

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1653 OF 2023

Shardul Shamprasad Dev
Age – 40 years, Occ – Lawyer,
R/o Vishwakamal, Vivekanand Nagar,
Behind Shri RamMandir,
Taluka – Kopargaon, District - Ahmednagar

PETITIONER

VERSUS

1. Manjiri Shardul Dev
Age – 33 years, Occ – Lawyer
R/o Chincholi Phata, Taluka – Rahuri
District – Ahmednagar
2. Meera Shamprasad Dev
Age – 70 yeas, Occ – Household
3. Shamprasad Vishwanath Dev
Age – 75 years, Occ – Lawyer
Both R-2 and R-3 R/o Vishwakamal,
Vivekanand Nagar, Behind Shri Ram Mandir
Taluka – Kopargaon, District – Ahmednagar
4. Pallavi Shailesh Kulkarni
Age – 47 years, Occ – Nil
R/o C/o Vasanti Upadhaye
114, Umashankar Co-operative Society
Near Dashbhuja Ganpati, First Floor
Plot No.2, Pune
5. Amol Manhor Achari
Age -33 years, Occ – Driver
R/o Sanjavani Kamgar Vasahat
Sahjanandnagar Shinganapur
Taluka – Kopargaon, District – Ahmednagar

RESPONDENTS

.....

Mr. R.S. Deshmukh, Senior Advocate a/w Yugandhari Abhijit
Nemade i/b Mr. Sanket S. Kulkarni, Advocate for the petitioner

Mr. L. V. Sangit, Advocate for respondent No.1

Mr. A., T. Kanawade, Advocate for respondent No.2

Mr. Shamprasad V. Dev - respondent No. 3 (party in person)

Mr. S. A. Deshmukh, Advocate respondent No.4

Mr. K. N. Bhosale, Advocate respondent No.5

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 11th APRIL, 2023

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned advocates for the parties.

2. By this petition, filed under Article 227 of the Constitution of India, the petitioner/husband has challenged orders dated 2nd December, 2022 passed by the learned District Judge, Kopargaon below Exhibit-24 and dated 5th December, 2022 passed below Exhibit-31 in Civil Miscellaneous Application No. 3 of 2020

3. The wife has filed Civil Miscellaneous Application No. 3 of 2020 seeking custody of minor Reyansh under section 6, 7, 8, 12 and 25 of the Guardians and Wards Act.

4. The husband filed application Exhibit-24 for appointment of Court Commissioner. He also filed application Exhibit-31, requesting the Trial Court to have independent interaction with

minor Reyansh about his ability and wishes. Both these applications are rejected by the Trial Court. Hence, the present petition.

5. This Court, by a detail order dated 13th February, 2023, has rejected the petition to the extent of challenge to the order passed below Exhibit-24. Hence, the present petition is being considered only to the extent of challenge to the order passed below Exhibit-31.

6. Heard learned senior advocate for the petitioner, learned advocates for respondents and respondent No.3 – party in person. Perused the grounds raised in the petition, annexures, reply filed by respondent No.1, additional reply filed by respondent No.3 and the impugned order.

7. It is pertinent to note here that the Trial Court on 4th December, 2021 passed following order below Exhibit-1 :

“1. I have heard the applicant and respondent No.1 at length. There are some applications pending on record. The submissions are made by either sides in respect of proceeding the matter for recording of evidence. The applicant has orally submitted today that her application be decided along with the main application. If she has not filed pursis to that effect yet, she shall file the same on record. The interactions will have to be done with the child. I observe that it be done after recording rival evidence.

2. *The respondent no.1 has also stated that the Psychiatric and Psychological Evaluation of Parents and the Child is required to be done and in view of the Child Access and Custody Guidelines, a Commissioner is to be appointed to consider the living conditions. Here, I observe regarding such submissions that either sides shall adduce their evidence first in this regard. Presently with regard to the Psychiatric and Psychological Evaluation, either side shall suggest the name of the person who can do it and accordingly the orders will be passed.*

3. *Hence with these observations the matter be posted for recording of evidence after getting the pursis of respective sides on record. Either side shall see to it that the matter proceeds as expeditiously as possible.”*

8. Application Exhibit-31 was filed by the husband on 6th March, 2020. Order below Exhibit-31, impugned in the present petition, is passed by the Trial Court on 5th December, 2022, by which the prayer of the husband to have interaction with minor Reyansh is rejected.

9. While passing the impugned order, the Trial Court has failed to take into consideration order dated 4th December, 2021, quoted supra. In fact, in that order, the Trial Court has categorically observed - *“The interaction will have to be done with the child. I observe that it be done after recording rival evidence”*. The impugned order is, therefore, contrary to the order passed by the Trial Court below Exhibit-1 on 4th December, 2021. In fact, the Trial Court ought to have disposed of

application Exhibit-31 in terms of the order dated 4th December, 2021, passed below Exhibit-1. The non application of mind on the part of the Trial Court, in passing the impugned order, is writ large on the face of record. The impugned order, therefore, is unsustainable, in law and facts of the case.

10. In the result, the writ petition is partly allowed. Impugned order dated 5th December, 2022 passed below Exhibit-31 in Civil Miscellaneous Application No. 3 of 2020 is quashed and set aside. Application Exhibit-31 is disposed of in terms of order passed below Exhibit-1 dated 4th December, 2021.

11. It is informed by the parties that evidence is being recorded in the Trial Court. The Trial Court shall interact with Reyansh, after recording of evidence is over. Evindentary value of the said interaction would be decided by the Trial Court at the time of hearing of the Civil Miscellaneous Application. Rule is made absolute in aforesaid terms.