

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

FAMILY COURT APPEAL NO. 79 OF 2019

Mr. Vinit Vilas Vaidya,
Age 33 years, Occ. Service,
r/o. B-6/802, Park Infenia,
Kumar Properties, Fursungi,
Tq. Haveli, Dist. Pune.

.. Appellant
(Original petitioner)

Versus

Mrs. Manjiri Vinit Vaidya,
Age 30 years, Occ. Household,
r/o. A-5, Gulmohar Colony,
E-30/I, CIDCO, Aurangabad.

..Respondent
(Original respondent)

Mrs. R.R. Mane and Jyoti Patki, Advocate for appellant,
Mr. R.D. Biradar, Advocate for respondent sole.

**CORAM : MANGESH S. PATIL
& S.G. CHAPALGAONKAR, JJ.**

**RESERVED ON : 24 JANUARY 2023
PRONOUNCED ON : 7 FEBRUARY 2023.**

JUDGMENT : [S.G. CHAPALGAONKAR, J] :-

1. The appellant/husband has filed the present appeal under Section 19 of the Family Courts Act, challenging the judgment and order dated 21.9.2019 passed by the Family Court, Aurangabad in Petition No. D-01/2017 filed for permanent custody of the minor girl from

respondent/wife under Section 25 of the Guardian and Wards Act.

2. Facts in brief are as under :-

The petitioner and respondent got married on 29.11.2012 at Aurangabad as per the Hindu Rites and Customs. Out of the said wedlock, they are blessed with girl child - "Manaswi". The child is in the custody of the mother. Presently, the appellant as well as respondent are residing separately at different locations in Pune City.

3. The appellant contends that the respondent was reluctant to reside in shared accommodation along with his parents. She was insisting for separate residence. The appellant acceded to her wish and arranged a separate accommodation in Pune. However, the respondent tried to commit suicide. On various occasions, she used to raise quarrels, abuse him and beat him. Even she was blaming him for death of her father. The appellant suffered great mental harassment due to the eccentric behavior of the respondent. The appellant suggested her to have the advice from counsellor. However, she did not cooperate. It is further the case of the appellant that respondent filed false cases under the provisions of the Protection of Women from Domestic Violence Act, 2005 as well as under Section 498A of IPC against him. The respondent refused him access to the child. According to appellant on 4.3.2017, the respondent flatly refused to allow him to meet the child. The appellant states that he has love and affection for his minor daughter. He can take good care of her. He is independent and can maintain her. He resides along with his parents. Even, they can take care of the child. As such, he has prayed for grant of permanent custody of Manaswi.

4. The respondent/wife filed written statement at Exh.35. She contends that it was mutually agreed before the Marriage Counselor that the parents of the appellant would reside separate from them. The appellant used to insult her. Once appellant took her on the terrace and tried to push her down. During her pregnancy, the appellant insisted to abort the child. On 17.12.2014, she gave birth to Manaswi. The appellant went to Japan after her birth. His parents did not visit her or came to see the child. The appellant is in service and spends about 8 to 10 hours out of the home. His father is of whimsical nature. His mother suffers from mental illness. He has no love or affection for Manaswi. She is afraid of appellant. The parents of the appellant are old aged and suffer from ailments. The child is safe in her custody and needs her care. With all these pleadings, the respondent has prayed for dismissal of the appeal.

5. The Family Court, after considering the pleadings and evidence on record, dismissed petition holding that appellant failed to prove welfare of child Manaswi can be secured by granting custody to him.

6. Learned Advocates appearing for both sides advanced their submissions in line of pleadings. We have considered arguments and evidence on record. Perused reasons recorded by Family Court. It is now fairly settled that in any proceeding before the Court for custody of the minor, the welfare of the minor child is the paramount consideration. It is also settled that where the matter relates to custody of the female child, the welfare of the child would be in the custody of her mother in absence of compelling reasons and circumstances. Normally, the mother cannot

be deprived of the company of the child to the detriment of interest of the child.

7. In the present case, Manaswi is aged about 8 years. She is in the custody of the mother since the date of birth. It appears that during the pendency of the proceeding before the Family Court, the consent terms were drawn between the parties. Accordingly, the appellant was given access to the daughter in the Children's Complex at Family Court, between 11.00 a.m. to 1.00 p.m. on first Saturday of every month. Thereafter appellant had filed an application before the Family Court at Aurangabad seeking for increase in his access time to the minor daughter. The application Exh.11 was partly allowed by the family Court vide order dated 13.10.2017.

8. The order passed below Exh.11 was challenged by the respondent in W.P. No. 14540 of 2017. The said writ petition was disposed of with the direction that the appellant will have company of his daughter on 1st and 3rd Saturday of each month in Children complex, Family Court. Rest of the terms of the order dated 13.10.2017 were maintained.

9. Even during the pendency of this appeal, C.A. No. 9876 of 2021 was moved by the appellant. Interim arrangement is made under the orders of this Court enabling the appellant to have limited access with the child at Children Complex on 1st and 3rd Saturday as well as 2nd and 4th Friday of every month. In the light of the aforesaid facts, we have considered the submissions advanced by both the sides. We have also interacted with the child- Manaswi and tried to find out her

inclination.

10. The appellant is employed in a Software Company having its location at Magarpatta, Pune and he resides at Phursingi along with his parents. The respondent is residing with her mother and Manaswi at Wakad, Pune. The child is taking her education in Kid-Zee School, Pune, which is at a shorter distance from the place of residence of the respondent. Though we have noted the inclination of the child to reside with the mother, we have analyzed the other relevant factors with intention to adjudge the welfare of the child.

11. Manaswi, is aged about 8 years and she needs company of the mother. It is the right of the child to have company of the parents at this age, particularly, in case of a girl child company and care of mother is essential. The service exigencies of appellant requires him to stay away from home at least for 9 to 10 hours. The appellant failed to bring on record arrangement by which, better care of the child can be secured by him during his working hours. Though the appellant depends on his parents for taking care of the child, no convincing evidence is brought on record regarding their health status and even their willingness. The appellant contends that he would manage the care of the child by taking "Work from home". However, he has not placed on record any material to show that his employment has such facility. In this background, looking from the prospectus of the child her welfare and well-being, this Court in exercise of *parens patriae* jurisdiction would give due weight to a child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. The child is in custody and care of respondent/mother since date of birth. Respondent got admitted

her in a standard school. The mother of respondent also resides with them which adds to additional care and contentment to the child. Evidence on record depicts that respondent has provided adequate medical care to child.

12. The overall analysis of the material on record leads us to the conclusion that there are no reasons to remove the child from the care and custody of the mother and allow the appellant to have permanent custody. The appellant has failed to establish his claim that better welfare of the child can be achieved by putting custody with him. However, we find that Manaswi should have attachment with her parents and both of them should have opportunity to shower love, affection and care towards her. In this background, we find that the judgment and order passed by the Family Court does not require interference, except little modification by granting some additional access to appellant with Manaswi and also grant him limited custody during school vacations for specified period.

13. In the result, we pass the following order :-

ORDER

- (i) The appeal is partly allowed.
- (ii) The appellant would be entitled to have access to minor – Manaswi on first and third Saturday of every month, in the Children Complex, Family Court, Pune between 11.00 a.m. and 1.00 p.m.
- (iii) The appellant would be entitled to the custody of minor –

Manaswi on Fourth Sunday of the month between 11.00 a.m. to 8.00 p.m.

(iv) The appellant would also have access to the child for additional two days during the festive season viz. Diwali and Christmas Vacations as per mutual agreement to be placed in writing before Family Court.

(iii) The appellant would be entitled to the custody of minor – Manaswi during entire second week (Monday 10.00 a.m. to Sunday 6.00 p.m.) in the month of May or any other week in that month as mutually agreed by parties in writing before Family Court.

(vi) The respondent shall hand over the custody of the minor – Manaswi to the appellant, as per the aforesaid schedule at Family Court, Pune.

(vii) The appellant shall restore custody of the minor – Manaswi to the respondent at her residence as per schedule of custody in terms of this order.

(viii) In the circumstances of the case, there shall be no orders as to costs.

[S.G. CHAPALGAONKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE