

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

**FIRST APPEAL NO.658 OF 2021 WITH
CIVIL APPLICATION NO. 5460 OF 2021**

Archana w/o Satyajit Jadhav,
Age 39 years, Occu. Household,
R/o C/o Prakash Deshmukh,
Plot No.6, Vishnu Nagar,
Jawahar Colony Road, Aurangabad
District Aurangabad

... APPELLANT

VERSUS

- 1) Satyajit s/o Suryabhan Jadhav,
Age 32 years, Occu. Business,
R/o Plot No.60, Near MIDC College,
CIDCO N-4, Aurangabad
- 2) The Police Inspector,
Pundlik Nagar Police Station,
Aurangabad

(The respondent no.2 is the formal
party, therefore notice is not necessary)

... RESPONDENTS

.....
Mr. J.M. Murkute, Advocate for appellant
Mr. S.S. Thombre, Advocate for respondent No.1.
Mr. A.M. Phule, A.G.P. for respondent No.2.

.....

WITH

**FIRST APPEAL NO.395 OF 2021 WITH
CIVIL APPLICATION NO. 3841 OF 2021**

Satyajit s/o Suryabhan Jadhav,
Age 34 years, Occu. Business,
R/o Plot No.60, Near MIT School,
N-4, CIDCO, A-Sector, Aurangabad
District Aurangabad

... APPELLANT

VERSUS

- 1) Archana w/o Satyajit Jadhav,
Age 29 years, Occu. Household,
R/o C/o Prakash Deshmukh,
Plot No.6, Vishnu Nagar,
Jawahar Colony Road, Aurangabad
District Aurangabad
- 2) The Police Inspector,
Pundlik Nagar Police Station,
Aurangabad

... RESPONDENTS

.....
Mr. S.S. Thombre, Advocate for appellant
Mr. J.M. Murkute, Advocate for respondent No.1.
Mr. A.M. Phule, A.G.P. for respondent No.2.
.....

CORAM : R. G. AVACHAT, J.

Date of reserving order : 23rd July 2021

Date of pronouncing order : 3rd August, 2021

ORDER :

This Appeal is filed under Section 47(C) of the Guardians and Wards Act, 1890. The challenge therein is to the order dated 9/12/2020, passed by the Incharge Additional District Judge, Court No.4, Aurangabad in Civil Misc. Application (Civil M.A.) No.127/2019. By the impugned order, the application moved by the wife (appellant herein) for custody of her minor son has been partly allowed. Being

aggrieved by, and dissatisfied with the impugned order, she has preferred this Appeal. Respondent No.1 herein is her husband, who has also preferred Appeal No.395/2021 challenging clause No.1(b), directing him to hand over the custody of minor to the appellant mother on every Sunday and also on other public holidays shown in the school diary.

2. The facts giving rise to the present appeal are as follows :

The appellant married respondent No.1 in March 2011. The couple has been blessed with a son – Deven. He would be completing age of 7 years within next two months. The matrimonial dispute arose in the year 2016 and it is alleged that, the respondent husband driven the appellant wife out of the matrimonial home in February 2019, keeping the minor in his custody. It appears that, the appellant wife has made frantic efforts for custody of the minor child. First she preferred application under Section 97 of the Code of Criminal Procedure, then moved a petition for habeas corpus. Lastly, preferred the application for custody of the minor child, under the provisions of the Hindu Minority and Guardianship Act, 1956 and the Guardians and Wards Act, 1890.

3. Heard. Mr. J.M. Murkute, learned counsel for the appellant wife would submit that, the respondent husband is a businessman. He leaves home early in the morning and returns late in the evening. Until 2020, the mother of the respondent husband was alive. She would look after the minor. The respondent's mother is no more. He, therefore, leaves Deven at the house of his sister. The appellant being the mother and natural guardian of the minor, is eager to have custody of the child. According to learned counsel, it would be the mother and none else who could take best of the care of her minor child. He would further submit that, the appellant wife is gainfully employed. There would, therefore, be no question of not providing the child with his necessities in life. The appellant being the mother, has an emotional bond with her child. Taking exception to the impugned order, the learned counsel would submit that, the learned Judge has placed reliance on the documents produced on record by the respondent husband. He has levelled allegations against the character of the appellant wife. The documents have been forged one. Those have not been proved in the proceedings before the learned Judge. The learned counsel took me through the various orders that had earlier been passed in relation to the custody of the minor. The learned counsel has

also relied on the following authorities :-

- (1) Lekha Vs. Anil Kumar
[Appeal (Civil) No.5131 of 2006)
- (2) Roxann Sharma Vs. Arun Sharma
[2015(2) ALL MR (SC) 978]
- (3) Surinder Kaur Sandhu Vs. Harbax Singh Sandhu & ors.
[AIR 1984 SC 1224]
- (4) Gauri Milind Aher Vs. Milind Balasaheb Aher
[First Appeal No.1437 of 2017)

4. Shri S.S. Thombre, learned counsel for the respondent husband would, on the other hand, submit that, the appellant wife herself left the matrimonial home. She has extra-marital relationship with the husband of the respondent's real sister. It would not be in the best of interest of the minor to grant her custody of the child. The learned counsel reiterated the reasons given by the learned Judge in support of the impugned order.

5. Perused all the relevant documents and the impugned order. Gone through the citations relied on. The facts of the citations relied on have altogether been different and distinguishable. It is a settled proposition of law that, welfare of a child is paramount consideration for deciding the

custody of child. The learned Judge, in paragraphs No.14 and 15 of the impugned order, has observed thus :-

“14. Moreover, it is undisputed fact that since last more than 23 months the minor is in the custody of father. Thus, now he has been set and well acquainted with the other family members of the father. It has been informed that the father took his admission in the 1st standard, hence the care of basic education to the minor has been taken by the father.

15. Of course, the love and affection of the mother is equally important for the overhaul development of the minor. But considering the nature of the allegations, it will not be safe and in the welfare of the minor to keep his overnight custody with the mother. The needs of minor to get natural love and affection of the mother and to have a social and psychological support and bondage with the mother can be satisfied if the mother is allowed to have visits with the minor. The Applicant and the respondent both are residing at Aurangabad. . . .”

6. In view of the impugned order, the custody of the minor child is to be continued with the respondent father. The appellant mother has been granted visitation rights. The respondent husband has been directed to hand over the minor to the custody of the appellant mother every Sunday and on public holidays shown in the school diary. The custody of the

minor child during those days is to be with the appellant mother from 9.00 in the morning to 6.00 in the evening.

7. While deciding the issue as to custody of the child, the wish of the child prevails provided the child is of the age of understanding. In view of Section 6(a) of the Hindu Minority and Guardianship Act, in case of a boy or unmarried girl, the father and after him, the mother is his natural guardian, provided the custody of the minor who has not completed the age of 5 years, shall ordinarily be with the mother.

8. With a view to ascertain the wish of the child Deven, I had interaction with him. He is not inclined to join the mother. I found him to be able to understand the questions and give rational answers thereto. He has been in the custody of his father for more than 23 months on the date of the impugned order. It appears that, the respondent husband and his sister do take proper care and look after the welfare of Deven. He is, therefore, not inclined to join his mother and stay with her. For all these reasons, no interference is called for with the impugned order.

9. In the result, First Appeal No.658/2021 fails. It is

dismissed.

10. In view of the above, the First Appeal No.395/2021 filed by the husband is also dismissed.

Civil Applications filed in both the Appeals are also dismissed.

**(R. G. AVACHAT)
JUDGE**

fmp/-