

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

WRIT PETITION NO.6235/2022

1. Bhagwat Narayan Hiwarkar,
Aged about 32 yrs, Occ. Service,
2. Nidhi D/o Bhagwat Hiwarkar,
Aged about 6 yrs, Occ. Student,
petitioner no.2 being minor through
petitioner no.1 as legal guardian,
Both the petitioners are R/o Jire Mali
Nagar, Tembhurna, Tq. Khamgaon,
District Buldhana.

...PETITIONERS

VERSUS

Sau Priyanka Bhagwat Hiwarkar,
Aged about 32 yrs, Occ. Housewife,
R/o C/o Shyam Kashiram Tayde,
Ram Nagar, Hiwarkhed, Tq.: Telhara,
District Akola.

...RESPONDENT

Ms D.V. Sapkal, Advocate for the Petitioners
Shri A.M. Tirukh, Advocate for respondent

CORAM : VINAY JOSHI, J.
DATED : 16/12/2022

ORAL JUDGMENT :

1. Heard finally by consent of both the parties.
2. The petitioner husband raises a challenge to the order dated

20/09/2022 by which the District Court has rejected the jurisdictional objection about the maintainability of the petition for seeking custody of minor child.

3. The petitioner husband got married with respondent-wife in the year 2015. The female child (petitioner no.2) was borne on 26/01/2016. Both lived together, however, due to differences, in the month of October, 2019 respondent-lady went to her parental house along with child. Undisputedly, the child lived with mother and material grand-parents till 31/07/2022.

4. It was the case of respondent-wife that, on 31/07/2022 petitioner husband has forcibly taken the child to his place. She has filed police report as well as applied for search warrant in terms of Section 97 of the Code of Criminal Procedure, 1973. However, as the custody was with father, it does not amount to illegal detention and therefore, search warrant was not issued. Later on, respondent-wife has filed application seeking custody of minor from petitioner-husband, in the month of September, 2022. In said application, petitioner-husband appeared and filed an application Exhibit 12 seeking rejection on the ground that Akot Court has no territorial jurisdiction. It was the petitioner's contention that the child was living with him at Khamgaon,

which was minor's ordinary place of residence in terms of Section 9 (1) of the Guardianship and Wards Act, 1890. The petition was filed by respondent-wife at Akot within whose jurisdiction she was living with child at her parental house.

5. The only question is whether stay of child at Khamgaon with father can be construed as the ordinary place of residence of minor or minor's stay prior to 31/07/2022 with her mother can be construed as an ordinary place of residence within the meaning of Section 9 of the Guardianship and Wards Act, 1890.

6. The facts are not in dispute that since birth, minor was with mother but after separation i.e. from 17/10/2019 minor was residing with mother within the jurisdiction of Akot Court till 31/07/2022. The respondent-wife alleges in police report and in the application for search warrant that on 31/07/2022, petitioner-husband took child with deceitful means. No doubt, from 31/07/2022 for next one month i.e. preceding to the filing of custody application, minor was with father at Khamgaon. Certainly, the said stay at Khamgaon cannot be construed as minor's ordinary place of residence. It is not the case that minor was living continuously with his father but the respondent took a specific stand that under some pretext, the minor was taken away from her

place of residence. Therefore, temporary stay of minor for one month at Khamgaon cannot be considered as his ordinary place of residence. The term ordinary place of residence cannot be construed as a place where minor was staying on the date of filing application for custody. Moreover, it is wife's specific contention that one month preceeding of application custody was taken by misrepresentation. The contents of application has to be seen for the purpose of jurisdiction. Since, minor was living with mother at Akot, the same has to be treated as minor's ordinary place of residence. In view of above, the impugned order calls no interference. Writ petition stands dismissed.

JUDGE

R.S. Sahare