

1. Parties herein got married on 27th April, 2016 and son-Kiaan was born on 15th March, 2019, whose temporary custody is the subject matter of issue before this Court.
2. The Respondent/wife invoked the provisions of Section 25 of Guardian and Wards Act, in which prayer is moved under Section 12 of the said Act seeking temporary custody of the child-Kiaan. Said

application Exhibit 4 came to be allowed vide the impugned order dated 25th September, 2021 passed by the Family Court, Pune. As such, this petition.

3. Heard respective counsel.

4. The contentions are, the Respondent-wife voluntarily removed herself from the company of the Petitioner so also child and left the child on the mercy of the Petitioner.

5. It is further claimed that even during health issue of the said child, the Respondent-wife/mother has not bothered to attend the child. In absence of any specific evidence, contrary to the above, it is claimed that the Family Court committed an error in ordering temporary custody of the child. The further contentions are, till final adjudication of the main application, the order impugned is required to be kept in abeyance or should be quashed and set aside.

6. The aforesaid contentions are countered by the learned counsel appearing for the Respondent, as according to him, mother is

being a natural guardian, she be a legal custodian of the child, considering the age. It is further claimed that the Petitioner is given visitation rights.

7. Considered rival submissions.

8. It appears that Family Court is not sensitive to the provisions of Section 6 of the Act, wherein it is specifically described that the child below five years, natural guardian / custodian should be the mother.

9. The fact remains that there is a matrimonial discord between the parties and even prayer to filing of present application, the Respondent-wife invoked the provisions of Section 97 of Code of Criminal Procedure, which were turned down by the Court of Magistrate having regard to the alternate remedy, which is invoked by the Respondent- wife.

10. Since the age of the child-Kiaan, which is 2½ years is not in dispute, in my opinion, the Family Court was justified of passing the

order thereby directed it temporary custody with the Respondent – mother.

11. The Family Court also considered the issue of equity and granted visitation rights to the Petitioner, as such his interest till final disposal of main proceedings is also taken care of.

12. No case for extra ordinary jurisdiction is made out. Petition fails and as such dismissed.

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(NITIN W. SAMBRE, J.)