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61-WP-5151-2025

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

61 WRIT PETITION NO. 5151 OF 2025

Swapna Dilip Nikalje Alias Swapna Krishnkanhaiya Sarode

VERSUS

Dilip Arjunrao Nikalje And Another

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Mr. Sachin G. Joshi, Advocate for the Petitioner.

CORAM : KISHORE C. SANT, J.

DATE : 21st APRIL 2025

PC :-

1. Heard the learned Advocate for the Petitioner.
2. A challenge in this petition is to an order dated 13th March 2025 passed in an application below Exh. 1 and order dated 21st March 2025 passed below Exh. 28 by the learned Judge, Family Court, Parbhani in P. D. No.09 of 2024. The respondent-husband had filed an application seeking custody of the children.
3. By way of impugned orders, the trial Court has directed the petitioner-mother to hand over the custody of minor children to the

respondent-father and directed to issue arrest warrant under Section 100 of Code of Criminal Procedure read with Section 25 of the Guardians and Wards Act.

4. It is stated in the application that the examination in the school are going on. However, the children, since are residing with the mother, are not in a position to go to school. It is also further stated that, in a compromise decree in Hindu Marriage Petition for divorce, it is specifically agreed in the compromise terms that the custody of the children will be with the respondent-father. There will be free access given to both the parents.

5. It is the case of the petitioner that, it was agreed that the custody of the children will be with the respondent-father. Till in the interest of children, the children are staying with the mother. Whenever they are staying with the father, they feel ill. It is also stated that if they go to school, they will suffer health issues etc. He thus submits that the petition deserves to be allowed by quashing and setting aside the impugned order.

6. Heard the petitioner. It is clearly seen that in the decree of divorce is passed by mutual consent, the parties have already agreed that custody of the children will be with the respondent-father. The mother will be given free access. The said order is passed on 13th March 2025. The petitioner was directed to hand over the custody of the children forthwith. However, inspite of this, the custody is not handed over. It is seen that now, the children are even not in a position to attend the school, as they are not residing with the father and mother. The mother is not allowing the petitioner to see children because of so called health issue. This Court finds that when the order is passed on compromise, it is necessary for the petitioner-mother to hand over the custody to respondent-father. This Court, therefore, does not find any reason calling for interference in the impugned order. With this, writ petition stands rejected.

7. It is made clear that, though the custody is handed over to the respondent-father, it shall be open for the mother to freely meet the children and respondent shall not obstruct the said access for any reason.

8. With this, writ petition stands disposed off.
9. No order as to costs.

[KISHORE C. SANT, J.]