

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 5021 OF 2018

Shri. Amar Laxman Chavan ...Petitioner

Versus

Sou Nanda Vishwanath Pawar

And another ...Respondents

....

Mr.Mithun Mahajan, Advocate for the Petitioner.

Mr. Milind Deshmukh, Advocate for the Respondents.

....

CORAM : R. G. KETKAR, J.

DATE : 11th OCTOBER, 2018

P.C.

1. Heard Mr.Mithun Mahajan, learned counsel for the petitioner and Mr.Milind Deshmukh, learned counsel for the respondents, at length.

2. This Petition takes exception to the order dated 10.01.2018 passed by the learned District Judge-1, Karad below exhibit-5 in G.W. Application No.5 of 2017. By that order, the learned trial Judge rejected the application made by the petitioner for interim custody of son Amey, aged about 4 years.

3. In paragraph 6, the learned District Judge noted that Criminal Miscellaneous Application No.25 of 2015 was filed by Ashwini (since deceased), wife of the petitioner. Application exhibit-31 was filed

in that proceeding for striking out her name as guardian in the title clause and inserting the name of opponent No.1 therein. The application for amendment was allowed against which the petitioner preferred Criminal Miscellaneous Application No.25 of 2017. The order further records that Criminal Miscellaneous Application No.25 of 2015 filed by the deceased Ashwini claiming various reliefs of maintenance for herself and Amey was objected by the petitioner herein and the Miscellaneous Application No.25 of the 2015 filed by the opponent No.1 was allowed by the learned Judicial Magistrate, First Class.

4. Mr. Mahajan has tendered an affidavit dated 19.09.2018 made by the petitioner. It is stated therein that respondent has not filed application demanding maintenance. There is no order as regards maintenance till date against him.

5. Rule. Mr.Deshmukh waives service. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for final hearing.

6. The Petition was heard on 4.10.2018 and in view of the controversy between the parties as regards passing of the order for payment of maintenance, they were directed to produce the documents. In pursuance thereof, Mr. Mahajan has tendered compilation of

documents, which is taken on record. He reiterates that no order is passed till date directing the petitioner to pay maintenance.

7. I have considered the submissions advanced by the learned Counsel for the parties. I have also perused the material on record. A perusal of the impugned order and in particular paragraph-6 shows that the learned District Judge rejected the application mainly on the ground that in order to avoid payment of maintenance to the son the present application is filed by the petitioner herein. It is not in dispute that no order of maintenance is passed by the learned District Judge. The finding recorded by the learned District Judge is, therefore, factually incorrect and contrary to the record. That apart, the learned District Judge also did not interact / take interview of the child.

8. In view thereof, the impugned order cannot be sustained and as such is liable to be set aside thereby restoring the application Exhibit-5 for deciding it afresh. Hence, the Petition is disposed of in following terms :

- i. The impugned order dated 10.1.2018 is set aside. Application Exhibit-5 is restored to the file of the learned District Judge for deciding it afresh.
- ii. Before passing the order on application Exhibit-5, the learned District Judge shall interact with son Amey for ascertaining the

wishes of the child. The learned District Judge will also ascertain where the welfare of the child lies and thereafter will pass appropriate order.

- iii. The learned Counsel for the parties assure that they will appear before the learned District Judge on 19.10.2018 being the next date of hearing and for that purpose no fresh notice be issued to them.
 - iv. The learned District Judge is requested to fix a suitable date and after interacting the child shall pass fresh order within four weeks therefrom.
 - v. All contentions of the parties on merits are expressly kept open.
 - vi. Rule is made absolute in aforesaid terms with no order as to costs.
- Order accordingly.

(R. G. KETKAR, J.)