



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

916 WRIT PETITION NO. 12972 OF 2023

JYOTI NILESH PAWAR  
**VERSUS**  
NILESH HARIBHAU PAWAR

Mr. C. V. Bodkhe, Advocate for the petitioner  
Mr. Nilesh N. Bhagwat, Advocate for the respondent

CORAM : R. M. JOSHI, J.  
DATE : 22<sup>nd</sup> NOVEMBER, 2024

**PER COURT :-**

1. Heard.
2. This petition takes exception to order dated 01/09/2023 passed in Civil M.A. 409/2022 by District Judge-6, Aurangabad whereby application Exhibits 13 and 18 were allowed by consent of both sides.
3. When this Court has started dictating the order, learned counsel for the petitioner seeks withdrawal of the petition. Having regard to the facts of the case, request is refused.
4. It is a case of the petitioner before this Court that the order impugned which is passed by consent of both sides be set aside for the alleged subsequent facts on the part of the respondent. During the course of the hearing, learned counsel for the petitioner/wife has submitted that the respondent has failed to pay maintenance to the petitioner. He also has drawn attention of the Court to the proceedings filed by the respondent before this Court and the order passed therein.

Sum and substance of the contention of the learned counsel for the petitioner is that since the respondent has failed to pay maintenance and to comply with the orders passed by the Court, the order impugned deserves interference.

5. Learned counsel for the respondent supported the impugned order.

6. There is no dispute about the fact that the impugned order dated 01/09/2023 granting interim custody to the petitioner is by mutual consent of both sides. Operative part of the said order reads thus:

**"ORDER**

*1. The application (Exhibit-13 and 18) are allowed.*

*2. The respondent Jyoti is hereby directed to handover the custody of the minor son Prajwal and minor daughter Pranal at 08.00 a.m. in the morning on every Saturday.*

*3. The applicant is hereby directed to drop the minor son Prajwal and minor daughter Pranal at 06.00 p.m. on Sunday.*

*4. Both the parties are directed to follow the order with peace."*

7. Since the order impugned is passed by mutual consent, unless the party thereto come before the Court that the consent is obtained as by fraud, misrepresentation etc., question of causing interference therein does not arise. No such case is sought to be made out by the petitioner. This Court has no hesitation to observe that the intention of the petitioner is not bonafide not in the interest of the children in moving the present petition. The said observations are justified from the order dated

12<sup>th</sup> March, 2024 passed by District Judge-6 in the afore stated proceeding. The relevant portion of the said order reads thus :

*"But in the instant matter, it is continuously revealed that the respondent use to prepare the children against the applicant, i.e. father of the children. Due to the extreme turbulence of the children, it is found that handing over the custody of the minor children, i.e. son Prajwal, age 6 years and Pranali, age 4 years, is not practically possible today."*

8. This Court has raised specific query to the learned counsel for the petitioner as to whether this order and the findings recorded therein are challenged at any point of time till date, he, on instructions, makes statement that the said order has not been challenged.

9. The above observations clearly indicate that it is revealed to the Trial Court that the respondent therein i.e. petitioner herein used to prepare the children against respondent father. It is due to the extreme turbulence of the children the custody was not handed over to the father as per the order impugned.

10. Apart from this, order passed by this Court dated 26<sup>th</sup> August, 2024 in Cri. W.P. 108/2023 indicates that the petitioner has relied upon the order impugned for the purpose of supporting her submission. This could be seen from paragraph 5 of the said order which reads as under:

*"5. It is contention of the learned counsel for the petitioner that respondent no.2 is not permitting the petitioner to meet their children. The learned counsel for respondent no.2 submits that as per the interim order passed in Civil Misc. Application No. 409 of 2022 dated 1<sup>st</sup> September, 2023 by the Sessions Court in the application under the Guardian and Wards Act, respondent no.2 is ready to provide access of her children to the petitioner. His statement is accepted. The respondent no.2 shall*

*provide access of children to the petitioner as per the order passed by the learned Sessions Judge.”*

11. The afore stated facts clearly show that the present petition is not bonafide but is intended with a motive to deny father custody of the children. Needless to say that the children are equally entitled to have the love and affection of both parents. Hence, there is no merit in the petition, petition otherwise could have been dismissed with heavy costs for abuse of process of law. However, since the petitioner is a woman, no cost is imposed. Hence, petition stands dismissed.

(R. M. JOSHI, J.)

ssp