



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

17 WRIT PETITION NO. 9439 OF 2018

PRIYADARSHANI BALASAHEB POL
VERSUS
PADMAKAR GANPAT SHIMPI

.....

Mr. V. V. Tarde, Advocate for the Petitioner

Mr. Shubham Sudhakar Pawar h/f Mr. Rahul R. Karpe, Advocate for the
Respondent

CORAM : R. M. JOSHI, J.

DATE : 11th AUGUST, 2025

PER COURT :-

1. This Petition takes exception to the order passed below Exhibit 15 in R.C.S. No. 96/2016 by learned Trial Court, whereby the said Court refused to exercise its discretion for conducting the DNA test of the Plaintiff and Defendant and Application filed by the Plaintiff came to be rejected.

2. It is the case of the Plaintiff that the Defendant is her biological father and the same is denied by him and therefore, DNA test was sought to be directed. The Defendant filed say and resisted the Application. He denied the contention of the Plaintiff. It is claimed that the Plaintiff is born out of marital relation between her mother and her father Balasaheb.

3. Heard learned Counsel for both sides at length.

4. At the outset, it is necessary to take note of the provision of Section 112 of the Indian Evidence Act, which reads thus :

"112. Birth during marriage, conclusive proof of legitimacy.--

The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten."

According to this provision, a person born within two hundred eighty days of marriage between his mother and any man, shall be conclusive proof of legitimacy of the child. The presumption of conclusive proof of legitimacy of child, casts greater burden on the man to show that parties to the marriage had no access to each other at any time when he could have been begotten. The presumption of legitimacy, therefore, must be challenged with specific plea of no access for parties to each other during relevant period. Unless case is sought to be made out to that effect, legitimacy of a child could not be challenged.

5. The judgments of the Supreme Court in no uncertain terms lay down the law that there cannot be a straitjacket formula with regard to allowing or rejecting DNA test and it would depend upon the facts and

circumstances of each case. The Supreme Court also cautions the Court that only if the test is eminently needed then such test can be directed to be conducted. It is also expected that the Court is required to balance the interest of both the parties.

6. Learned Trial Court has considered the said provisions and held that a child born during the continuance of valid marriage shall be a conclusive proof that the child is legitimate child of the man, unless it was shown that the parties to the marriage had no access to each other during the relevant time. It is observed that in paragraph 6 of the order that there is nothing to indicate that the parents of Plaintiff had no access to each other at any time. Unless such common non-access is established, question of rebuttal of presumption under Section 112 of the Act does not arise.

7. It is settled position of law that the DNA test for the decision of the paternity would be the last resort to be adopted by any Court. At the first instance the Court is required to take into consideration as to whether the case is made out for taking exception under Section 112 of the Act. In absence of any proof of no access, question of directing DNA test does not arise. Consequently, view of Trial Court is probable and the refusal by the Trial Court to exercise the discretion for conducting DNA

test cannot be termed as perverse.

8. As a result of above discussion, there is no merit in this Petition. Hence, Petition stands dismissed.

(R. M. JOSHI, J.)

ssp