

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

WRIT PETITION NO. 13239 OF 2022

Archana Bramhanand Tale .. Petitioner

Versus

Bramhanand Ramrao Tale .. Respondent

Shri B. R. Waramaa, Advocate for the Petitioner.
Shri Hemant Surve, Advocate for the Respondent.

CORAM : SANDEEP V. MARNE, J.
DATE : 22ND DECEMBER, 2022.

FINAL ORDER :

. By this petition, the petitioner challenges order dated 17th December, 2022 passed by the Principal Judge, Family Court, Aurangabad thereby granting interim custody in respect of the couple's son to the respondent-father for two days on 24th December, 2022 and 25th December, 2022.

2. It appears that on previous occasions respondent-father was granted interim custody of the child from time to time. By order dated 27th April, 2018 interim custody of 10 days was granted. Thereafter by order dated 30th April, 2019 interim custody for a period of 30 days was granted to the respondent-father. It is also seen that respondent-father was earlier granted visitation rights on every Sunday from 10.00 a.m. to 5.30 p.m. The said visitation rights came to be modified by order dated

24.08.2021 essentially on account of Covid-19 pandemic and modified to 4.00 p.m. to 5.30 p.m. on 01st and 03rd Saturday of each month.

3. Respondent-father filed application seeking interim custody of the son as under :

Christmas Vacation	From 20 to 31 st December, every year
Summer Vacation	From 03 to 25 May, every year
Diwali Vacation	From 15 October to 05 November every year

4. The child came to be interviewed by the Marriage Councilor on 13.12.2022. I have perused the report of the Marriage Councilor. Though the councilor has recorded observation that the son shown disinclination to spend Christmas vacations with the father, it is also recorded in that report that child is very friendly with other family members of the father. He has close and loving relations with the grandmother (father's mother).

5. Family Court has proceeded to partly allow the father's application by granting interim custody for only two days on 24.12.2022 and 25.12.2022. Several conditions are put by the Family Court on the father during such interim custody in para No. 10 of the order, which reads thus :

"[10] Considering the previous conduct of the parties

necessary directions need to be given to the petitioner. While enjoying interim custody, the petitioner shall not do any mind poisoning of the child in respect of respondent mother. Secondly, he is not permitted to take video of the minor child. So far as photographs are concerned, for his sweet and happy memories he can click some photographs but surely he cannot file the same in the Court as evidence. Both parties to see that the child enjoys said interim custody period safely and happily. They shall not create any hurdle for the same.

6. Mr. Waramaa strenuously submits that the son is aged 15 years and his wish is paramount. The son having expressly shown disinclination to visit the house of the father, Family Court cannot impose interim custody against the wish of the child. The report of the Marriage Councilor though records disinclination of the child to spend Christmas vacations with the father, also shows good and loving relations with other members of the family, particularly with the father's mother. Also of relevant is the fact that, when the child was interviewed by the Marriage Councilor, the prayer of the father was for spending the entire Christmas vacations from 20th December, 2022 (12 days) with the son. Therefore, disinclination shown by the child during the course of interaction with the Marriage Councilor is required to be considered in the light of the prayers that were made in the application. Now Family Court has granted interim custody only for two days considering overall circumstances of the case. Considering the fact that the father has been granted interim custody on several occasions in the past and is also granted visitation rights, no error is found in the order of the Family

Court.

7. Mr. Waramaa raises a grievance about direction No. 6 in the order dated 17th December, 2022, where the Family Court has granted liberty to the respondent-father to seek police aid. Mr. Waramaa on taking instructions from the petitioner, who is present in the Court, makes a statement that minor son will be brought before the Marriage Councilor as directed in direction No. 3 of the order dated 17.12.2022 at 4.00 p.m. on 23rd December, 2022. In view thereof direction No. 6 of the impugned order dated 17.12.2022 shall stand set aside.

8. Another anxiety that Mr. Waramaa expresses is about minor son being in exclusive custody of the father during the two days. He submits that mother desires that the grand parents of the son should also be present in the house during interim custody period. Mr. Survey, fairly submits that during the entire period of custody of the minor son with the respondent-father, the grandparents will also be present in the house. So this anxiety expressed by the mother is taken care of.

9. The next concern of Mr. Waramaa is that custody of the minor son should be returned to the petitioner-mother on 26th December, 2022 at 11.00 a.m. Mr. Surve, on taking instructions from the respondent-father, makes a statement that as directed by the Family Court, the custody of the minor son shall be returned to the Marriage Councilor at 11.00 a.m. on 26.12.2022.

10. Considering the above position emerging, the order passed by the Family Court is upheld, subject to above modification.

11. With the above observations and directions writ Petition is disposed of. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]

bsb/Dec. 22