

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 4511/2019

Prasad D. Toal

..VS..

Anagha V. Joshi & anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R.R. Deshpande, Advocate for the petitioner
Ms. M.P. Kshirsagar, Advocate for the respondent no. 1

CORAM : Z.A.HAQ, J.
DATED : 09/09/2019

Heard.

In the joint petition filed by the petitioner and respondent no. 1 under Section 13B of the Hindu Marriage Act, 1955 for divorce by mutual consent, the parties had agreed for disposal of the petition as per the consent terms dated 14/09/2015. The term [C] of the consent terms is that permanent custody of the minor son Pranad will be with the present petitioner (father of Pranad) after Diwali, 2015. Accordingly, custody of Pranad was handed over to the petitioner after Diwali, 2015.

In March 2018, the respondent no. 1 filed an application under Sections 7, 8, 10 and 12 of the Guardians and Wards Act, 1890 (for short "the Act of 1890") seeking custody of Pranad on the ground that the petitioner has re-married and step mother of Pranad is not taking proper care of Pranad. In these proceedings, the respondent no. 1 had filed an application praying for interim custody of Pranad. By the impugned order, the Family Court directed the petitioner to handover custody of Pranad to the respondent no. 1 temporarily after his exams were over. The Family Court

directed the respondent no. 1 to return the child to the petitioner one day before the school was to re-open. This order is challenged by the petitioner by filing petition on 27/06/2019.

According to the petitioner, the respondent no. 1 has not handed over custody of Pranad inspite of the directions given by the Family Court to her to handover custody of Pranad to the petitioner one day before re-opening of the school. The main thrust of the argument on behalf of the petitioner is that the application filed by the respondent no. 1 under Sections 7, 8, 10 and 12 of the Act of 1890 is not maintainable.

It is not in dispute that the petitioner has re-married. The respondent no. 1 is serving as physical instructor in a reputed school at Nagpur on honorarium. It is on record that parents of the respondent no. 1 are residing with her.

The petitioner disputes the claim of the respondent no. 1 that her parents are residing with her.

Be that as it may, in the facts of the case, at this stage, I am not inclined to consider the technical objection raised on behalf of the petitioner about maintainability of the application under Sections 7, 8, 10 and 12 of the Act of 1890. The petitioner is at liberty to agitate the same before the Family Court. The petitioner will be at liberty to file application before the Family Court for seeking custody of Pranad.

With the above observations, the petition is **disposed**. In the circumstances, the parties to bear their own costs.

JUDGE