

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

APPEAL FROM ORDER NO. 49 OF 2015

Asif Yusuf Shaikh
Age. 39 yrs, Occ. Service,
R/o. Mirajgaon, Tq. Karjat,
Dist. Ahmednagar.

.... Applicant
[Ori. Applicant]

Versus

1. Munshibhai Babubhai Pathan,
Age. 74 yrs, Occ. Nil,
R/o. Juna Bajartal,
Nr. Ram Mandir, Sonai,
Tq. Newasa, Dist. Ahmednagar.
2. Rajiya Munshibhai Pathan,
Age. 69 yrs, Occ. Household,
R/o. As above.

.... Respondents

Advocate for Applicant : Mr. Anand D. Dale h/f. Mr. S.S. Rathi
Advocate for Respondent Nos. 1 & 2 : Mr. R.R. Karpe

CORAM : RAJESH S. PATIL,J.

DATE : 07th December, 2022

JUDGMENT:-

1] This appeal from order is filed by the appellant, who claims to be the father of his minor son namely Aman, under Sections 17 and 25 of the Guardian and Wards Act, 1890. The application filed by the applicant under Sections 17 and 25 of the Guardian and Wards Act was dismissed by the order dated 17.11.2014 passed in Civil Misc. Application No. 85 of 2014. Aggrieved thereby, the present appeal from

order is filed.

2] It was the case of the applicant that he was married to one Jabina who is the daughter of respondent Nos. 1 and 2. Out of the said wedlock, son Aman was born on 27.03.2006. The applicant further stated that on 27.4.2006, Jabina (wife) committed suicide at Mirajgaon. Thereafter, unfortunately respondent Nos.1 and 2 filed complaint with police station under Section 498-A, 306 r/w. 34 of IPC against the applicant and his family members.

3] The applicant's contention is that the parents of his wife have forcibly taken custody of his son Aman after filing police complaint against the applicant. It was his further case that in spite of his request, his wife's parents did not give custody of his son. However, after the death of Jabina (wife) he re-married with Nilofer Abdul Ajij Khan on 3.6.2007, who is also a teacher at Mirajgaon. The applicant has contended that his financial condition is sound and he can maintain Aman. Therefore, he requested for custody of Aman.

4] The respondents, by filing written statement resisted the claim of the applicant and stated that Aman was 13 years old and has shown disinclination to go with his father and after the death of their daughter Jabina, the applicant immediately remarried. Aman is admitted in an English Medium School and respondents i.e. the grant parents are incurring all the expenses. They further stated that the applicant has never contributed anything for well being of Aman, except, giving sweets whenever he met him.`

5] The learned lower court, after recording his findings, has rejected the application of the applicant. However, respondent Nos. 1 and 2 were directed to allow the applicant to see his son Aman as per the convenience of school timing of Aman on first and third Saturday of every month during 3.00 p.m. to 5.00 p.m. in Court premises.

6] Today, Aman – son of applicant is present in the Court. This court had very specifically asked him a question, whether he wants to reside with his grant parents or he wants to stay with his father. Aman, who is now 17 years and 9 months old, has answered that he wants to stay with his grant-parents. However, he showed his inclination to meet his father whenever the father wished.

7] Taking into consideration the reasons recorded by the learned trial court while rejecting the application, and the statement made by Aman today, who is now 17 years and 9 months old, the appeal from order stands rejected. Civil application also stands disposed off.

[RAJESH S. PATIL]
JUDGE

grt/-