

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

LETTERS PATENT APPEAL NO. 371/2012 IN WRIT PETITION NO. 577/2012 (D)

(PRAKASH YADAVRAO TEMBHARE & ANOTHER **VERSUS** VAISHALI PRAKASH TEMBHARE)

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

Court's or Judge's order

Shri R.L. Khapre, Senior Advocate with Shri D.R. Khapre, counsel for the appellants.
Shri E.S. Sahasrabuddhe, counsel for the respondent.

CORAM : A. S. CHANDURKAR AND G.A. SANAP, JJ.

DATED : 07TH OCTOBER, 2021.

The challenge raised in this letters patent appeal is to the judgment of the learned Single Judge in Writ Petition No.577 of 2012. That writ petition was filed for challenging the order passed by the learned Ad-hoc District Judge-1, Gondia in proceedings seeking custody of the minor child.

In the light of the judgment of the Hon'ble Supreme Court in *Jogendrasinhji Vijaysinghji Versus State of Gujarat & Others* [(2015) 9 SCC 1], Shri R.L. Khapre, learned Senior Advocate for the appellant fairly submits that the letters patent appeal would not be maintainable since a challenge was raised in the writ petition to the order passed by the Civil Court.

We have no difficulty in accepting the aforesaid submission in view of the settled legal position.

In the light of aforesaid legal position, it is submitted by the learned Senior Advocate that the appellants be permitted to withdraw the letters patent appeal so as to invoke review jurisdiction before the learned Single Judge in Writ Petition No.577 of 2012. According to him by virtue of various interim orders, the custody of the minor child is presently with the appellant no.1.

Shri E.S. Sahasrabuddhe, learned counsel for the respondent submits that the respondent has moved a civil application seeking visitation rights and that civil application is pending.

Since it is found that the letters patent appeal is not maintainable in view of the decision in *Jogendrasinhji* (supra), the letters patent appeal is permitted to be withdrawn. The points raised therein are kept open. The appellants are free to take such legal recourse as is permissible in law. Similarly, the prayers made in the civil application preferred by the respondent are also kept open.

The letters patent appeal is disposed of as withdrawn. No costs.

The interim orders operating in the letters patent appeal shall continue to operate for further period of four weeks from today.

(G.A. SANAP, J.)

(A. S. CHANDURKAR, J.)

APTE