

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2693 OF 2023
WITH

CIVIL APPLICATION NO. 1718 OF 2024
IN FA/2693/2023

Mukhtar s/o Yunus Sayyad,
Age : 32 years, Occ. Business,
R/o Krushi College Road,
Infront of Bhojane Hospital,
Pachod, Tq. Paithan,
Dist. Aurangabad.

Versus

1. Habiba w/o Mukhtar Sayyad,
Age : 25 years, Occ. Household,
R/o Krushi College Road,
Infront of Bhojane Hospital,
Pachod, Tq. Paithan, Dist. Aurangabad.
At present Janta Hotel, Pachod,
Tq. Paithan, Dist. Aurangabad.
2. Yunus s/o Bandeali Sayyad,
Age: 55 years, Occu. Business,
3. Karimunnisa w/o Yunus Sayyad,
Age: 53 years, Occu. Household
4. Mukhtar s/o Yunus Sayyad,
Age: 32 years, Occu. Business,
5. Nisar s/o Yunus Sayyad,
Age: 26 years, Occu. Business,
6. Ishrat w/o Afroz Shaikh,
Age: 30 years, Occu. Household,
7. Masarrath w/o Affan Mehfooz Chaus,
Age: 28 years, Occu. Household,

Resp. No. 2 to 7 All R/o Krushi College Road, Infront of
Bhojane Hospital, Pachod, Tq. Paithan, Dist. Aurangabad.

**WITH
FIRST APPEAL NO. 2694 OF 2023
WITH
CIVIL APPLICATION NO. 1717 OF 2024
IN FA/2694/2023**

Imran s/o Yunus Sayyad,
Age : 34 years, Occ. Business,
R/o Krushi College Road,
Infront of Bhojane Hospital,
Pachod, Tq. Paithan,
Dist. Aurangabad.

Versus

1. Ashiya w/o Imran Sayyad,
Age : 32 years, Occ. Household,
R/o Krushi College Road,
Infront of Bhojane Hospital,
Pachod, Tq. Paithan, Dist. Aurangabad.
At present C/o Osman Inayat Khan Pathan
Ekta Nagar, Pachod,
Tq. Paithan Dist. Aurangabad.
2. Yunus s/o Bandeali Sayyad,
Age: 55 years, Occu. Business,
3. Karimunnisa w/o Yunus Sayyad,
Age: 53 years, Occu. Household
4. Mukhtar s/o Yunus Sayyad,
Age: 32 years, Occu. Business,
5. Nisar s/o Yunus Sayyad,
Age: 26 years, Occu. Business,
6. Ishrat w/o Afroz Shaikh,
Age: 30 years, Occu. Household,
7. Masarrath w/o Affan Mehfooz Chaus,
Age: 28 years, Occu. Household,

Resp. No. 2 to 7 All R/o Krushi College Road, Infront of
Bhojane Hospital, Pachod, Tq. Paithan, Dist. Aurangabad.

(3)

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Advocate for Appellants : Mr. Rodge Krishna Pratap
Advocate for Respondent No.1 : Mr. Sayyed Tauseef Yaseen

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CORAM : S.G. MEHARE, J.**DATED : APRIL 03, 2024****ORAL JUDGMENT :-**

1. Rule. Rule made returnable forthwith and heard finally with the consent of parties.

2. It is a case of custody of the children. In both appeals, the appellants are the real brothers and respondents are the real sisters. The sisters married the appellants. Both respondents delivered around nine children out of their wedlock. However, the family discord resulted in case of custody of the children. The wives have filed the application for custody. The notices were served upon the appellants. They have filed the written statement. However, later on they did not lead the evidence. Hence, the matter was decided without their evidence.

3. The contention of the appellants is that financial condition of the respondents/mothers is not sound. On the contrary, they have sufficient source of income to maintain all children. The appellants can look after the welfare of the children. However, an opportunity may be granted to lead the evidence to prove the ability to make the welfare of the children.

4. Learned counsel for respondents vehemently opposed the submissions of the appellants referring to the dates of the proceeding. He vehemently argued that the appellants were not diligent. The mother is the best caretaker of the small children. The appellants have no good case to take a lenient view to remit the matter. He also submitted that since last two years, the mothers were not allowed to see their children. There is a great possibility of tutoring them. Therefore, if the Court comes to the conclusion that the matter is fit to remit, the custody of the children for intermediate period may be directed.

5. Both learned counsels submit that their parents are the residents of the same locality, so it is possible for them to meet intermediately. The children are small aged ranging from 13 to 3 years. In a matrimonial dispute, children are always the sufferer. The matrimonial dispute affect their mental health and creates an adverse notion against the marriage institution. They are entitled to love and affection of both, mother and father. The situation permits to make an arrangement to have custody of the children with the mother for few days. The opportunity needs to be granted to the appellants to lead the evidence to verify and prove the capacity and ability of either side to make the welfare of the children. Hence, the following order :

ORDER

- (i) Both appeals are allowed.
- (ii) The impugned judgments and orders dated 29.04.2023 passed by the learned District Judge-7, Aurangabad in Civil M.A. No.364/2022 and 363/2022 stand quashed and set aside.
- (iii) The appeals are remitted to the Court of learned District Judge, Aurangabad for a fresh decision by granting an opportunity to lead the evidence.
- (iv) Both parties shall appear before the learned District Judge on 15.04.2024.
- (v) The learned District Judge shall make an endeavour to dispose of the matter before summer vacation of 2024.
- (vi) The appellants shall not seek an adjournment without any substantial reason.
- (vii) In the meantime, the respondents/mothers are allowed to have custody of the children for two days in every week.
- (viii) The appellants shall handover the custody of the children for suitable two days of every week till the application is decided on merit.
- (ix) The order of custody shall be effected forthwith.
- (x) No order as to costs.
- (xi) Record and proceeding be returned to the learned District Court, Aurangabad.

(6)

(xii) Pending civil applications stand disposed of.

(xiii) Rule is made absolute in above terms.

(S.G. MEHARE, J.)

Mujaheed//