

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

WRIT PETITION NO.803 OF 2020

**YUVRAJ MUKUNDRAO SALGAR
VERSUS
NAGNATH BAPURAO TARDE**

...
Advocate for Petitioner : Mr. R.K. Kasat, Advocate h/f
Mr. S.S. Thombre
Advocate for Respondent : Mr. G.V. Ghuge
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 24th APRIL, 2023

PER COURT :

1. Order dated 29/07/2019, passed by learned District Judge-3, Ambajogai, below Exhibit-1 in Civil Misc. Application No.27/2017, thereby rejecting application filed by the petitioner/original applicant under Section 6(a) of the Hindu Minority and Guardianship Act, is challenged in the present petition.
2. Facts which are not in dispute are that, on 20/09/2015, wife of the petitioner committed suicide. Minor daughter Kranti was with the petitioner at that time. It is the contention of petitioner that Kranti was forcibly taken away by the respondent/maternal grandfather. In the year 2017, petitioner filed application under Section 97 of the Code of Criminal Procedure for issuance of search warrant of his daughter Kranti. The same was rejected on merits by learned Judicial Magistrate First Class, Parli Vaijnath. Thereafter,

present application is filed for seeking custody of minor Kranti from respondent grandfather.

3. Initially respondent failed to file reply. Thereafter his application Exhibit-20 was allowed and he was permitted to file reply. However, he has failed to file reply and comply with the order. Written notes of arguments were filed on behalf of respondent at Exhibit-23. Trial Court after hearing both the sides rejected application of the petitioner. Hence, the present petition.

4. Heard learned advocate for petitioner and learned advocate for respondent. Perused the memo of writ petition, annexures thereto and the impugned order.

5. The matter pertains to custody of minor and her welfare is of paramount consideration, which the trial Court will have to take into consideration while deciding to whom her custody should be given. Indisputably, the parties in the proceedings have not entered the witness box and failed to lead evidence in support of their respective contentions. Trial Court has erroneously proceeded to decide the matter only on the basis of rival contentions of the parties and written notes of arguments, which is not expected in custody matters.

6. In the result, following order:-

ORDER

- (I) Writ petition is allowed.
- (II) Impugned order dated 29/07/2019, passed by learned District Judge-3, Ambajogai, below Exhibit-1 in Civil Misc. Application No.27/2017, is quashed and set aside.
- (III) The matter is remanded back to learned District Judge-3, Ambajogai, for decision afresh on merit, within three months from the date of receipt of writ of this order, after giving opportunity to both the sides to lead evidence.
- (IV) Parties shall cooperate in expeditious disposal of the matter.

7. Needless to mention that this Court has not expressed any opinion on merits of the matter. Respective contentions of both the parties are kept open.

8. At this stage, learned advocate for petitioner submits that till the application is decided on merit, he may be given visitation right to his daughter. Learned advocate for respondent strongly opposed this prayer contending that since the petitioner has given poison to his wife, they apprehend danger to the life of minor at the instance of petitioner.

9. Taking into consideration the fact that petitioner is father and natural guardian of minor Kranti, he is entitled to meet his daughter on every alternate Sunday between 10:00 a.m. to 02:00 p.m., at the residential house of the respondent.

(NITIN B. SURYAWANSHI, J.)