

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

**905 CIVIL APPLICATION NO.1872/2018
IN FA/723/2018**

IMRAN KHAN S/O JABBAR KHAN
VERSUS
NASEEM BEGUM @ NASEEM FIRDOUS W/O IMRAN KHAN

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Advocate for Applicant : Mr.Kadam Vishant P.
Advocate for Respondent : Mr.Ghatge M.V.

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CORAM : M.S.SONAK, J.
DATE : 15th February, 2018

ORAL ORDER:-

- 1) Heard learned counsel for the parties.
- 2) This matter was called out yesterday and since a proposal for settlement was put-forth by the learned counsel for the respondent, which proposal atleast prima-facie appeared to be most reasonable, the matter was adjourned to today with directions to the applicant Mr.Imran Khan s/o. Jabbar Khan to remain present in the Court. The respondent Mrs.Naseem Begum w/o. Imran Khan

was present in the Court yesterday and as per the directions, even present in the Court today as well. Today, when the matter is called out, Mr.V.P.Kadam learned counsel for the applicant states that despite several attempts on his part to contact Mr.Imran Khan telephonically, the said Mr.Imran Khan has refused to take his calls and thereby respond.

3) In the aforesaid circumstances, Mr.V.P.Kadam learned counsel quite rightly sought leave of this Court to make his submissions on the merits of the matter.

4) Mr.Kadam learned counsel submits that in terms of Section 9(1) of the Guardians and Wards Act, 1890, the application with respect of guardianship of minor has to be made in the District Court having jurisdiction in the place where minors ordinarily resides. He submits that there is ample material on record, which suggests that the two minor children namely Shahjaan and Fatima aged 3

years and 6 months respectively ordinarily resides at Parbhani. He therefore, submits that the proceedings instituted by the respondent before the District Court at Nanded were without jurisdiction and order made by the District Court Nanded is therefore a nullity. Mr.Kadam learned counsel further submits that from Aadhar Card of the respondent, it is clear that she resides in municipal area of Nanded. Therefore, the proceedings were even otherwise not maintainable before the District Court at Nanded, but the proceedings had to be instituted before the Family Court, which is already constituted for the purpose.

5) Mr.Kadam upon a query of the Court as to whether such objections had ever been raised before the District Court at Nanded, replied that no such objections appeared to have been raised before the District Court, Nanded. Even otherwise from the record, it is quite clear that no such objections were raised before the District Court,

Nanded.

6) The record, prima-facie indicates that two minor children were with the respondent Mrs.Naseem Begum when they were taken away by the applicant to Parbhani. There are averments to this effect in the proceedings instituted by the respondent Mrs.Naseem Begum before the Court. In this circumstances, atleast, prima-facie, there is not much merit in the contentions raised on behalf of the applicant. Besides, the objections which at the highest relate to issue of the territorial jurisdiction, if not raised at the earliest instance, need not be entertained at the stage of appeal. In any case, the objections so raised, are really not of much importance in deciding the application for interim relief, which is made in this appeal by the applicant and which has been considered at this stage.

7) In the proceedings, there are allegations and

counter allegations made by the parties against each other. The applicant has alleged that the respondent Mrs.Naseem Begum maltreats the minor children and even tried to administer Mosquito Repellent to minor children, which could have caused several harm to the health and well-being of the children. On the other hand, Mrs.Naseem Begum has alleged that the applicant has physically assaulted her to the extent that she had to be admitted in the hospital for six days. The Trial Court has disbelieved the allegations made by the applicant, but believed the allegations made by the respondent. No doubt, matter will have to be ultimately resolved in the appeal.

8) However, at this prima-facie stage, no much credence can be given to the allegations levelled by the applicant. This is because despite of these allegations, the applicant has chosen to institute a Suit bearing R.C.S. No.2 of 2018 at the Parbhani District Court

seeking restitution of conjugal rights. Atleast, prima-facie, it is required to be noted that if there was any merit in the allegations levelled by the applicant Mr.Imran Khan, then this very applicant would not have instituted a Suit seeking restitution of conjugal rights. It is further to be noted that the Suit has been instituted at Parbhani when it is the applicant's case that the respondent is a resident of Nanded. Prima-facie, therefore, there appears to be merit in the contention of the learned counsel for the respondent that the Suit is nothing but a ploy to harass the respondent and perhaps to deprive her the benefit of the custody of the minor children, which is now awarded in her favour by order, which is impugned in this appeal.

9) The children are, as noted earlier 3 years and 6 months of age respectively. Atleast, prima-facie the Trial Court has correctly held that in such a situation, it is only proper that the custody of the children, which

was taken away by the applicant is restored to the respondent. There is no case made out for grant of any interim relief, since, the order made is in the interest of the minor children, which is paramount in matters of this nature.

10) As indicated earlier, the learned counsel for the respondent on the basis of instructions of the respondent, who is present in the Court, has stated that the respondent is willing to resume the marital relationship with the applicant, provided that the applicant permits her to stay with him at Ambejogai, where he is presently serving as a Teacher in College. All that, the respondent Mrs.Naseem Begum has stated is that she may not be forced to live with the applicant's mother at Parbhani as long as the applicant himself continues to reside at Ambejogai where he is in service. This proposal is most reasonable in the circumstances. This proposal infact is in the interest of the applicant,

if at all his Suit seeking restitution of conjugal rights is a genuine Suit with intention to indeed resume marital relations with the respondent. This proposal is in the best interest of the minor children, who would have benefit of both the parents. It is for this reason that directions were issued for the presence of Mr.Imran Khan with intention that matter could have been sorted out.

11) However, taking into consideration the fact that Mr.Imran Khan is not interested in any co-operation, the application for interim relief was heard. Taking into consideration, non-cooperative attitude of Mr.Imran Khan, there is really no case made out for grant of any interim relief.

12) The learned counsel for the respondent has pointed out that while Mr.Imran Khan discharges his service as a Teacher in College, the minor children aged 3 years and 6 months respectively are placed in Creche. Again, this is

also a ground, which needs to be considered while deciding the application for grant of interim relief. The mother of the children, who has been awarded custody is willing to take care of the children. The interest of the children will be best served by mother taking care of the children rather than the children to place in the Creche while the father discharges his service.

13) For all the aforesaid reasons, the application for interim relief is rejected. The application is rejected with costs of Rs.25,000/-. The applicant to pay such costs by depositing the same in this Court within a period of four weeks from today. This Court has ascertained from the respondent that the applicant is a Teacher, who gets a salary of approximately Rs.55,000/- per month. However, till date, the applicant has not offered or paid any maintenance to the respondent wife. The applicant despite the rejection of the said order, is unlikely to co-operate and handover the custody of the

minor children without intervention of the Court or the Police officials. Taking into consideration all these factors, it is indeed necessary that the applicant is made liable to pay costs, which is determined as Rs.25,000/-.

14) The hearing in the appeal is deferred by six weeks. In the meantime, since, interim relief is declined, the applicant, is not only directed to pay costs within four weeks from today, but further, within one week from today, the applicant is directed to reach with two minor children to Nanded and hand over their custody to the respondent. In case, this direction is not complied with, the respondent is granted liberty to approach this Court by filing appropriate application including inter alia application by invoking the provisions of the Contempt of Courts Act, 1971.

15) At this stage, the learned counsel for the applicant

submits that after the custody of the children is handed over by the applicant to the respondent, the applicant should be granted visitation rights to meet the children. This is entirely reasonable request made by the learned counsel for the applicant. Even after custody of the minor children is restored to the respondent, the applicant is granted visitation rights to meet the children on every weekend either at the place where the respondent is presently resides or if convenient at the premises of District Court, Nanded or premises of Family Court, Nanded. In case there are any logistic difficulties, the parties are at liberty to apply this Court. However, visitation rights are granted to the applicant, provided he complies with the directions of handing over the custody of the minor children to the respondent within one week from today and further deposits the costs within four weeks from today.

16) Notwithstanding this order, if some settlement on

the lines proposed by the respondent is possible, the parties are at liberty to explore the possibilities for settlement of the disputes. Infact, such settlement will be in the best interest of the minor children.

17) Civil application for interim relief is rejected with costs as aforesaid.

[M.S.SONAK, J.]