

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

WRIT PETITION NO. 2698 OF 2022
(Dr. Vinita W/o Sandeep Agrawal Vs. Sandeep S/o Shivkumar Agrawal)
WITH
WRIT PETITION NO. 2699 OF 2022
(Dr. Vinita W/o Sandeep Agrawal Vs. Sandeep S/o Shivkumar Agrawal)

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

Court's or Judge's orders

Mr. P.S. Tiwari, Advocate for Petitioner in both petitions
Mr. D.Y. Kumbhare, Advocate for Respondent in both petitions

CORAM : MANISH PITALE, J.

DATE : 15th JUNE, 2022

WRIT PETITION NO. 2698 OF 2022

By this petition, the petitioner has challenged order dated 29/04/2022, passed by the Family Court No.2, Nagpur, whereby an application at Exh.37, praying for dismissal of the petition filed by the respondent for want of territorial jurisdiction has been rejected.

2. The respondent filed the aforesaid petition under the provisions of the Guardians and Wards Act, 1890, praying for grant of permanent custody of the minor child born out of the wedlock between the parties and alternatively prayed for visitation rights. Interim relief was also sought by the respondent by way of the said petition. In the said petition, the

Court below passed an order on 09/02/2021, on Exh.16, whereby the petitioner was directed to give virtual access of the minor child to the respondent and further directions were given.

3. It is the case of the petitioner that when differences occurred between the parties in their matrimonial life, she was initially constrained to move from Nagpur with the minor child to Kanpur, where her parents reside and thereafter, she has moved to Jodhpur, where she is working. The petitioner is a Doctor by profession. On this basis, it was contended in the aforesaid application at Exh.37 that the petition filed by the respondent for permanent custody and other reliefs was not maintainable, as Section 9 of the aforesaid Act mandates that such a petition has to be filed before the District Court having jurisdiction over the place where the minor ordinarily resides. The said application was opposed by the respondent.

4. A perusal of the impugned order dated 29/04/2022, shows that the Court below has rejected the application on the ground that the aforesaid objection regarding jurisdiction was already dealt with in paragraph No.5 of order dated 09/02/2021, whereby Exh.16 was disposed of and virtual access was granted to the respondent. Thereafter, the Court below has commented upon the conduct of the petitioner and also recorded that the petitioner has come up with a trick that she desires to transfer the said pending petition to another

Court. It is recorded that the petitioner has not come with clean hands before the Court.

5. The learned counsel for the petitioner submitted that the objection regarding jurisdiction raised in Exh.37 has not been decided on merits by the Court below and that reliance on the earlier order dated 09/02/2021, passed on Exh.16, particularly, paragraph No.5 thereof, was wholly erroneous for the reason that the said application at Exh.16 was filed by the respondent for some other relief. In any case, it was submitted that paragraph No.5 of the said order does not deal with the aforesaid objection regarding jurisdiction in a satisfactory manner and, therefore, by way of abundant caution, the petitioner has filed the Writ Petition No.2699/2022, before this Court to challenge the said order dated 09/02/2021.

6. On the other hand, learned counsel for the respondent submitted that the question regarding jurisdiction was put to rest in the earlier order dated 09/02/2021, passed on Exh.16 and that in any case the conduct of the petitioner before the Court below would indicate that she was vacillating, inasmuch as initially she claimed that she was residing at Kanpur and then she claimed that she was residing at Jodhpur and that, therefore, in this backdrop, the Court below was justified in rejecting the application at Exh.37.

7. This Court has considered the material on record. A perusal of the impugned order shows that specific objection

regarding jurisdiction taken on behalf of the petitioner by relying upon Section 9 of the aforesaid Act has not been dealt with by the Court below. The objection has been rejected only on the ground that the same was dealt with earlier and rejected in the order dated 09/02/2021, passed on the application at Exh.16. A perusal of the said order dated 09/02/2021, passed on Exh.16, particularly paragraph No.5 thereof, shows that the serious objection regarding jurisdiction raised on behalf of the petitioner by relying upon Section 9 of the aforesaid Act, was not dealt with satisfactorily by the Court below. It was expected that the Court would go into the question as to what was the material placed on record by the rival parties to demonstrate as to where the minor child in question can be said to be ordinarily residing. No such enquiry appears to have been conducted by the Court below, either in the order dated 09/02/2021 or in the impugned order dated 29/04/2022.

8. At the same time, this Court is of the opinion that since the order dated 09/02/2021, passed on Exh.16 grants virtual access to the respondent, who is father of the child, interference may not be warranted in the said order only on the ground that the observations made in paragraph No.5 cannot be said to be sustainable. Instead, it would be appropriate that the application at Exh.37 filed by the petitioner is decided afresh, without being influenced by the observations made in paragraph No.5 of the order dated 09/02/2021. This Court is of the opinion that the serious objection regarding jurisdiction raised on behalf of the petitioner by relying upon Section 9 of

the aforesaid Act needs to be dealt with in a more satisfactory manner.

9. In view of the peculiar facts and circumstances that emerge from the record of the present case, this Court is of the opinion that the petition filed by the respondent along with applications filed therein, particularly the application at Exh.37, ought to be considered by another Court within the jurisdiction of the Family Court at Nagpur.

10. In view of the above, the writ petition is partly allowed. The impugned order dated 29/04/2022, is quashed and set aside. It is directed that the said application at Exh.37, filed in Petition No.D-1 of 2021, shall be considered afresh. The Principal Judge of the Family Court at Nagpur is directed to allot the aforesaid petition filed by the respondent therein bearing No. D-1 of 2021, to a Court presided over by a Judicial Officer other than the Officer, who has passed the impugned order.

11. The writ petition is disposed of.

12. It is directed that the application at Exh.37 will be decided afresh, without being influenced in any manner by paragraph No.5 of the order dated 09/02/2021, passed on Exh.16.

WRIT PETITION NO. 2699 OF 2022

In the light of the order passed in Writ Petition No.2698/2022, the learned counsel for the petitioner seeks permission to withdraw Writ Petition No.2699/2022. Hence, Writ Petition No.2699/2022, is disposed of as withdrawn.

2. It is made clear that all contentions of the parties are kept open and it is expected that the petition filed by the respondent and particularly the application filed at Exh.37 by the petitioner shall be disposed of expeditiously.

JUDGE