

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6792 OF 2017

Sandhya @ Pranjali Pramod Joshi,
Age : 32 years, Occup. Household,
R/o. 'Chinmay', Mathura Nagar,
In front of University Gate, Parbhani,
Tq. & Dist. Parbhani.Petitioner

Versus

Pramod Mangalmuti Joshi,
Age : 39 years, Occup. Nil,
R/o C/o Mangesh Suresh Shete,
Saharakirti, A-6-25, Wadgaon
Kolhati, M.I.D.C., Waluj,
Tq. & Dist. Aurangabad.Respondent

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Mr.S.S. Jadhavar, Advocate, for the petitioner.

Mr. A.G. Gondhamgaonkar, Advocate, for respondent

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 14th JULY, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard learned advocates for the parties finally, by consent.
2. This petition has been moved against interim order dated 24-04-2017 on Exh.9 in Miscellaneous Civil Application No.555 of

2015 passed by District Judge- 2, Parbhani giving custody of minor Shripad, who happens to be son born from wedlock between petitioner and respondent.

3. Petitioner is mother of Shripad. Civil Miscellaneous Application No.555 of 2015 has been moved by father / respondent seeking custody of Shripad purportedly pursuant to Section 8 of the Guardians and Wards Act, 1890 claiming that petitioner has been a psychiatric patient from long time even before the marriage which fact has not been disclosed to the respondent. While the conduct of petitioner had not been normal, there had been certain incidents in their house. Despite medical treatment being given to her, there had been little improvement. Due to all this she has not been able to properly maintain the child born from the wedlock. The situation worsened when petitioner threatened respondent, his mother and his other relatives.

4. Around January, 2015 petitioner's mother had taken the petitioner to maternal house along with the child and since then they are residing at Parbhani. It is further claimed that, economic condition of her parents' is not well and they may not be able to maintain the child.

5. The petitioner has denied the allegations against her. It has been referred to that right from birth she has been properly maintaining the child. The minor is having good physical and

mental condition. According to her it is a ploy by respondent to take away the child and to make her suffer by keeping Shripad away from her. She has been maintaining the child as normal parent. It is not a case that, there is no mental medical facilities available at Parbhani. It is a district place and she is ready even to come to Aurangabad and give the child proper treatment.

6. During pendency of aforesaid proceedings, application exh.9 has been moved for interim custody of Shripad stating that, he has been already admitted to 'ICON' which is centre for child Neurodevelopment at Aurangabad. The petitioner would not be able to maintain child. Said application came to be granted and, as such, the petitioner is before this Court.

7. Learned counsel Mr. S. S. Jadhavar, for the petitioner contends that, as a matter of fact proceedings are not maintainable pursuant to the provisions invoked by the respondent. Secondly considering the age, the child is very comfortable with the mother and temporary custody is not sufficient to come to a definite conclusion that the child would be comfortable with father. It is not the case that the father would take care of the child personally, since it emerges that ICON is a residential institute. In the circumstances it does not appear that the father is inclined to take all responsibilities of child, his daily requirements as the same would be assigned to other institute. Therefore, he submits that, the main proceedings be decided

expeditiously.

8. Learned counsel for respondent Mr. A. G. Godhamgaonkar submits that it is not in dispute that, father is economically well placed and is staying at Aurangabad. In comparison to Parbhani, Aurangabad is a better place wherein requisite medical treatments are readily available. There may not be any such facility available at Parbhani. Besides father is not alone but his sisters and mother are also ready to take care of the child. He submits that, in the circumstances while admission has been already taken at Aurangabad, it is for the betterment of the child and just for the mother's desire, child's welfare may not be trampled down, child will be spoiled.

9. After having heard learned counsel of either side, in the scenario, I feel it appropriate that, main proceedings which are pending in the court at Parbhani, may be proceeded with expeditiously. In case of custody of child if the decision is not in favour of father, may lead to unsustainable situation. In the circumstances it would be appropriate to direct concerned court to proceed with the main proceedings as expeditiously as possible. It is further made clear that, observations hitherto in the interim order passed by the trial court as well as those appearing in this order are at interlocutory stage and shall have no influential bearing.

10. As such impugned order stands quashed and set aside. Writ petitioner stands allowed. Rule is made absolute in terms of prayer Clause 'B'. The concerned court to proceed with main proceedings expeditiously and dispose of the same within a period of four weeks from date of receipt of writ of this order.

[SUNIL P. DESHMUKH, J.]

vjg/-