before the learned District Judge is an application for interim custody. While deciding the application, the issue which is sought to be framed as a preliminary issue would be part of the consideration on merits of the rival contentions. Therefore, it is not necessary to adopt the course of action which the learned District Judge has adopted. The learned judge will decide the application with all issues together.

4. Considering the fact that the application is pending for more than one year the learned Civil Judge, Satara will take up the application filed by the Respondent-husband for interim custody as early as possible and dispose of the same within period of six months from the date of the writ reaching the Court. For the purpose of interim custody the learned District Judge Satara, will have to take a prima facie view of the matter. In case the learned

Judge finds that, instead of considering the interim application, the main application for custody itself requires to be decided, the learned Judge may decide to do, so as early as possible, within the above stipulated time period. All contentions of the parties are kept above. Writ Petition is disposed of.

(N.M.Jamdar, J.)