



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2569 OF 2023

Nikhil Kailash Sharma

...Petitioner.

Versus

State of Maharashtra and Another.

...Respondents.

Mr. Punalkar Sanjiv and Mr. Ranjeet Nair for the petitioner.

Ms. Shilpa Gajare, APP for the respondent-State.

Ms. Seema Sarnaik i/b Mr. P. B. Gujar for respondent no.2.

Coram : Sharmila U. Deshmukh, J.

Date : February 22, 2024.

P. C. :

1. By this petition, challenge is to the orders passed by trial Court and appellate Court by which the interim custody of children has been shifted from the petitioner–father to the respondent–mother.

2. Although petition was heard at length, learned counsel appearing for the petitioner, on instructions from the petitioner, who is present through VC and learned counsel appearing for respondent no.2, on instructions of respondent no.2, who is personally present in the Court, have arrived at a consensus that the matter be remanded to the trial Court, i.e., JMFC, Barshi, to be considered afresh upon necessary affidavits along documents being placed on record by the

parties as regards the welfare of children.

3. In view of the consensus arrived at between the parties, the impugned orders are quashed and set aside. The matter is remanded to JMFC, Barshi to decide the application below Exhibit – 19 afresh within a period of four weeks from the date of production of a copy of this order. Parties to file their respective comprehensive affidavits dealing with the manner in which the welfare of children would be best achieved while in the custody of party concerned. As the issue is as regards the shifting of interim custody of children, trial Court to decide the said application by reasoned findings on the welfare of the children. Trial Court is requested to decide the application expeditiously and in any event within a period of three weeks from the date when the additional affidavits are filed by the parties. Both parties agree that no adjournment on whatsoever ground would be requested and that the parties would proceed with the matter.

4. In the meantime, pending adjudication of interim custody application, the parties have arrived at certain terms as regards the access of children, which is as under :

- (a) On 2nd Sunday of each month, the respondent – mother will avail the access of children from 11.00 a.m. to 5.00 p.m. at the

pre-designated mall at Nanded. The petitioner – father would leave the children at the gate of mall in the custody of mother and will pick up the children from the said gate at 5.00 p.m. on the same day.

(b) On 4th Saturday of each month, the petitioner – father will bring the children to Barshi and hand over the custody of children to the respondent-mother on Saturday evening at 6.00 p.m. and will pick up the children on the next day, i.e., on Sunday at about 3.00 p.m.

(c) The vacation will be shared equally between the parties, first half of the vacation to be availed by the respondent – mother and in the second half children will be with the petitioner – father.

(d) The petitioner–father would share the examination schedule of children with the respondent – mother. The access of children will remain in abeyance during the examination period.

5. Parties to remain present before the trial Court on 29th February 2024 with a copy of this order.

6. All concerned to act upon the authenticated copy of this order.

[Sharmila U. Deshmukh, J.]