

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

FAMILY COURT APPEAL NO. 16 OF 2018

Savita w/o. Sudam Bhadwe

....Appellant.

Versus

Sudam s/o. Sandu Bhadwe

....Respondent.

Mr. A.P. Basarkar, Advocate for appellant.

Mr. V.H. Dighe, Advocate for respondent.

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.
DATED : 04/02/2019**

ORDER :

1. The appeal is filed to challenge the judgment and order of Family Court, Aurangabad delivered in Petition D.No. 4/2014 on 16.10.2017. The said proceeding was filed by present appellant for seeking custody of her minor son from present respondent, father of the child and it was under the provisions of sections 6 and 13 of the Hindu Minority and Guardianship Act, 1956. She was living separate from the husband for many years.

2. The husband took the defence that the present appellant had harassed him as his financial condition was not that good and he was required to do labour work. He contended that the conduct of the present appellant was arrogant and she was proud of her beauty

and she always used to say that she could have got better husband than the respondent. He also contended that the appellant was taking suspicion against him and even after birth of two children, her conduct did not improve. He took the defence that he had also suspicion about the chastity of the appellant and the man who was in contact with the appellant used to quarrel with him and used to give threat of life. He specifically contended that on 1.7.2012 the appellant had left his company on her own and she had started living with the said man. It is his case that whereabouts of the appellant were not known and for some time, he and his parents were searching for the appellant, but they could not trace her. It is contended that he had given missing report to CIDCO police and before police the appellant and the said man had given statement that they were having relations and they were living like husband and wife. He contended that the said man is rich man, having huge property and for him, the appellant left his company. He also contended that before J.M.F.C. also application was made by the appellant for custody, but the said application came to be dismissed due to default. It is contended that due to aforesaid conduct of appellant, he was required to file proceeding for divorce.

3. The Family Court framed issues which include the issue regarding entitlement of the appellant to get the custody of the

child. The Family Court has considered the point of welfare of child from all the angles. The Family Court observed the conduct of the present appellant before the Family Court and the Court was required to strike out her evidence as she was not remaining present to make her available for cross examination.

4. The submissions and the reasoning given by the Family Court show that since 1.7.2012 the appellant was living separate from the husband and in the year 2011, she had given complaint against the aforesaid person for offences punishable under section 363, 366, etc. of Indian Penal Code. The evidence given by her in Sessions Case is considered by the Family Court. In view of these circumstances, the Family Court has held that she is not entitled to the custody of the son. One daughter is living with the appellant.

5. By way of abundant precaution, this Court had asked the present respondent to keep the boy present before this Court. In the chamber, in the presence of counsel of both the sides, this Court made enquiry with the boy. He is aged about 12 years. The submissions of the boy show that no attachment is left for mother. The submissions show that the mother, appellant had never attempted to remain in touch with him for so many years. He is not ready to go to her mother. The interests of the child are already

considered by considering the capacity of the husband of the appellant and aforesaid probabilities are also considered by the Family Court. In view of these circumstances, this Court holds that there are no merits in the appeal. In the result, the appeal stands dismissed.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

ssc/