

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO. 7543 OF 2019

Shridhar Purushottam Khadye	.. Petitioner
Vs.	
Sanjeevani Shridhar Khadye & Anr.	..Respondents

Mr. Chaitanya Chavan i/ b Mr. Rohan Samant, Advocate for
Petitioner.

**CORAM : C.V. BHADANG, J.
DATE : 9TH DECEMBER, 2020**

P.C.

1. The challenge in this petition is to the judgment and order dated 27th September 2016 passed by the learned District Judge at Thane, in Civil Misc. Application No. 382 of 2014. By the impugned judgment, the learned District Judge has rejected the application filed by the petitioner, under Section 3 read with Section 6 (a) and (b) of the Hindu Minority and Guardianship Act, 1956. (for short 'the said Act')

2. The petitioner and respondent are husband and wife. They are blessed with a son Master Pushkar, who is born on

19th September 2009. Presently he is residing with the respondent.

3. Admittedly, the petitioner was already married, when he entered into wedlock with the respondent.

4. The petitioner filed the aforesaid application under Section 3 and 6(b) of the said Act, seeking reliefs as under:

“ i. The petitioner states that the marriage took place at Mumbai but the son is at present residing at Mira Road hence this court has jurisdiction to pass the order of for declaring the petitioner as the natural guardian u/s 3, 6(b) of Hindu Minority Guardianship Act, 1956 as well till final disposal of the main application the respondent may be directed to give the petitioner proper and complete access of the baby boy master Pushkar born on 19/9/2009 to the petitioner.

ii. That pending the final disposal of Hon'ble court be pleased to give the petitioner week ends access to the petitioner.

iii. That pending and final disposal of the main petition the Hon'ble court be pleased to give the petitioner festival access as well as have all the updates of his education as well as the welfare of the child.

iv. That for such other and further reliefs as in the nature and circumstances as the case may be requires.

v. Cost of the petition may be provided.”

5. The respondent resisted the application inter alia on the ground that it is filed, in order to create panic and mental harassment to the respondent.

6. The learned District Judge framed the following issue:-

“Whether it will be legal and proper and also as in the interest and welfare of the child Pushkar to transfer custody from the hands of his mother to the hands of his father?”

7. Learned District Judge after interacting with the child found that it would not be proper to hand over the custody of the minor to the petitioner and in that view of the matter the application came to be rejected.

8. In this case, a notice was issued to the respondent on 6th September 2019 indicating that the petition could be heard finally.

9. I have heard the learned counsel for the petitioner. The respondent has been served. However, today none appears for the respondent. Perused record.

10. It is submitted by the learned counsel for the petitioner that the learned District Judge was in error in deciding the application without recording oral evidence. It is submitted that the petitioner was not seeking custody. It is submitted that the petitioner was only seeking a declaration that he is the natural guardian of the minor and for a limited access of the minor. The learned counsel has pointed out that although initially it was claimed that the child would be illegitimate as the petitioner was already married, subsequently, the petition was amended to seek a declaration under Section 6 (a) of the said Act. It is submitted that having regard to Section 16 of the Hindu Marriage Act, the child would be legitimate. It is submitted that although in paragraph 24 of the impugned judgment, the learned District Judge has accepted that the petitioner is the natural guardian of the child the learned District Judge has neither granted such declaration nor the limited access as prayed for.

11. I have considered the circumstances and the submissions made. Perusal of the impugned judgment would show that in paragraph 23 and 24, the learned District Judge has accepted that the petitioner is the natural guardian of the

child. However, in the operative part no such declaration is granted.

12. That apart the prayer clause would indicate that the petitioner was only seeking a limited access and not custody as has been pointed out by the learned counsel for the petitioner. It also does not appear that oral evidence was led before the learned District Judge.

13. In that view of the matter, the learned counsel for the petitioner submitted that the application may be remitted back to the learned District Judge for deciding it afresh in accordance with law.

14. Having regard to the circumstances as noted above, I find that it would be appropriate that the matter is remitted back to the learned District Judge as prayed.

15. Hence, the following order:-

ORDER

- a) The petition is partly allowed.
- b) The impugned judgment and order dated 27th September 2016 is hereby set aside.

- c) Civil Misc. Application No. 382 of 2014 is restored back to the file of the learned District Judge at Thane for disposal according to law.
- d) The parties to appear before the learned District Judge on 11th January 2021.
- e) Needless to mention that in the event the respondent does not appear, the learned District Judge shall issue a notice to the respondent and then proceed to decide the petition as expeditiously as possible.
- f) It would be open to the petitioner to seek amendment of the pleadings. If such an application is filed, the same shall be decided on its own merits and in accordance with law.
- g) In the circumstances, there shall be no order as to costs.

C.V. BHADANG, J.