

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 2818/2022

Kamlesh Ramesh Jibhkate, aged about
 35 years, R/o. Tilak Ward, Mohadi, Dist.
 Bhandara (Maharashtra State).

... **PETITIONER**

VERSUS

Seema Kamlesh Jibhkate, Aged
 about 31 years, R/o. C/o.
 Anusaya Natthujisawarkar, Datta
 Nagar, near Datta Mandir, Kandri
 (Kanhana) Dist. Nagpur
 (Maharashtra State).

... **RESPONDENT**

Mr. Kamlesh Ramesh Jibhkate, Petitioner (In person)
 Mr. Alok Daga, Advocate for respondent-sole.

CORAM : **VINAY JOSHI, J.**

RESERVING THE JUDGMENT ON : **20.12.2022**

PRONOUNCING THE JUDGMENT ON : **04.01.2023**

JUDGMENT :

Petitioner-father raises a challenge to the interim order
 dated 11.05.2022 (Exh. 14), whereby the Trial Court has granted

limited access of the child during the pendency of custody application. The Trial Court has granted limited access/visitation rights to the father on every Sunday between 04.00 p.m. to 06.00 p.m. at Public Garden, which is impugned herein.

2. Most of the facts are not in dispute. The couple got married on 23.11.2018 as per Hindu Customary Rites. They were blessed with a male child on 21.09.2019. Due to matrimonial differences, petitioner-father has filed Hindu Marriage Petitions for divorce and application for custody of child under the provisions of the Guardians and Wards Act, 1890. As against this, wife has filed application under Section 12 of the Protection of Women from Domestic Violence Act, seeking multiple reliefs as available under said Act. In custody application, the husband has filed application (Exh. 14) seeking interim relief of visitation rights which was partially rejected by the Trial Court which is the subject matter of this petition.

3. Heard the petitioner in person and the learned counsel appearing for respondent-wife. At the inception, it is to be noted that the interim order is under challenge, meaning thereby the application for custody is still pending, wherein evidence is yet to be recorded. The petitioner has filed interim application primly on medical ground. It is his contention that the minor child has developed a medical condition

called as “Robin Pierra Sequence” which is birth defect. The minor child was treated at various hospitals for the deficiencies. On 15.07.2020, Cleft Palate surgery was done by Dr. Dinesh Sarda. According to the petitioner, the respondent-wife is not giving proper medical treatment and taking care of the child. The petitioner has expressed fear that if child is not treated properly, he may develop a speech deficiency in future. The petitioner would submit that joint parental care is necessary for the well being of the child. The petitioner by amendment, has prayed for grant of weekly visitation rights from Friday Morning to Sunday Evening for the practice of language and speech therapy. On the other hand, while resisting petition, the respondent would contend that she has given proper treatment to the child. According to respondent, having regard to the tender age of child, it is not in the interest of child to give his overnight custody during pendency of the application.

4. It is petitioner’s main grievance that wife is not giving proper medical treatment to the child. On 07.12.2022, it was asked to the petitioner that he can suggest a name of Doctor of his choice so that the wife could be directed to bring the child at concerned place. However, the petitioner replied that as per advise of Dr. Dinesh, there is no requirement of medical treatment, but the child would be cured,

by parental sharing, which is recorded by this Court.

5. The petitioner is not coming with a specific case that he intends to take treatment of a child at particular hospital or with particular Doctor, but he says that parental sharing is the mode for recovery. Similar prayer of overnight visitation rights was made before the Trial Court, but it was refused on the ground that the child was barely 29 months old, living with his mother from last seven months. The Trial Court expressed that considering age of child, it is not proper in the interest of child to hand over frequent overnight custody to the father.

6. On date, the child is merely three years of age and for near about last one year child is living with his mother. Having regard to the tender age and the deficiencies faced by the child, it is not appropriate in the interest of child to hand over frequent overnight custody of a child. The husband is staying at Mohadi, Dist. Bhandara with his parents. If during pendnecy, child is asked to stay at different atmosphere for two whole days, it may have adverse impact by frequent change. The Trial Court has rightly rejected the said interim prayer which may have adverse impact on the tender mind.

7. So far as the limited visitation rights are concerned, the Trial Court has granted limited rights on every Sunday between 04.00 p.m. to 06.00 p.m. at Public Garden near residence of mother. The petitioner would submit that either respondent is not giving access to the child at Public Garden or the access is not properly provided at said place. Moreover, it is his grievance that grand-parents of child were not allowed to meet during limited access period. It seems that there is bitter enmity in between the couple, therefore though limited access was given, it was not found to be fruitful. Respondent-wife is resident of place known as Kandri Kanhan, Dist. Nagpur which is informed to be 25 to 30 kms. away from Nagpur City. Husband is staying at Mohadi, Dist. Bhandara. In order to have a workable solution, it would be in the interest of both to provide limited visitation rights at Children Complex (Bal-Sankulan) at Family Court, Nagpur, where the petitioner along with his parents can meet the child. Though both the parties have made allegation and counter allegation, it is a matter of evidence. It would be in the interest of both that, the Trial Court shall expeditiously decide the custody application.

8. In view of above, petition is partly allowed. The respondent-wife shall allow the petitioner and his parents to meet the child for three hours on every Monday between 01.00 p.m. to 04.00

p.m. at Family Court, Nagpur in Children Complex (Bal-Sankulan) till the decision of the custody application. The rest of the prayer is rejected. The Trial Court shall decide the custody application expeditiously and as far as possible within three months from the date of communication of this order.

9. In case of change in circumstances, petitioner is at liberty to move to the Trial Court for modification of interim order.

10. Petition stands disposed of in above terms.

(VINAY JOSHI, J.)

Gohane

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signed by
JITENDRA
BHARAT
GOHANE
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