

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

FIRST APPEAL NO. 891 OF 2016
WITH
CIVIL APPLICATION NO.14255 OF 2019 IN FA/891/2016

CHINTAMAN RAJARAM PATIL
VERSUS
SIMA CHINTAMAN PATIL AND ANOTHER

....

Mr. Ujwal S. Patil, Advocate the Appellant
Mr. Gajendra D. Jain, Advocate h/f Mr. N.L. Choudhari, Advocate
for Respondent Nos. 1 and 2

....

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 14th JANUARY, 2022

PER COURT:-

1. Mr. Ujwal Patil, learned counsel for the applicant / appellant and Mr. G.D. Jain holding for Mr. N.L. Choudhari, learned counsel for respondent nos. 1 and 2 are present.

2. This Court vide order dated 14.12.2021 has referred the matter to the SUKOON Center, High Court Legal Services Sub-Committee at Aurangabad to fix the terms of visiting rights, time and date etc. After holding meeting with both the parties, the in-charge of SUKOON Center has submitted her report in sealed

envelope. The sealed envelop is opened and the report is taken on record and marked as 'X' for identification.

3. On going through the report it is noticed that the Counsellor could not settled the terms in respect of visiting rights. Accordingly, Counsellor has submitted failure report.

4. The appeal is of the year 2016, whereby the appellant has challenged the order passed by the learned District Judge seeking custody of a minor son. It is pointed out Mr. Patil, learned counsel for the applicant / appellant that the application seeking custody of minor was rejected by the learned District Judge on the ground that the son was of 6 years old at that time. He submits that now the son has become more than 12 years old. The appellant can file fresh application before the learned District Judge with the same prayer, subject to liberty at the hands of this Court.

5. Mr. Jain holding for Mr. N.L. Choudhari, learned counsel for respondent nos. 1 and 2 has supported the impugned order passed by the learned District Judge.

6. Practically 5 years are over in deciding this appeal regarding custody of a minor son. There is no propriety to keep

pending this appeal for years together. The appellant may file a fresh application before the learned District Judge in view of the change in circumstances. No prejudice would be caused to the respondent wife, if the applicant / appellant file a fresh application before the learned District Judge. It is necessary to grant permission to the appellant to withdraw the appeal with liberty to file an application for custody before the learned District Judge.

ORDER

- (i) The appeal stands disposed of as withdrawn with liberty to the applicant / appellant to file fresh application for seeking custody of a minor son before the learned District Judge at Jalgaon.
- (ii) The learned District Judge shall decide the application seeking custody of a minor son on its own merits.
- (iii) The appeal stands disposed of accordingly.
- (iv) In view of disposal of the first appeal, civil application No. 14255 of 2019 also stands disposed of.

[SHRIKANT D. KULKARNI]
JUDGE

S.P. Rane