

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9434 OF 2022**

Dr. Gauri Abhishek Chavan

....Petitioner

Versus

Mr. Abhishek Ajit Chavan

....Respondent

Mr. Ranvir Shekhawat i/b. M/s.Raj Legal for Petitioner.

Smt.Chitra Phadke a/w.Atharva A.Dandekar and Padmini Ainapure for Respondent.

CORAM : S. G. DIGE, J.

DATE : 16th DECEMBER, 2022.

P.C. :

1. Heard learned counsel for the petitioner and learned counsel for the respondent.

2. Learned counsel for petitioner submits that the family Court rejected the application filed by the petitioner for interim custody of her daughter on the ground that the said prayer of custody of the minor daughter is already rejected by the Metropolitan Magistrate Borivali Court, for short (MM Court) and the petitioner has not challenged the said order. So the order passed by learned Magistrate Court has attained finality, the observations of Family Court are

improper. In fact petitioner has challenged the said order before City Civil & Sessions Court, Dindoshi Division which is pending. Learned counsel for petitioner submits that petitioner is Doctor she has shifted her house from Dadar to Vile Parle only for convenience of her daughter. Being mother petitioner needs the custody of minor daughter who is 7 years old. But these facts are not considered by Family Court and rejected the application of petitioner without any reasonable ground. Hence requested to allow the Writ Petition.

3. Learned counsel for the respondent submits that the submission of learned counsel for the petitioner in respect of shifting of petitioner from Dadar to Vile Parle, there is no proof produced on record in that regard. The daughter Rui meets to the petitioner either at Borivali or at Dadar. The learned Family Judge has discussed, about why she is denying the interim custody to the petitioner in the impugned order. It cannot be said that merely the application of petitioner seeking interim custody is rejected only on the ground that there was order of MM Court Borivali. The order passed by the learned family Judge is well reasoned order and no interference is

required in it.

4. I have heard both the learned counsels. Perused the impugned order passed by learned Family Judge. In her detailed order. Learned Judge has observed in para 6 that,

“the Magistrate Court while rejecting the temporary custody of minor daughter to the respondent wife conclude in the negative, that there was domestic violence upon respondent wife alleged by her. On the perusal of the said order it is understood that considering the welfare of the child it was held that respondent wife is not holding responsibility for the temporary custody of her daughter. The respondent wife did not challenge this order, she preferred the application of the jurisdiction of Family Court by filing similar application which was already rejected by competent Court after hearing issue on merit. This is nothing but venture which waste of public time.”

5. Thereafter, learned Family Judge has discussed about merit of the application and rejected the application of interim custody filed

by petitioner. In my view the learned Family Judge in her impugned order mentioned about the order passed by Metropolitan Magistrate Court. But she has not considered the fact that the proceedings pending before Magistrate Court was under Domestic Violence Act and no application was filed before the Metropolitan Magistrate, for getting the interim custody of daughter. The Letter was given by protection Officer to the Metropolitan Magistrate dated 22/1/2020 and in the said letter protection officer has mentioned about giving custody of the daughter to the petitioner. So application given by the protection officer to the Metropolitan Magistrate cannot be said that it was application by the petitioner for getting interim custody. Moreover the learned Family Judge has observed that the order passed by the Metropolitan Magistrate Court has attained finality, as it was not challenged, but the petitioner has challenged, the said order before City Civil & Sessions Judge, Dindoshi Division. The Family Court has to decide the interim application on its own merit. Family Court has vast jurisdiction comparing to the order passed by Metropolitan Magistrate, in respect of custody of child matter the order passed by Family Court would prevail. So Family Court has to

decide the custody matter on its own merit. In the present matter the learned Family Court has observed that earlier the learned Metropolitan Magistrate Court has already rejected the application and no appeal is pending. Hence petitioner is not entitled for the custody which is improper. In view of above, I pass following order:

ORDER

(i) Writ Petition is allowed in terms of prayer clause (a).

(ii) Learned Family Judge is requested to decide the application of petitioner for getting interim custody of her daughter that is Exhibit 83 on its own merit as early as possible without being influenced by the earlier orders.

(iii) Learned Counsel for the respondent submits that at present Court Room No.2 is vacant who has passed impugned order if it is so the in-Charge Court of Court Room No.2 shall decide the application on its own merit preferably within 4 weeks, after receipt of this order.

(iv) The learned Judge also decide the Divorce Petition filed by the respondent as early as possible.

(v) Writ Petition is disposed of.

(S. G. DIGE, J.)