

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 16 OF 2019

Pravin S/o Ramnath Jadhav,
Age – 25 years, Occu. Agril.,
R/o. Bor-Ranjani, Tq. Ghansavangi,
District – Jalna

.. Petitioner
(Orig. Respondent)

Versus

Meghana Pravin Jadhav,
Age – 22 years, Occu. Household,
At present R/o Dasala, Tq. Selu,
District – Parbhani

.. Respondent

...
Mr. M.P. Tripathi, Advocate for petitioner
Mrs. S.E. Waghmare, Advocate for respondent
...

CORAM : SUNIL P. DESHMUKH, J.
DATE : 18-01-2019

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for parties finally, by consent.

2. The petition had been moved questioning legality of order dated 17-12-2018 passed in Civil Miscellaneous Application no. 472 of 2018 by district judge – 2, Parbhani. Said application has been preferred seeking custody of child – Aniruddha, pursuant to provisions of Guardians and Wards Act, 1890. Petitioner, who

happens to be husband of applicant in said proceedings, has questioned jurisdiction of court at Parbhani, contending that son - Aniruddha whose custody is sought by present respondent, ordinarily has been residing in Jalna district and as, such, having regard to section 9(1) of aforesaid enactment, jurisdiction would be with Jalna court. He further contends that respondent - wife had approached a non-government organization, stating that she had been driven away by petitioner keeping son - Aniruddha with him and also further contends that son - Aniruddha had been going to a nursery school at Bor-Ranjani, Taluka - Ghansavangi District - Jalna as would be borne out by the certificate. However, these aspects have been ignored by the district judge and application of the petitioner has been rejected. He submits that having regard to factual aspects and the position as would be emerging from section 9 of the Guardians and Wards Act, 1890, as also that application for custody of son - Aniruddha is being espoused mischievously while other proceedings for divorce against respondent by petitioner are on the verge of decision. He, therefore, contends that trial court had been in error in not properly taking into account the circumstances and rejecting the application.

3. On the other hand, Mrs. Waghmare, learned counsel for respondent contends that application specifically refers to the circumstances under which son - Aniruddha had been snatched away from the respondent from Dasala, Taluka - Selu, District - Parbhani. She submits that the nursery certificate which has been produced is not reliable and had been an obtained document. Son - Aniruddha had not completed three years of age and would not be able to go to nursery school, particularly looking to the areas where parties are residing. She submits that non-government organization's letter may not be taken into account which is relied on by the petitioner and the same has not been referred to in the objection by him. She submits that factually, son - Aniruddha had been residing ordinarily with her all along after she had been driven away from Jalna and this aspect has been aptly considered by the district judge. She further refers to the citation which had been relied on by petitioner and which had not weighed with the district judge and accordingly urges this court not to indulge into the request made under the writ petition.

4. On one hand, respondent-wife has specifically contended that son - Aniruddha had been snatched away by her brother-in-law from Dasala, Taluka - Selu, District - Parbhani

creating a scene and the same is purportedly denied by the petitioner.

5. Emerging situation, in the circumstances, is about disputed questions of fact. Respondent wife has referred to the reasons for not relying on the documents which are relied on behalf of petitioner. The district judge has referred to various citations. It is not disputed that son - Aniruddha is below the age of 5 years. In the circumstances, it does not appear to be a case where indulgence is required to be given to petitioner, in the discretionary powers of this court. The petition is, thus, not be entertained and is dismissed. Rule is discharged.

[SUNIL P. DESHMUKH]
JUDGE

arp/