

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

Amk

**CIVIL APPLICATION NO. 2661 OF 2016
IN
FIRST APPEAL NO. 440 OF 2015**

Shri Sachin Bhausahab Zarekar .. Appellant
Vs.
Shri Eknath Rambhau Gavane & Anr. .. Respondents

Mr. A. S. Shalgaonkar for the Appellant.
Mr. Neville D. Deboo for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.
DATE : 26th AUGUST, 2016.

P. C. :

1. This is an application preferred by the appellant herein seeking permission to get the custody of his minor child Viraj, aged 6 years, for schooling purpose during the academic year 2016-17 and thereafter till the final disposal of this appeal.

2. It is submitted by the learned counsel for the appellant that during the summer vacation, when the minor child Viraj was with the appellant, the appellant has taken his admission in the school considering his desire. The appellant has also paid the school fees of Rs.8,000/- for the K.G. admission. The school has informed the appellant that if the child does not come to the school by 20.06.2016, then his admission will be cancelled by the school. Thus, it is urged that considering the desire and wish of the minor child and having regard to the fact that the appellant is

the natural father of the child, the custody of the minor child be handed over to him for the purpose of schooling for this academic year and further till disposal of the appeal.

3. Learned counsel for the appellant has brought to the notice of this Court, the letter issued by the school to the appellant stating therein that when the interview of the child has taken in the school, he gave good interview, he has good skill and he is eligible to get admission in UKG standard in the school. Learned counsel for the appellant has also pointed out the receipt of the payment of the school fee produced at page 14 of this application. Thus, according to learned counsel for the appellant, this application of the appellant seeking custody of the child for the schooling purpose, having regard to the welfare of the minor child, needs to be allowed.

4. *Per contra*, learned counsel for the respondents has resisted this application and in my considered opinion, rightly so. The record goes to show that the Trial Court has rejected the application of the appellant seeking custody of the child of the child and the same Judgment is the subject matter of this appeal. The appellant is already re-married. Whereas, respondents herein are the grand-parents of the child, being the parent of his mother.

5. It is further pertinent to note that in the year 2015 also, the appellant has filed a similar application seeking custody of the child and at that time the said prayer was not granted by this Court but only following arrangement, pending the appeal was suggested and directed by this Court vide order dated 20.01.2016:

- "(i) The father and step-mother may visit to Surat to meet the child on Saturday and Sunday with prior intimation to the grandfather/ grandmother. At the relevant time, the grandfather will handover the custody of the child to the father till he is at Surat and then the father will hand over the child to the grandfather without causing any inconvenience to the school timings.*
- (ii) The phone number of the maternal grandfather is provided to the father of the child.*
- (iii) 60% of the access will be given to the father during summer vacation. The child will be brought to the residence of the father and he will spend his vacation with them."*

6. It is pointed out by the learned counsel for the respondents that though the appellant was specifically directed to hand over custody of the child to the respondents, without causing any inconvenience to his school timings, the custody was not handed over after the school vacation was over. Only after the order was passed by this Court directing handing over of the custody within 3 days, the custody was handed over by appellant to respondents.

7. In this light of the fact and considering that the Trial Court has, after having regard to all the aspects of the case rejected the custody of the child to the appellant and the said order is subject to challenge in this

appeal, considering the conduct of the appellant of not handing over custody of the child to the respondents, as ordered by this Court immediately after the access of the summer vacation was over, and having regard to the fact that the child is very small one and not yet mature enough to express his willingness and intelligent preference and he is already studying in school at Surat with his grandparents-respondents herein, no strong reason is made out to disturb the arrangement, which is made functional by the order of this Court. The appellant is having the access of the child by every Saturday, Sunday, which access he can continue but for the present, no reasons are made out for disturbing the custody of the child, which is with the respondents. The application, therefore, stands dismissed.

8. The hearing of the appeal is, however, expedited. Learned counsel for the appellant to file private paper book within six months. After the paper book is ready, the appeal be placed before the Court for hearing.

[DR. SHALINI PHANSALKAR-JOSHI, J.]