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

**FAMILY COURT APPEAL NO.44 OF 2018
WITH
CIVIL APPLICATION NO.6956 OF 2018
WITH
FAMILY COURT APPEAL NO.44 OF 2018**

LAXMICHAND KISHANRAO LANDGE,
Age: 40 YEARS, Occ: Service,
R/o. Plot No.10, Shriseva Housing
Society, Ganesh Nagar, New Ris,
Taluka Khalapur, Dist. Raigad. ..APPELLANT

VERSUS

SWATI LAXMICHAND LANDGE
Age: 29 years, Occ: Household
R/o. C/o. ABHIMANYU RAJARAM
PAREKAR, Hariom Niwas,
Swayamwar Mangal Karyalaya Road,
Radhika Nagar, Nanded. ..RESPONDENT

Mr Satyajit S. Bora, Advocate for appellant

**CORAM : PRASANNA B. VARALE &
S. M. GAVHANE,JJ.**

DATE : 6th JUNE, 2018

ORAL ORDER :

Heard Mr. Bora, learned Counsel appearing
for the appellant at length.

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2. This is an appeal challenging the order dated 28th May, 2018, passed by learned Judge of Family Court, Nanded.

3. By the order impugned in appeal, learned Judge of the Family Court allowed the application filed at the instance of the respondent seeking a temporary custody of minor children Varad and Pratik. Mr. Bora, learned Counsel appearing for the appellant, in his detailed submissions, invited our attention to the various documents placed on record. The first limb of the submission of Mr. Bora, learned Counsel appearing for the appellant is, the marriage between the appellant and the respondent was solemnized some time in 2009. Till 2016, the parties lead the matrimonial life but for the respondent, who left the matrimonial home on 19th December, 2016, the parties initiated proceedings and counter proceedings against each other. He further submitted that it was the case of appellant that the respondent was not keeping the affairs as if a person of sound mind and in

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disturbed mental condition, she left matrimonial home.

4. Mr. Bora, learned Counsel appearing for the appellant, by inviting our attention to the copy of Hindu Marriage Petition No. A-135 of 2017 placed on record at Exhibit-B, submitted that the appellant initiated the proceedings under Section 13(1)(ia) of Hindu Marriage Act, 1955 for dissolution of marriage. He also fairly submitted that there was counter proceedings at the instance of the respondent for restitution of conjugal rights. Mr. Bora, learned Counsel was also fair in submitting that contrary stand was taken by the respondent for leaving matrimonial home. He submitted that it was a stand of the respondent that she was driven out of her matrimonial house.

5. It may not be necessary for us to go in detail for referring the allegations and counter allegations of the parties. We are purposely not referring to these allegations and counter

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allegations for another purpose namely; the issue before us is not of the break in the matrimonial relations between the parties but before us the issue is of custody of minor children. As such, we are only referring to the submissions of Mr. Bora, learned Counsel and we are not giving other details of the allegations and counter allegations.

6. The documents placed on record show that the parties have submitted their say to the respective proceedings initiated against each other and interestingly enough, common stand is taken by both the parties in the proceedings that the parties have not placed all the relevant facts before the Court. Be that as it may.

7. Now, coming to the issue involved in the appeal, the order challenged in the appeal is passed on the application dated 14th May, 2018. The application is submitted by the respondent, of which copy is placed on record at Exhibit-D. It would be relevant to refer clause-4 of the

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application. In clause-4 of the application, the respondent submits that the children are enjoying their vacations and the respondent-applicant be permitted to have their custody during the period of vacations and in the alternative, the respondent – applicant be permitted to have visiting rights after period of one month.

8. To this application, say is filed at the instance of the appellant. The application is vehemently opposed. It is stated in the say to the application that the respondent is seeking custody of the children at the place namely at Nanded. The temperature of Nanded city would be nearly 44 degree Celsius and it may affect the health of children. The application is also opposed by raising ground that the application is nothing but an attempt to prolong the proceedings and harass the appellant.

9. Mr. Bora, learned Counsel appearing for the appellant submitted that the application was

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though filed at the instance of respondent, it was not signed by the respondent and the appellant had every reason to believe that it was an application at the instance of the parents of the respondent.

10. The perusal of the documents placed on record show that the appellant herein (and the respondent to the application) not only filed say but also reiterating the grounds by filing points of written arguments. Learned Judge of the Family Court, considering the application and submissions and counter submissions by the parties, allowed the application. Learned Judge of the Family Court granted custody of these minor children to the respondent for a limited period i.e. from 1st June, 2018 to 8th June, 2018. Learned Judge, in the operative order, directed the parties namely; to the appellant, to bring the minor children before the Court on 1st June, 2018 at 11.00 a.m. sharp and then directed the respondent-petitioner, to bring back the children to the Court on 8th June, 2018 for handing them back to the respondent i.e.

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appellant before us.

11. By clause-4 of the operative order, learned Judge of the Family Court imposed duty on the respondent of taking due care and precautions of health and well being of the children. Considering the limited period granted by learned Judge of the Family Court i.e. the period is only for 8 days and it expires after 48 hours i.e. day after tomorrow i.e. on 8th June, 2018 at 11.00 a.m. and considering the nature of the order and grounds raised in the appeal, we are of the clear opinion that the appeal is not even worth of issuance of notice to the respondent and we propose to decide the appeal at the stage of admission itself.

12. Mr. Bora, learned Counsel appearing for the appellant though vehemently submitted that learned Judge committed serious error in the order, we are unable to accept the submissions of Mr. Bora, learned Counsel for more than one reason. As we have stated earlier that it may not be necessary

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for us to refer to the details of the allegations and counter allegations of the parties. It is not in dispute that the parties have initiated counter proceedings against each other, one for dissolution of marriage and another for restitution of conjugal rights. These proceedings are pending before the competent judicial forum. The issue is of custody of minor children.

13. Undisputedly, these children are namely elder son Varad is of seven years of age and younger son Pratik is of 3-1/2 years of age. The application was moved by the respondent raising ground that as the children will be enjoying summer vacation in the period of vacation, the respondent be permitted to have custody of the children. At the cost of repetition, we say that the application was opposed on two grounds; firstly, the respondent is seeking custody of the children at a place namely Nanded having extreme temperature of 44 degree Celsius and secondly, the applicant – respondent with an oblique motive of protracting

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the proceedings, filed the application.

14. Insofar as dealing with these grounds, learned Judge of the Family Court was justified in observing that it was will and wish of the applicant – mother to have custody of the children for a limited purpose, that too, for the period of summer vacation to the school. Learned Judge was also justified in observing that merely because city Nanded may have extreme temperature in summer period, it cannot be a ground to deny love and affection of biological mother to the children. The other ground was raised in the application of summer camp i.e. it was submitted that the children are admitted in summer camp. Learned Judge of the Family Court was also justified in observing that an absence for temporary period in the summer camp would not adversely affect the children but if the children are deprived of from love and affection of the biological parents for a temporary period, it would certainly adversely affect the children.

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15. The other ground was of protracting the proceedings. Learned Judge of the Family Court could not find any favour with this ground and we are also unable to accept this ground as a ground of opposition to the application seeking temporary custody of the minor children.

16. Mr. Bora, learned Counsel appearing for the appellant vehemently submitted that learned Judge on assumptions and presumptions was pleased to observe that the applicant-respondent mother was showing positive result in her health status. Mr. Bora, learned Counsel, by inviting our attention to the documents placed on record, submitted that the respondent was undergoing treatment of Psychiatric and as such, the appellant was apprehending that if the respondent is carrying any such mental illness, the respondent may not be in a position to take due and proper care of the children, who are minor and as such, the appellant was opposing the application.

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17. It was submission of Mr. Bora, learned Counsel that learned Judge erred in observing that there was a positive improvement in the health status of the respondent without there being any supportive material on record. We are unable to accept this submission of Mr. Bora, learned Counsel for the reason that perusal of the documents placed on record show ailment suffered by the respondent is in the nature of anxiety, fear or occasional hallucination. There is nothing placed on record to show that the respondent is carrying such ailment to arrive at conclusion that the respondent is not a person of sound mind.

18. Mr. Bora, learned Counsel appearing for the appellant though raised an attack submitting that the documents were placed before the Court namely; prescriptions placed on record were of dated 15th November, 2016 and the Court ought to have satisfy itself by calling some extra material in the nature of treatment provided to the respondent, we are unable to accept this submission

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for the reason if the ground of mental health is raised in the proceedings by the appellant, the said ground will have to be tested by learned Judge on the basis of material placed before the Court and by giving equal opportunity to both the parties to advance their submission on that ground and this stage is yet to arrive in the proceedings. Learned Judge of the Family Court was considering the aspect of granting custody of minor children for a temporary period and as such, it was not necessary for learned Judge of the Family Court to call for some additional material in the form of medical documents. As such, we find that no error is committed by the learned Judge of the Family court and we are unable to accept the submissions of Mr Bora, learned Counsel appearing for the appellant. There is consistent view of the Hon'ble Apex Court as well as of this Court that the minor children are entitled for equal care, protection, love and affection from both the parents. It is also a consistent view of the Apex Court as well as this Court that fight between the spouses should not

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adversely affect the welfare and well being of the children and in such matters, the paramount consideration is of welfare and well being of the minor children.

19. Learned Judge of the Family Court, taking into consideration all the relevant factors, granted a temporary custody to the respondent – mother, that too, for a period of eight days. The appeal, thus, is devoid of any merit.

20. Mr. Bora, learned Counsel appearing for the appellant, on instructions, submits before us that the appellant though was directed by the order of learned Judge of Family Court dated 28th May, 2018 to hand over the custody of minor children on 1st June, 2018 at 11.00 a.m. sharp in presence of Marriage Counselor of the Court, the appellant has not handed over the custody of minor children. The appellant had prepared appeal on 1st June, 2018 and filed the same in this Court on 4th June, 2018. We are surprised to see the attitude and approach of

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the appellant.

21. We have no hesitation to say that the appellant is a person who is having no regards to the law and acting only with an object to satisfy his own ego without considering the fact that parents owe equal duty to their children by providing them due care, protection and love. We are aware that our observations are in a bit harsh words. But, in view of above stated facts, we are constrained to use these harsh words.

22. As we have stated that the appeal is devoid of any merit and deserves to be dismissed, the same is dismissed accordingly.

23. In view of dismissal of Family Court Appeal No.44 of 2018, nothing survives in Civil Application No. 6956 of 2018, same stands disposed of accordingly.

24. Considering the approach and attitude of the appellant, we impose costs of Rs.5000/- (Rs. Five thousand only) on the appellant to be deposited in the office of Legal Services Authority at District Court Nanded within three weeks from today. Mr. Bora, learned Counsel, on instructions, submitted before us that the matter is posted before learned Family Court on 12th June, 2018. Considering the fact that the appellant was successful in making the order dated 28th May, 2016, passed by learned Judge of Family Court ineffective, we direct the appellant to hand over the custody of minor children to the respondent on 12th June, 2018 at 11.00 a.m. sharp in presence of Marriage Counselor of Family Court and the respondent to bring back minor children to Family Court on 20th June, 2018 at 11.00 a.m. sharp for handing over them to the appellant. We make it clear that other conditions imposed by learned Judge of Family Court, by order dated 28th May, 2018 would be intact for the period from 12th June, 2018 to 20th June, 2018.

25. Registry to inform the order forthwith to
learned Judge of Family Court, Nanded.

(S. M. GAVHANE)
JUDGE

(PRASANNA B. VARALE)
JUDGE

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