

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

Writ Petition No.7111 of 2018
(Abhinay Dilip Rai .vs. Sau. Mayuri w/o Abhinay Rai)

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

Court's or Judge's orders.

Mr. V.D. Darne, Advocate for Petitioner.
Dr. R.S. Sirpurkar, Advocate for Respondent.

CORAM : Manish Pitale, J.
DATED : January 15, 2019.

By this writ petition, the petitioner has challenged order dated 11.10.2018 passed by the Court of Ad-hoc District Judge-1, Yavatmal, in M.J.C. No.83 of 2018. The impugned order has been passed on Exh.5, which was an application filed by the respondent claiming interim custody of two minor children. The petitioner (husband) and the respondent (wife) have been having differences in their matrimonial life leading to certain proceedings instituted by the respondent, including a proceeding for the custody of the minor children under the provisions of the Hindu Minority and Guardianship Act. In an interim application marked as Exh.5, the respondent prayed for custody of the children during the pendency of the proceedings. By the impugned order, the Court has found that the children being minor, one of whom is aged about 2 ½ years and other about 7 years, should be in the custody of the respondent, during the pendency of the proceedings, in the interest of justice.

2. The Court has found that the welfare of the minor children demands that the interim application filed by the respondent be allowed. It is also recorded in the impugned order that one of the children i.e. the child aged about 7 years, already voluntarily joined the custody of his mother during mediation proceedings before the Court below and that now only the minor child, who is aged about 2 ½ years is with the petitioner.

3. Having heard learned counsel for the parties and perused the record, it appears that the Court below has not committed any error in passing the impugned order, since both the children are minor, one of whom has already joined the custody of the respondent, this court does not find any reason to interfere with the impugned order. Although the learned counsel for the petitioner (husband) sought to raise contention concerning the character of the respondent, this Court refrains from making any observation with regard to the same. The petitioner is at liberty to raise such contentions as are available to him in the main application, which is still pending before the Court below.

4. In the light of the above, the present writ petition is dismissed and the impugned order passed by the Court below is confirmed. Accordingly, the petitioner is directed to hand over custody of 2 ½ years old child Sammer to the respondent forthwith i.e. on or before 18.01.2019.

5. The Court below i.e. the Court of Ad-hoc District Judge-1, Yavatmal, is directed to decide the application filed by the respondent i.e. M.J.C. No. 83 of 2018 expeditiously and in any case within a period of three months from today.

JUDGE

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