

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

APPEAL AGAINST ORDER NO.19/2022

Kashefaanjum Mohd. Dilshad and another

Vs.

Mohd. Ijharullah Mohd. Esarullah

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

Court's or Judge's orders

Shri C.D. Rohankar, Advocate for appellants
Shri Aadil J. Mirza, Advocate for respondent

CORAM : SMT. M.S. JAWALKAR, J.

DATED : 11/10/2022

Heard learned Counsel for both the parties.

2. It appears that respondent filed application for custody of child before the learned District Judge-1, Darwaha, District Yavatmal. The respondent and appellant no.1- Kashefaanjum married as per Muslim rituals on 17/05/2012. Out of said wedlock, one son namely Mohd. Sayam born on 30/04/2013.

3. Due to dispute between husband and wife, the appellant no.1 wife filed application under Section 12 of the Protection of Women from Domestic Violence Act, 2005. She left her matrimonial house and gone to her parent's house along with her minor son.

4. Thereafter, on 06/10/2016, both the parties by consent filed application for a dissolution of marriage. In the said consent terms, it is agreed that the son when attains the age of seven years, his custody will be handed over to the father. In view

thereof, the application for custody vide No.19/2015 was withdrawn by the father.

5. After the son attained the age of seven years, his father moved an application for custody bearing No.20/2020 under the Guardians and Wards Act, 1890. He filed an application as well as sent legal notice also. It is contended that wife- appellant no.1 performed another marriage and appellant no.2 is an old aged person and he will not be able to maintain the child. The respondent submitted that he is able to maintain the child as well as will give him school education.

6. The said application was opposed by the wife on the ground that said consent term in Misc. Civil Application No.146/2015 were not read over to her. The appellant No.1/wife admitted that she has performed second marriage. However, her contention is that the child is residing along with her at Anjangaon Surji, whereas contention of the respondent is that the child is residing with the grandfather.

7. The learned Trial Court after considering the contentions of the parties and perusal of record, allowed the application and appellant Nos.1 and 2 were directed to hand over the custody of Mohd. Sayam to the respondent.

8. The respondent herein contended that while passing the order, no opportunity was granted to

cross-examine nor any opportunity granted to lead any evidence.

9. On perusal of Rojnama, It appears that ample opportunity was granted by the Court for leading evidence.

10. Learned Counsel for respondent relied on *Nil Ratan Kundu and another Vs. Abhijit Kundu* reported in *(2008) 9 SCC 413*.

11. In view thereof, there is no error whatsoever in view of the order passed by the learned District Court. However, it would be appropriate to modify the order by inserting some directions for access to the appellants.

12. The appellants with minor son and the respondent to remain present on 21/10/2022 before the learned Executing Court and on that date, the appellants will hand over the custody to the respondent till 07/11/2022 before the learned Executing Court.

13. The appellants will take custody of child initially for period of two weeks. It may be during Diwali Vacation, 2022, thereafter, the child will be again returned under the custody of respondent i.e. on 07/11/2022. Thereafter, in the second month i.e. in the month of December, 2022, the appellants wife and grandfather will return the custody to the father on 24/12/2022. Parties to remain present thereafter before the learned Executing Court for further

directions on 09/01/2023.

14. Parties to follow the conditions mentioned above, scrupulously and there will be no dispute over these conditions.

15. The application stands disposed of in above terms.

JUDGE

R.S. Sahare