

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

WRIT PETITION NO.1831 OF 2022

**MOHD. IRFAN ABDUL MANNAN GHONGADE
VERSUS
SUMAYYA YASMEEN DIVORCE WIFE OF IRFAN M. GHONGADE AND
OTHERS**

...
Advocate for Petitioner : Mr. Sachin S. Deshmukh
Advocate for Respondent Nos. 1 to 3 : Mr. G. R. Sayed
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 21ST APRIL, 2022

PER COURT :

1. The petitioner by this petition filed under Article 226 and 227 of the Constitution of India, takes exception to the order passed by the learned Judge, Family Court, Parbhani, below Exhibit-5 in Petition-D No.27/2020, thereby partly allowing the application Exhibit5.

2. The petitioner/father filed the said proceedings under Section 25 read with Section 7 of Guardians and Wards Act, for grant of permanent custody of respondent Nos. 2 and 3 – his children, from the custody of respondent No.1 wife. In the said proceedings application Exhibit-5 is filed by the petitioner seeking following prayers:-

“(i) Non-applicant No.1 may kindly be direct to take admission of non-applicant No.2 and 3 i.e. Aman and Afan in Potdar Jumbo International School at Parbhani;

(ii) Till the disposal of main application non-applicant No.1 may kindly be directed to handover the interim custody of N.A. No.2 and 3 i.e. Aman and Afan, during the School vacations and on Ramzan Eid, Bakri-Eid and on every birthday of non-applicant No.2 and 3;

(iii) Allow this application and grant visitation right and grant any other relief as this Hon'ble court deem fit and proper to sub-serve the ends of justice."

3. It appears from the documents placed on record that during the course of hearing of the application Exhibit-5, a statement of the learned advocate for petitioner was recorded that the petitioner does not wish to press prayer clause Nos. (ii) and (iii) of the application. According to the petitioner, the said statement was made without seeking consent of the petitioner. The petitioner, therefore, filed application Exhibit-16 seeking liberty to press prayer clause Nos. (ii) and (iii) of the application Exhibit-5. The Family Court allowed the application Exhibit-16 by order dated 04-07-2020.

4. However, while deciding the application Exhibit-5 the Family Court has observed that at the stage of argument the petitioner has restricted his arguments to the extent of education of children in Potdar Jumbo International School at Parbhani only and abandoned other reliefs of temporary custody of children till the decision of the main petition. The petitioner is challenging the impugned order to the

extent that it does not take into consideration the prayer clause Nos. (ii) and (iii) in application Exhibit-5.

5. Heard the rival submissions of the learned advocate for petitioner and the learned advocate for respondents.

6. The learned advocate for petitioner, on instructions from the petitioner who is present in the Court, submits that at the time of hearing of application Exhibit-5, the arguments of the petitioner were not restricted to the extent of education of respondent Nos. 2 and 3. He submits that at the time of hearing of application Exhibit-5 written notes of arguments were placed on record. Copy of the said written notes of arguments is made available for perusal of this Court. In the written notes of arguments the petitioner has made specific averment seeking interim custody of respondent Nos. 2 and 3 during School vacation and Ramzan Eid, Bakri-Eid and every birthday of respondent Nos. 2 and 3.

7. In the light of these facts, this Court is of the considered view that the Family Court ought to have taken into consideration the submissions of the petitioner in respect of prayer clause Nos. (ii) and (iii), while deciding the application Exhibit-5.

8. In the result, the writ petition is allowed. The Family Court

is directed to consider prayer clause Nos.(ii) and (iii) of application Exhibit-5 on its own merits and decide the same after hearing the parties, within a period of two weeks from the date of receipt of this order.

9. The parties shall appear before the Family Court on 27-04-2022. Formal notice in that behalf is, therefore, dispensed with.

(NTIN B. SURYAWANSHI, J.)

SVH