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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FAMILY COURT APPEAL NO. 88 OF 2023**

Varsha Pandurang Gujar,
Age 33 years, Occ. Household,
R/o. C/o. Yogesh Pandurang Gujar,
Shendurni, Tal. Jamner,
Dist. Jalgaon.

..APPELLANT
(Original Petitioner).

Versus

Anand Pratap Gujar (Kare)
Age 38 years, Occ. Agri & Business,
R/o. Ayodhya Nagar,
Near Sadguru Colony, Jalgaon,
Taluka and District Jalgaon.

.. RESPONDENT
(Original respondent)

Mr. J.A. Menezes, Advocate for appellant.
Mr. S.B. Chavan, Advocate for respondent.

**CORAM : SMT. VIBHA KANKANWADI
& S.G. CHAPALGAONKAR, JJ.**

**RESERVED ON : 2nd FEBRUARY, 2024.
PRONOUNCED ON : 6th FEBRUARY, 2024.**

JUDGMENT [PER S.G. CHAPALGAONKAR, J.]

1. The appellant/original petitioner in Petition No. D-62/2019 filed this appeal impugning the judgment and order dated 30th March, 2022 passed by the Family Court, Jalgaon, by which prayer of the appellant for custody of the minor daughter came to be rejected.

2. Mr. J.A. Menezes, learned Advocate appearing for the appellant would submit that the appellant is the biological mother of the minor – Bhargavi, who is presently in the custody of father. The marriage

between the appellant and respondent that was solemnized on 29th November, 2012, has been dissolved as per the decree of divorce passed by the Family Court. However, the minor daughter remained in custody of the respondent. On 10th September, 2019, the respondent married with one Saniya Kumawat. Since then the minor is subjected to ill-treatment. The respondent travels in pursuance of his business and neglects the minor daughter. He would, therefore, submit that the appellant being biological mother and natural guardian, needs to be given custody of minor – Bhargavi.

3. Mr. Menezes would further submit that the appellant recorded her evidence before Family Court. The respondent failed to appear and controvert the pleadings and evidence on record. However, the Family Court dismissed the petition vide impugned order dated 30th March, 2022.

4. Mr. S.B. Chavan, learned advocate appearing for the respondent would submit that the appellant had abandoned the daughter when she was infant. Since then the respondent is taking care of the child. He would point out that the respondent married with Saniya Kumawat on 10th July, 2019. She has accepted Bhargavi as her own child and taking due care. The appellant, by filing present proceeding, is trying to disturb the matrimonial life of the respondent and also welfare of the child. He would point out that since the year 2016, the child is in the custody of the respondent. She is aged 9 years and her welfare can be better looked by the respondent.

5. We have considered the submissions advanced on behalf of

both the parties. As per the order dated 5.1.2024, the child was presented before us for interaction. We had advantage to gather the first hand information as regards to the wellbeing of the child and also her willingness. During our interaction with the child by ensuring child friendly atmosphere, we could note that child is well-nourished and intelligent. She do not recognize the appellant. She recognize the second wife of respondent as her mother. We find that respondent and his second wife are taking due care of the child who appears extremely happy as per the present arrangement. So far as claim of the petitioner is concerned, true that she is the biological mother of the child, however, fact remains that when the child was infant, the appellant left the company of respondent. The child has been left in custody of respondent husband since the year 2016 as per the terms of divorce by mutual consent. Since then the child has grown up in the company of the father. Apparently, respondent married with Smt. Saniya Kumawat in the year 2019 and child is recognizing her as the mother. The present application has been filed in the year 2019 when the respondent performed second marriage.

6. Although the appellant alleges that respondent is not looking after the child because of his business assignments or the second wife of the respondent, being step-mother, is not taking proper care, such evidence is not available on record. The contentions of the appellant/petitioner are not supported by any evidence. In fact, on our interaction with the child, we could note that second wife of the respondent is taking care of the child and securing her overall development. The Family Court taking into account the aforesaid aspects, rightly observed that the appellant had abandoned the child –

Bhargavi, when she was infant and at no point of time, she had access with the child. The child is not even in a position to recognize the appellant. Apparently, the petition for custody is filed under apprehension of possible ill-treatment towards Bhargavi by the step-mother. We subscribe to the aforesaid observations made by the Family Court.

7. Oral request for visitation right at least to the appellant cannot be considered as no care was taken by her to have that term incorporated in mutual consent divorce terms. Since 2016 to 2019 she made no attempt to meet the child. Now that limited prayer would disturb the life of the child.

8. It is trite that the welfare of the child is paramount consideration for determining the question as regards to the custody. Although one may have sympathy towards the natural mother, in the peculiar facts and circumstances of the case, when Bhargavi was abandoned by the petitioner/appellant and the fact that the child is growing in company of father, who is providing best environment for educational and intellectual development with the assistance of his second wife, we do not find any reason to disturb the situation.

9. Hence, no case is made out for interference in the order passed by the Family Court. The appeal sans merit, hence stands dismissed.

[S.G. CHAPALGAONKAR, J.]

[SMT. VIBHA KANKANWADI, J.]

grt/-