



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.141/2023

Vinod Namdeorao Punwatkar .Vs. Sau. Arati Vinod Punwatkar

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. K. S. Ghatare, Advocate for petitioner.
Mr. Bhushan Dafle, Advocate for respondent.

CORAM : ANIL L. PANSARE, J.
DATE : 16.10.2023

Challenge is to the order dated 20.10.2022 passed by Additional Sessions Judge – 1, Wardha in P.W.D.V. Appeal No.6/2022. The respondent-wife had filed, before the Judicial Magistrate First Class, Wardha, an application under Section 12 of the Protection of Women From Domestic Violence Act, 2005 (hereinafter referred to as the “DV Act”). She has then filed an application under Section 21 of the DV Act for grant of interim custody of the elder daughter, since the younger daughter was already in her custody. The learned trial Court, vide order dated 23.12.2021, has partly allowed the application thereby granting rights of visitation to the child but refused the custody of the child. The wife has assailed the said order before the Sessions Court which, by the impugned order, allowed the appeal and thereby granted custody of the elder daughter in favour of the wife.

2. The aforesaid order is under challenge.
3. Perused the record. Learned counsel for the petitioner submits that the petitioner was not heard and

was not given an opportunity of hearing before passing the impugned judgment. As against, learned counsel for the respondent has filed the Roznama of the proceedings before the first appellate court as also the pursis filed by the petitioner before the first appellate court.

4. My attention is invited to pursis dated 07.06.2022 filed by the petitioner before the Sessions Court. The petitioner requested the Sessions Court to treat his reply filed by him to the application filed under Section 21 of the DV Act by the wife as his argument. Counsel for the respondent thus submits that opportunity was given to the petitioner.

5. Learned counsel for the respondent has then invited my attention to Roznama. The Roznamas dated 10.08.2022, 24.08.2022, 23.09.2022, 01.10.2022, 06.10.2022, 13.10.2022 and 20.10.2022, indicate that the petitioner and his counsel were absent. The roznama dated 19.09.2022, however, indicates that the petitioner through his counsel was present, only on that day.

6. The Rozanama dated 23.09.2022, after recording absence of the petitioner and his counsel, indicates that the counsel for the petitioner was directed to keep the petitioner present along with child on the next date without fail. Despite such status, neither the petitioner nor his counsel appeared on 01.10.2022. i.e. the next date. The Sessions Court has given yet another opportunity by adjourning the matter to 06.10.2022. On that day as well, the petitioner and his counsel were absent. On 13.10.2022, again the petitioner and his

counsel were absent. The Court heard counsel for the respondent and adjourned the case for argument of the petitioner on 20.10.2022. The petitioner as also his counsel remained absent. Therefore, the Court delivered the judgment.

7. Noting the aforesaid status, the Sessions Court has held in paragraph 7 thus:

“7. It is seen that as the respondent remained absent, his Advocate not turned before the Court to argue the matter. Age of the child Sanidhya @ Swara is 6 years old. While deciding the custody orders the welfare of the child is of utmost priority of the Courts and the Courts are inclined to do what is in best interest of the child. While deciding such application wish of the child, age and sex of the child and whether shifting custody at any time would hamper his/her normal routine has to be considered. On 23.09.2022, I have directed respondent to keep child present before the Court. However, respondent not turned before the Court along with child. The Court would not generally do anything which will disturb or hamper the well being of the child. It is seen from averments of the appeal that respondent is jobless and not having income source. Appellant is working as Nurse in Kasturba Hospital, Sewagram. She is maintaining herself and her second child also. Considering this aspect and welfare of the Sanidhya @ Swara, who is of 6 years old, it is necessary to give temporary custody of the child with appellant. Hence, answer of Point No.1 is in affirmative. Therefore, interference warranted in the order passed by the learned Trial Court. Resultantly, I proceed to pass the following order.”

8. Despite such status, the learned counsel has made an argument that the petitioner was not given an opportunity of hearing.

9. The counsel now submits that the child is not willing to reside with the mother. This argument, however, was not put forth before the Sessions Court. Learned counsel for the petitioner submits that the child's custody is a sensitive issue.

10. The prime consideration will always be to the welfare of the child. The desire of the child is definitely significant, provided the child is not influenced by the party. This issue requires detailed consideration. The petitioner, for no reason, has remained absent before the Sessions Court. However, considering the sensitivity of the issue as also the age of the child, which was six years when the application was filed, I am of the considered view that the Sessions Court should consider the submission of the petitioner – husband before arriving at a conclusion to grant or not to grant the custody of the child to the wife. At the same time, the conduct of the petitioner will have to be dealt with by imposing suitable costs. Hence, following order is passed.

ORDER

(i) The writ petition is partly allowed.

(ii) The judgment and order dated 20.10.2022 passed by Ad hoc Additional Sessions Judge – 1, Wardha in P.W.D.V. Appeal No. 5/2022, is quashed and set aside, subject to the petitioner depositing costs of Rs.50,000/- before the Sessions Court, Wardha. The cost, once

deposited, shall be paid to the respondent-wife, upon her filing application to that effect.

(iii) If the amount of costs is not deposited on or before 27.10.2023, the order passed herein shall stand recalled without further reference to the Court.

(iv) P.W.D.V.A Appeal No.5/2022 is restored to the file of Sessions Judge, Wardha for consideration afresh after giving an opportunity of hearing to both the sides.

(v) The parties shall appear before the Sessions Court, Wardha on 30.10.2023.

The writ petition is disposed of.

(Anil L. Pansare, J.)