

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

APPEAL AGAINST ORDER NO.37 OF 2018

Sachin s/o Haridas Bhise
Aged about 31 years, Occ:
R/o Kothari Layout, Khamgaon, Tq.
Khamgaon, Dist. Buldana.

...APPELLANT

---VERSUS---

1. Umadevi alias Ranjana Sachin Bhise
(Divorcee) Now Sau. Ranjana Shankar
Makode, Aged 30 years, R/o Mazar, Tq.
Ner, District Yavatmal.
2. Krushna alias Astha Sachin Bhise
Aged about 10 years, Occ. Student
Through Guardian mother respondent
no.1 C/o Amol Rambhau Sontakke, R/o
Pathardi, Tq. Telhara, District Akola.

...RESPONDENTS

Mrs Anjali A.Bhide, Advocate for the appellant.
Shri A.B. Mirza, Advocate for respondents.

CORAM : AMIT BORKAR, J.
DATED : JULY 19, 2022.

ORAL JUDGMENT :

1. **Rule.** Rule is made returnable forthwith. Heard finally by consent of the parties.

2. The appeal challenges the order passed by the learned District Judge-1, Akot, rejecting the application of the father seeking permanent custody of 14 years female child. The learned District Judge has rejected the application, mainly relying on the

clause consent terms, which according to the District Judge responsibility of the father to have custody of the female child. The District Judge relied on the relevant terms and has recorded the finding that the father in the consented wife to take responsibility for the maintenance of his daughter. On the contrary, the terms show that the divorce was granted to the wife on the condition that she would maintain the girl child and take responsibility for the marriage expenses of the said child.

3. According to the learned Advocate for the appellant, the wife has been remarried, and the child has been in the custody of the maternal uncle, the custody of the child should be handed over to the father.

4. The District Court has recorded a finding that nothing in the divorce deed can preclude the wife from remarriage. The District Judge interviewed the child and held it was in the child's interest to remain with the maternal uncle. There are no complaints against the maternal uncle, either about the character or any other indecent behaviour. The female child is with the mother and maternal uncle right from inception. The District Judge thought fit not to disturb the custody of the child.

5. Taking an overall view of the matter, particularly in view of the fact that custody of the child was with the mother for all these years and thereafter with the maternal uncle, in the interview conducted by the District Judge, he has held that it is in the welfare of the child that the custody be continued with the maternal uncle and also considering the age of 14 years. In custody matters, the welfare of the minor predominates to such an extent that the legal rights of the persons claiming to be the guardians or claiming to be entitled to the custody will play a very insignificant role in the determination by the court. In my opinion, therefore, the finding recorded by the District Judge cannot be said to be perverse, calling for interference under Order XLIII Rule 1 of the Code of Civil Procedure. However, insofar as access to the father is concerned, the District Judge needed to grant access to the father in accordance with the terms of the compromise deed. I, therefore, pass the following order:

6. The impugned order dated 04.04.2018 passed by District Judge-1, Akola in Miscellaneous Judicial Case No.19/2017 is modified to the extent of granting visiting rights to the father.

7. The father shall be entitled to access his daughter –

Krushna alias Astha Sachind Bhise, aged about 14 years (at present residing at Pathardi, Taluka Telhara, District Akola). The father shall have visiting rights at Court premises at Civil Judge Junior Division, Talhara every 1st and 3rd Saturday between 3 pm and 5 p.m.

8. The respondent no.1/mother and maternal uncle shall cooperate with the father to give visiting rights to the appellant as directed above.

9. Rule is made absolute in the above terms. No costs. Pending civil application (s), if any, stand disposed of.

JUDGE

Wagh