

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11246 OF 2022

Shivek Ramesh Dhar

... Petitioner

Versus

Mrs. Madhumita Bhainsora

... Respondent

— —
Mr. Shivaji A. Masal for the Petitioner.

Ms. Apoorva Thakre for Respondent.

— —

CORAM : SHARMILA U. DESHMUKH, J.

DATE : June 26, 2023.

P. C. :

1. Heard.

2. The civil application has been preferred seeking interim custody of the child for performing *Kahnethar* ritual which is prevalent amongst the Kashmiri Pandits. The custody is sought for a period of three weeks, which is vehemently opposed by the learned counsel appearing for the respondent-wife.

3. Learned counsel appearing for the Petitioner has tendered an undertaking-cum-affidavit on behalf of the Petitioner stating the details of the ceremony which is required to be performed. The

affidavit states that the *Kahnethar Pooja* is to be held on 30th June, 2023 and thereafter, the *Mahamurtyanjay Jap and Gruhashanti Havan* will be held.

4. Learned counsel appearing for the respondent-wife opposes the application and submits that the *Kahnethar Pooja* can be held in Mumbai. She would further submit that the minor child aged about 4 ½ years is a autistic child and as such, he cannot be permitted to travel to Noida without the mother.

5. Considered the submissions of the parties.

6. The application seeks interim custody of three weeks for performing the *Kahnethar Pooja* which necessarily requires the presence of child. The perusal of the undertaking-cum-affidavit indicates that *Kahnethar Pooja* will be held only on 30th June, 2023 and thereafter, the other ceremonies i.e. *Mahamurtyanjay Jap and Gruhashanti Havan* will be held. It is evident that for performing the other two rituals the presence of the child is not required and the ritual of *Kahnethar* will be held on one day. As regards the contention that the ritual can be held in Mumbai, it will be required to be borne in mind is that the ritual will have to be performed by the Kashmiri

Pandit priest and the presence of Kashmiri Pandit will be easily accessible in Noida, as such, the ceremony can be properly performed in Noida. As the parties are required to travel to Noida, apart from day of *Kahnethar Pooja*, some few days pre and post the *pooja* will be required, so that the child does not suffer any discomfort by reason of traveling, considering the health of the child.

7. There is no other objection which is raised by the learned counsel appearing for the respondent-wife, apart from stating that the Mundan ceremony of the child has already been performed. Be that as it may. The Petitioner is the father of the child and it is not denied that the *Kahnethar Pooja*, is a Kashmiri Pandit ritual. I refrain from going into the issue as to whether the same is required to be performed within a period of one year from the death of the family member or not. It is sufficient that the religious ceremony is required to be performed as per the Kashmiri Pandit's custom and for the said purpose the presence of the child is required. Learned counsel appearing for the respondent-wife submits that the respondent-wife will travel to Noida alongwith the child. As it is stated that the respondent-wife suffers from financial constraints, let all expenses of the respondent-wife be borne by the petitioner-husband. The

expenses shall include the travel expenses as well as the accommodation expenses. It is made clear that there should be no discomfort to the respondent-wife and the child during the period that they are residing at Noida for the religious ceremony.

8. Learned counsel appearing for the respondent-wife submits that the maternal grandmother of the child will be required to accompany the child. In that event, the expenses of the maternal grandmother will have to be borne by the respondent-wife.

9. For the reasons above, the child is permitted to travel to Noida alongwith the respondent-wife for a period from **29th June, 2023** to **7th July, 2023**. It is made clear that the respondent-wife will be present during all the ceremonies and no objection should be taken to her presence at the ceremony. It is also made clear that no dispute be raised by the Petitioner and the Respondent during the ceremonies. Considering that the child is stated to be a autistic child, it is sole responsibility of the petitioner-father to ensure of well being of the child during the period that the child is in Noida and appropriate medical assistance should be made readily available in event of any health issues of the child.

10. This Court is informed that the matter will be listed during this period before the District Court, Thane. Both parties agree by consent that an application for adjournment will be moved before the learned District Court, Thane, which application will be considered by the Court concerned.

11. In view of the above, writ petition stands disposed of in the above terms.

(Sharmila U. Deshmukh, J.)