

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

First Appeal No. 1996 of 2018

District : Nanded

Dr. Ravishankar s/o. Dashrathrao
Navhat,
Age : 40 years,
Occupation : Medical Practitioner,
R/o. Bhagyalaxmi Nagar,
Basmat Road,
Parbhani, Taluka & Dist. Parbhani.

.. Appellant
(Original
petitioner)

versus

Sow. Vaishali w/o. Ravishankar
Navhat,
Age : 36 years,
Occupation : Medical Practitioner,
Presently R/at
C/o. Shri Nagorao Lokre,
In front of Pandurang Kirana
Stores, Ulhas Nagar,
Haribhau Dange Road,
Taroda Naka, Nanded.

.. Respondent
(Original
respondent)

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Mr. Ram B. Deshpande, Advocate, for the appellant.

Mr. Santosh C. Bhosle, Advocate, for the respondent.

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With

First Appeal No. 1865 of 2019

District : Nanded

Dr. Vaishali w/o. Ravishankar
Navhat,
C/o. Nagorao s/o. Honaji Lokre,
Age : 35 years,

Occupation : Medical Practitioner,
R/o. Ulhas Nagar, Malagaon Road,
Taluka & Dist. Nanded. } .. Appellant

versus

Dr. Ravishankar Dashrathrao
Navhat,
Age : 42 years,
Occupation : Medical Practitioner,
R/o. Bhagyalaxmi Nagar,
Basmat Road, Parbhani,
Taluka & Dist. Parbhani. } .. Respondent

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Mr. Santosh C. Bhosle, Advocate, for the appellant.

Mr. Ram B. Deshpande, Advocate, for the respondent.

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CORAM : SMT. VIBHA KANKANWADI, J.

**Date of reserving
the judgment : 25th June 2019**

**Date of pronouncing
the judgment : 16th September 2019**

JUDGMENT :

01. Both these appeals are arising between same parties and they challenge the judgment and order passed by the learned District Judge-4, Nanded, in Misc. Civil Application No. 49 of 2017, dated 11-09-2017, thereby partly allowing the said application filed by the appellant by granting visiting rights during long holidays, vacation, covering more than two weeks to the children; however, refusing to hand

over custody of the two minor children to him.

02. The facts leading to the appeals are that the original applicant and respondent are husband and wife. They got married on 06-12-2007 as per Hindu rites. Their marriage is still subsisting. They have two children. At the time the application was filed, elder son was aged 07 years; whereas younger was 03 years old. The parties i.e. husband and wife resided together at Parbhani and Mumbai. Husband is M.B.B.S. and has Diploma in Child Health; whereas the respondent is B.A.M.S. and she is also practicing as Medical Officer. It is contended that till Diwali of 2015, the relationship was smooth. Respondent - wife went to Nanded along with children for Diwali festival, which was her parental home, with a promise that she would come within a week. However, when the husband had talked with her, 5 - 6 days thereafter and asked her to come back at Parbhani, she did not speak properly. Thereafter, there was reluctance. It was also told that the school of the elder son would open; still she did not come and thereafter she flatly refused to cohabit with him. When he tried to meet them, the father of the respondent had refused to allow them to meet. He had then sent a legal notice dated 31-05-2016 to her but she did not respond to obey; however, false reply was given on the ground that the husband is having illicit relations with the wife of the younger brother of the

petitioner. It was also alleged that the petitioner was constantly asking divorce from her. It is stated that father of respondent has no means of earning and is dependent on rent amount. There is no other male member of the respondent to look after the minor children. It is, therefore, stated that the welfare of the minor is in danger if they are allowed to continue in the custody of respondent - wife. He is having residence at Parbhani and he is residing with his parents. He himself is a paediatrician and knows child psychology. The welfare of the minor would be taken care of by him and on these grounds, he had prayed for custody of the children.

03. The respondent filed reply at Exhibit 17 and denied all the adverse allegations. It has been stated that the husband is unnecessarily withholding her certificates so also the documents of children which are necessary for continuation of education of the children at Nanded. She has stated that her relations with husband were never cordial. The behaviour of the petitioner since date of marriage showed demonic nature. He used to pressurize her for family gains. He had humiliated her ignoring her qualification. He had no love and affection towards children. She is taking proper care of the children. She has initiated cases against the husband at Nanded and therefore, he is pressurizing her by filing false cases.

04. It appears that the applicant as well as respondent did not adduce any oral evidence but relied upon the documents those were produced on record. Therefore, taking into consideration those documents and hearing both sides, the application was partly allowed. The claim of the husband for custody of the minor children was dismissed; however, visiting rights were given to him by a detailed order. Hence, present appeals. In the appeal filed by the husband, he is challenging the refusal of his prayer for custody; whereas the wife is challenging the order passed regarding visiting rights.

05. Heard learned Advocate Mr. R.B. Deshpande appearing for the husband in both the cases. Heard learned Advocate Mr. S.C. Bhosle appearing for wife in both the cases.

06. It has been vehemently submitted on behalf of the husband, that the prayer for handing over custody of the minor has been rejected only on the ground that there is no proper person to look after the children since the parents of the husband are old. Further, it has been stated that the respondent is also a medical practitioner, but the concerned Court failed to see that the financial condition of the husband is more sound than the wife. The point as regards, welfare of the child has paramount

consideration to decide the application, has not been properly considered.

07. Per contra, learned Advocate appearing for the wife supported the reasons given by the learned District Judge for rejecting the custody of the child and further submitted that the learned District Judge failed to consider that the respondent is a dangerous person and number of times he has given threats to kill the wife and children. It is also stated that the respondent's moral has gone down and he used to keep watching blue films and used to have unnatural intercourse, beating the wife in front of children. Therefore, unnecessary technical order ought not to have been passed.

08. Learned Advocate appearing for the husband has relied on the decision in *Mohan Kumar Rayana Vs. Komal Mohan Rayana* (AIR 2008 SC 471) wherein the Apex Court had modified the interim order when the husband was completely denied any access to minor children till the report of psychiatrist was submitted.

09. Per contra, learned Advocate appearing for the wife has relied on the decision in *Lachhmananna Irranna Shetpalliwar & others Vs. Anil Shriram Marsetwar* (2017(5) Bom.C.R. 818), wherein it was held that the welfare of minor children lies in continuing custody with grandfather in whom they have faith, confidence and

also love and affection. Further reliance has been placed on the decision in *Nil Ratan Kundu & another Vs. Abhijit Kundu* (AIR 2009 (Supp.) SC 732) wherein it has been held that *"Paramount consideration is welfare of child and the law on this point is fairly well settled. In deciding a difficult and complex question, a court of law should keep in mind relevant statutes and the rights flowing therefrom. In certain cases which cannot be decided by interpreting legal provisions, it is humane problem and required to be solved with human touch. If minor is old enough to form an intelligent preference or judgment, same must be considered, as well."*

10. At the outset, it is to be noted that both the parties preferred not to give oral evidence and only depended on documentary evidence filed by them. It is not in dispute, that both are Doctors; one is professing allopathy while another is Ayurvedic Doctor. A legal aspect cannot be given a go-by that while considering such kind of applications, welfare of the child / children should be paramount consideration. The point which was argued before the learned District Judge on behalf of the respondent itself appears to be starting with a negative point. It appears that it was argued (It is also so supported from the contents of his application) that the three ladies in the house of respondent's mother are committing atrocities on his sons and it is sure that there is negative impact on delicate mind of his

sons. In fact, there was absolutely no evidence adduced by the husband to show that the three ladies were giving negative impact to the children. How a matter can give negative impact on the sons is a question and unless any cogent evidence is adduced, no substance can be found in such kind of allegations. Further, it appears that the point which was argued that there was no male member in the family of parents of respondent to look after the activities of minor except old father of the respondent and it was specifically pointed out that the brother of the respondent is on cross terms with her parents and sister. It appears that the husband wanted to just paint negative picture of the wife. So also, he wanted specific impress about the male dominance which is absolutely not expected from a medical practitioner. If we have to consider the situation at his house, except old parents, there is nobody else in his family. Therefore, he cannot be said to be on much better footing than the respondent.

11. The respondent - wife has produced on record the first information report lodged by her. It appears that the first information report which she has lodged, is for the offence under Section 498A, 294, 323, 504, 506, 377, 497, 109 read with Section 34 of the Indian Penal Code. No doubt, the relationship between husband and wife are strained.

Taking into consideration the age of the children, especially the second child, the mother was the natural guardian since he was less than 5 years old. When the wife has undertaken that she would look after the children properly, so also, she is the mother, definitely she would look after them properly. The decision taken by the learned District Judge appears to be correct.

12. As regards the visiting rights granted to the applicant are concerned, it appears that the appeal filed by the wife contains exaggerations. She cannot go to the extent and say that the behaviour of the father with the children would be dangerous. She has not entered the witness box to prove the same and only on the basis of copy of the first information report, such conclusion cannot be drawn. Therefore, even the order passed by the learned District Judge, giving visiting rights to the husband deserves to be upheld.

13. There is absolutely no merit in both the appeals and therefore, they deserve to be dismissed; hence, they are accordingly dismissed. There shall be no order as to costs.

(Smt. Vibha Kankanwadi)
JUDGE

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