

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.9712 OF 2023

**YUSUF KHAN ABDUL SAMAD KHAN AND ANOTHER
VERSUS
SAYAMA MUJAHID PATEL**

...

Advocate for Petitioners : Mr. Krishna P. Rodge
Advocate for Respondent : Mr. I.K. Wagh

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 30th AUGUST, 2023

PER COURT :

1. Petitioners have impugned the order dated 22/06/2023, passed by learned District Judge-2, Jalgaon, below Exhibit-11 in Civil M.A. No.128/2023, thereby allowing application filed by the respondent/wife and issuing direction to the police officer within whose jurisdiction the ward/minor child resides, to make search of the house of petitioner No.1/husband and to produce ward/minor child namely Mohammad Umar Yusuf Khan/respondent No.2 before the Court on next date.

2. Respondent/wife has filed Civil M.A. No.128/2023 under Sections 7 and 25 of the Guardians and Wards Act, claiming custody of the minor Mohammad Umar Yusuf Khan. It is not in dispute that petitioner No.1 and respondent were married and petitioner No.2/minor is born out of the said wedlock. Thereafter,

they both have parted their ways by executing *Khulanama*.

3. It is the case of petitioner that as per *Khulanama*, custody of the minor child should be with the mother till the age of seven years and thereafter, the child was to be given in the custody of husband/petitioner No.1. Accordingly, the child was given in the custody of petitioner. However, respondent/wife has asked for custody of the child by filing said proceeding. After separation, respondent has married and presently she is staying at Kasab Kheda, Khultabad, District Aurangabad, and not at her maternal house at Pachora, District Jalgaon. Petitioner further contends that, since petitioner is staying at Aurangabad, the minor is taking education at Aurangabad, and since after marriage respondent is also staying at Aurangabad, the Court at Jalgaon has not jurisdiction to entertain the petition filed by respondent. Impugned order is passed by the District Court without hearing the petitioner.

4. Learned advocate for respondent, on the other hand, supports the impugned order contending that bailiff report clearly indicates that, notice was sought to be served on the petitioner but he refused to accept the same. He further submits that the incident in question has taken place within Jalgaon District, as the child at the relevant time was taking education in a school at Jalgaon.

5. After hearing the rival submissions and on going

through the writ petition memo, annexures thereto, impugned order as well as the reply affidavit filed by the respondent, this Court, at this stage, is not inclined to go into the merits of the matter, since the proceeding is pending before the Court at Jalgaon. As the impugned order is passed without hearing petitioner, the same is unsustainable. Hence the following order:

ORDER

- (I) Writ petition is partly allowed.
- (II) Impugned order dated 22/06/2023, passed by learned District Judge-2, Jalgaon, below Exhibit-11 in Civil M.A. No.128/2023, is quashed and set aside.
- (III) The matter is remitted back to the District Court. The District Court shall hear the application Exhibit-11 and decide the same afresh on merit.

(NITIN B. SURYAWANSHI, J.)