

vks

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

WRIT PETITION NO.14249 OF 2017

Chabutai Baburao Pawar
and anr

... Petitioners

V/s.

Dattatraya N Khandagale
and ors

... Respondents

Mr. Vijay Killedar, for the Petitioners.

Mr. Kuldeep V.Nikam, for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 20th FEBRUARY, 2018.

P.C. :

1] Heard learned counsel for the petitioners and learned counsel for the respondents.

2] By this petition filed under Article 227 of the Constitution of India, the petitioners are challenging the order dated 9th November, 2017, passed by District Judge-6, Sangli. By the said order, application at Exh.7, filed in Misc. Application No.107 of 2017 was allowed and petitioners were directed to hand over the custody of child Aditi to her father, within 30days from the date of the impugned order.

3] Respondent No.1 is the father of child Aidit, whose mother died in an unfortunate accident. The age of the child is only 2 ½
1/4

years. In view thereof, this Court, on 1st February 2018, with the consent and concurrence of learned counsel for both the parties and in presence of parties, has passed order directing access of child Aditi to her father respondent No.1 herein during the period from 5th February 2018 to 8th February 2018 and 13th February 2018 to 15th February 2018 for four hours on each of the day, in presence of Adv. Smt. Sunita Mohite, whose name was suggested by learned counsel for the parties and it was also informed that she is ready to act as Counsellor and Supervisor in the access of child during above period.

4] Accordingly, today Adv. Sunita Mohite, has filed her report in a sealed envelope, alongwith note-book which she has maintained about the access of the child. The said sealed envelope is opened in the Court in the presence of parties and the report goes to show that initially Aditi was reluctant to be in the company of her father and his family members but on subsequent occasions, Aditi was quite comfortable and happy to be in the company of her father and his family members. The report and the note book are taken on record and marked as "X" for identification.

5] In view of this positive report submitted by Adv.Sunita Mohite, coupled with her noting made by her during the period of

access, I do not find any reason to deny the custody of child Aditi to her father, who is her natural guardian.

6] Learned counsel for the petitioners, on the specific instructions of maternal uncle of child, Mr.Amit Pawar, who is present in the Court, submits that the report of Adv. Sunita Mohite is one sided and bias one. However, this submission cannot be accepted especially considering that report appears to be objective and also supported with the entries made in the note book. Secondly, the appointment of Adv. Sunita Mohite was made with the concurrence of both the learned counsels and respective parties. In such circumstances merely because the report is in favour of respondent father, report cannot be challenged on this ground.

7] Therefore, having regard to the report and also detailed order passed by the trial Court directing the petitioners to hand over the custody of child Aditi to the father and father being natural guardian and as Aditi is comfortable and happy in the company of her father and his family members, writ petition needs to be dismissed and accordingly stands dismissed.

8] At this stage, learned counsel for petitioners and the

maternal uncle of the child Aditi, seeks time upto 23rd February, 2018 to hand over custody of Aditi to respondent No.1 father. Hence for handing over the custody of child Aditi, in the premises of this Court on or before 23rd February 2018, matter is adjourned to 23.02.2018.

[DR.SHALINI PHANSALKAR-JOSHI, J.]