



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

WRIT PETITION NO.7682 OF 2023

(Himanshi w/o Deepak Aswani Vs. Deepak s/o Ramesh Aswani)

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

Court's or Judge's orders.

Mr. A. H. Joshi, Advocate for Petitioner.
Mr. Kailash Dodani, Advocate with Mr. Bhavesh Sugandh, Advocate,
Ms. Medha Negi, Advocate and Mr. A. Kalroiya, Advocate for Respondent.

CORAM: ANIL S. KILOR, J.

DATE: 8th NOVEMBER, 2023.

Order below Exh.65 dated 01.11.2023 passed by the Judge, Family Court, Nagpur (Court No.3) in Petition No.D-52/2022 allowing the application Exh.65 for grant of an ad-interim custody of the child namely Vivaan from 08.11.2023 to 12.11.2023 is under challenge in this writ petition.

2. The learned Family Court, while granting custody, has considered the earlier orders passed on 20.10.2022 and 13.05.2023 granting interim custody. The Court has further considered that it is necessary to grant custody for the welfare of the child.

3. The learned counsel for the petitioner, however, submits that the impugned order is illegal for the reason that the learned Family Court has not taken into consideration the report of the Psychiatrist dated 17.05.2023 which was submitted on the direction of the

Family Court. It is further submitted that the reasons stated in the reply opposing the application Exh.65, was also not considered.

4. On the other-hand, the learned counsel for the respondent points out that, twice the Family Court interviewed the child and thereafter only, the ad-interim custody was granted on earlier occasions.

5. It is submitted that even after Dr. Bhave's report dated 17.05.2023, the custody was granted on 13.05.2023 after recording the reasons for not relying upon the said report.

6. He has further pointed out that though the Psychiatrist was directed to conduct counseling of parents along with the child, no counseling was conducted of the parents.

7. He has further drawn attention of this Court to the photographs filed on the record of the child Vivaan while he was in custody of his father in pursuance to the earlier orders passed by the Family Court.

8. In the light of rival submissions of the parties, I have perused the record and the impugned order.

9. From the record, it is apparent that this is not the first occasion when the ad-interim temporary custody of child Vivaan was granted to the father by the Family Court. Even after the report of the Psychiatrist, the custody was handed over to the father, recording the reasons why the

report cannot be relied upon.

10. After going through the said report, it is apparent that the report is vague and no detailed observations are recorded by the doctor about the behaviour and other important things he noticed during the counseling of the child.

11. Moreover, the photographs filed on record do not support the case of the petitioner that the child does not want to go with the father even for few days.

12. The record further shows that earlier also the attempt was made to seek modification of the order of custody and thereby a prayer was made not to grant overnight custody. The said request was rejected by the Family Court by recording the reasons.

13. Thus, considering the history of this case and the earlier orders passed by the Family Court, I do not find any error committed by the Family Court in allowing the application Exh.65.

14. Accordingly, the writ petition is dismissed.

JUDGE