

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO. 25 OF 2020

1. Pranita Nivrutti Kamble
Age : 28 yrs, occ : service
R/o Prafulla Nagar, Bhokar,
District Nanded.

2. Yashoda @ Medhavini d/o
Nandlal Lokade
Age : 7 yrs, occ : education.
Under the guardian of real
mother i.e. appellant No.1.

Appellants

Versus

Nandlal Kisanrao Lokade
Age : 35 yrs, occ : agri.
R/o Yashoda Hospital, Near
Shankar Timber, Belapur
Road, Dharmabad,
District Nanded.

Respondent

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Mr. Ganesh Gadhe, Advocate for the appellants.
Mr. C.V. Thombre, Advocate for the respondent.

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CORAM : SANDIPKUMAR C. MORE, J.

Dated : 12 January 2024.

Order :

1. The appellants, who are the non-applicants in Misc. Civil Application (RJE) No. 16/2017 have challenged the judgment and order dated 15.09.2020 passed in the said Application by the learned District Judge-1 at Bhokar, District Nanded (hereinafter referred to as "the learned trial Court), whereby the application of present respondent has

been partly allowed, by granting visitation right to him as mentioned therein.

2. Admittedly, appellant No.1 is the mother of appellant No.2-daughter whereas the respondent is her father. The marriage between appellant No.1 and respondent has been dissolved under decree dated 03.05.2016 which was solemnized on 20.02.2012. Respondent-father then preferred the aforesaid application for getting custody of appellant No.2 under the provisions of Section 8 of Guardians and Wards Act. However, the learned trial Court though refused to hand over custody of appellant No.2 to respondent, but allowed visitation right to him. It has been directed that appellant No.1 shall give temporary overnight custody of appellant No.2 to respondent for 24 hours on every second and forth Saturday till completion of 24 hours on next day i.e. Sunday. The trial court has also directed that custody of appellant No.2 is to be transferred in presence of Police Station Officer, Bhokar. Feeling aggrieved with the said order only to the extent of Clauses 2 and 3 in respect of temporary custody, the appellants have preferred this appeal.

3. Learned Counsel for the appellants vehemently argued that the learned trial Court should not have granted

overnight custody of appellant No.2 – daughter since the respondent, in the past, had treated appellant No.1 with cruelty and great physical and mental torture. He relied on the judgment of this Court in the case of ***Agelo John Bosco Savio Fernandes vs Maria Beatriz de Souza*** reported in ***2016 (4) Bom.C.R. 221*** wherein this Court had quashed and set aside overnight custody of female child aged about 7 years.

4. On the contrary, learned Counsel for the respondent-father opposed the appeal on the ground that the respondent is a Z.P. employee and having every source of income to maintain appellant No.2 who is his own daughter. He pointed out that on three occasions during pendency of the litigation, the respondent was attacked by appellant No.1 and her relatives. According to him, there was interim order of visitation in favour of respondent-husband, but it was not followed by the appellants. He pointed out that appellant No.1 has remarried, and therefore, future of appellant No.2 is in danger. He submitted that false First Information Reports on three occasions were lodged by appellant No.1 against the respondent, but this Court has already quashed all those three First Information Reports. As such, he prayed for dismissal by the appeal.

5. Heard rival submissions. Also perused the documents on record.

6. It is significant to note that the appellants are objecting the impugned order only to the extent of overnight custody of appellant No.2 to respondent and that too in the presence of concerned Police Station Officer of Bhokar Police Station. Though this Court in the case of ***Agelo John Bosco Savio Fernandes vs Maria Beatriz de Souza*** (supra) has quashed the order of overnight custody granted in that matter, but on going through the same, it appears that the child had shown her unwillingness to go with the father. In present cases, no such unwillingness is there. Further, it is significant to note that the respondent is father of appellant No.2 and in absence of there being any specific incident of torture, specially with appellant No.2 by the respondent, there is no reason to refuse custody of his own daughter to him, as directed. The facts of the case relied upon by the appellants are different than the present case wherein it appears that the respondent, despite interim order, was not allowed to meet his own daughter by appellant No.1 and her relatives.

7. It is extremely important to note that during pendency of this appeal an effort to settle the matter amicably through Mediator was made and the said Mediator had even recorded compromise purshis mentioning that appellant No.1 allowed appellant No.2-daughter to meet the respondent-father on first and third Saturday in the Court of District and Sessions Judge at Bhokar, District Nanded in front of the Superintendent of Court between 3.00 p.m. to 5.00 p.m. However, under order dated 04.11.2023, this Court has observed that though the matter was settled before the Mediator, but the compromise purshis as aforesaid, was not followed as per the complaint made by present respondent, and therefore, the matter was taken for final hearing again on failure of parties to observe the terms of compromise purshis.

8. It is also significant to note that appellant No.1 has remarried, and therefore, the respondent, who is the father of appellant No.2 and also a Z.P. employee, cannot be prohibited from visiting his own daughter for temporary period. In view of the same, there is no substance in the appeal and accordingly it stands dismissed.

(SANDIPKUMAR C. MORE, J.)