

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR**

**FIRST APPEAL NO. 352 OF 2022**

Rahul s/o Rajan Shinde

..vs..

Pundalik s/o Sakharam Dhoke and ors.

WITH

**FIRST APPEAL NO. 358 OF 2022**

Chhaya Rahul Shinde (dead) thr. LR's Pundalik Sakharam Dhoke and ors.

..vs..

Rahul Rajan Shinde

-----  
Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders  
-----

Court's or Judge's orders

Smt. S.W. Deshpande, Advocate for the appellant.  
Shri Vijay Kothale, Advocate for the respondent.

**CORAM : M.S. KARNIK, J.**

**DATED : 12/04/2022.**

These First Appeals are interconnected and arising out of same judgment and order dated 22.02.2022 of the Trial Court.

2. Heard the learned Counsel appearing for the parties.

3. Learned Counsel for the appellant invited my attention to the findings recorded by the Trial Court in the petition filed by the husband under Section 27(1)(B)(D) of the Special Marriage Act (for short 'the Act'), 1954 and Section 38 of the Act (wrongly stated as Guardian and Wards Act, 1890) for custody of the minor daughter. My attention is then invited to Section 38 of the Act. From the reading of the judgment and order dated 22.02.2022 passed by the Trial Court, it appears that the wishes of the minor child, who is 9 years of age, were not ascertained. Learned Counsel do not dispute this. .

4. Without commenting any further on the merits of the respective contention, suffice it to observe that the parties agreed that the matters could be remanded back to the Trial Court for passing appropriate orders upon ascertaining the wishes of the minor child. It is made clear that I have not made any observations on the merits of the respective contentions and the same are kept open.

5. Considering the nature of the controversy and the interest of the minor child, the Special Marriage Petition No.4 of 2019 needs to be decided expeditiously. The evidence has already been recorded.

6. The parties are directed to appear before the Trial Court on 19.04.2022 along with the copy of this order. The parties will not seek any adjournment and the matter will be argued on the date, fixed by the Trial Court. The Trial Court to decide the Special Marriage Petition No. 4 of 2019 as early as possible and in any event, by 05.05.2022.

7. Needless to mention that the Trial Court will ascertain the wishes of the child on the date which is convenient to the Trial Court, after taking into consideration the examination schedule of the child.

8. This concession is made by the learned Counsel for the respondent-husband on the instructions of Shri Rahul Rajan Shinde who is personally present in the Court, when the matter was heard.

9. The impugned Judgment and order dated 22.02.2022, is set aside. The parties to act on the authenticated copy. The Appeals stand disposed of with no order as to costs.