

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****MISCELLANEOUS CIVIL APPLICATION NO. 32 OF 2025**

Ruchita Ganesh Kolambkar)
Age : 37 Years,)
Mukam Post Shipur, Vai Nesari,)
Taluka Gadhinlaj, District Kolhapur)

..... Applicant/
Org. Respondent

VERSUS

1) Shrikrushn Chandrahas Kolabkar)
Age – 54 Years,)

2) Santosh Chandrahas Kolambar)
Age – 46 Years)
Room No. 305, Sai Samarth Apartment)
Omkar Nagar, Diva Purv,)
Maharashtra – 400 612)

..... Respondents/
Org. Petitioners

Mr. Sanjay Dhadam for the Applicant.

CORAM : RAJESH S. PATIL, J.

DATE : 6 OCTOBER, 2025

ORAL JUDGMENT :-

1) Mr. Dhadam, learned advocate for the applicant submits that in the Order dated 29 September, 2025, in para no.3, it has been wrongly mentioned that the applicant is staying with “one daughter and two sons”. He submits that infact, the applicant was staying with two sons. After death of her husband, daughter, was illegally taken

into the custody by her brother-in-laws and during the pendency of this transfer proceeding, even one son has been illegally abducted by the respondents. A complaint to that effect has been filed with the police.

2) Mr.Dhadam further submits that the respondents have been duly served with the court notice and also by a private notice of the advocate and affidavit of service dated 4 April, 2025 has already been filed.

3) None appears for the respondents when the matter is called out, though served. It seems respondents do not want to appear in the present proceedings. Hence, I proceed further to hear the proceedings in absence of the respondent.

4) This is a petition filed by the applicant who is a widow of the deceased Mr.Ganesh Kolabkar. The respondents are the brothers of the deceased husband of the applicant. The respondent no.1 is married and due to his domestic violence with his wife, he is residing separately from his wife. The respondent no.2 is unmarried. It is further submitted that both the respondents are influential people, who have filed an application under Section 7 of the Guardians and Wards Act, 1890, to declare themselves as lawful guardians of the

three children of the applicant. The said petition is pending before the District Court at Thane. After the death of the applicant's husband, she has shifted to reside with her parents' house at Post Shipur, Vai Nesari, Taluka Gadhinglaj, District Kolhapur. The distance between Thane and Kolhapur is around 550 kms. It will be difficult for the applicant to attend the court hearing at Thane. Therefore, the present proceedings have been filed.

5) It is the submission of the learned advocate for the applicant that in the custody petition, the proceeding has been recently served on his client and the written statement/reply has not been filed. The proceedings are at the preliminary stage.

6) The applicant in the present proceeding, is a widow lady who is fighting for the custody of her two minor children, who are alleged to have been illegally taken over by her brother-in-laws. It is orally submitted before me that the respondent no.2, brother-in-law has been making efforts and trying to force her to get married with him, the said proposal has been denied by her.

7) Under the Hindu Minority and Guardianship Act, 1956, Section 6 mentions about who can be a guardian of Hindu minor. Section 6 reads as under :-

6. Natural guardians of a Hindu minor.—The natural

guardians of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are—

- (a) in the case of a boy or an unmarried girl—the father, and after him, the mother; provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;
- (b) in the case of an illegitimate boy or an illegitimate unmarried girl—the mother, and after her, the father;
- (c) in the case of a married girl—the husband:

Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section—

- (a) if he has ceased to be a Hindu, or
- (b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi).

Explanation.—In this section, the expressions “father” and “mother” do not include a step-father and a step-mother.

As per Guardians and Wards Act, 1890, Section 9 states about the jurisdiction to entertain application with respect to the guardianship of the person. Section 9 reads as under :-

9. Court having jurisdiction to entertain application.— (1) If the application is with respect to the guardianship of the person of the minor, it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides.

(2) If the application is with respect to the guardianship of the property of the minor, it may be made either to the District Court having jurisdiction in the place where the minor ordinarily resides or to a District Court having jurisdiction in a place where he has property.

(3) If an application with respect to the guardianship of the property of a minor is made to a District Court other than that having jurisdiction in the place where the minor ordinarily resides, the Court may return the application if in its opinion the application would be disposed of more justly or conveniently by any other District Court having jurisdiction.

7.1) Hence, in my view the applicant who is the the mother of three minor children is the natural guardian, after the death of her husband (who was the father of three minor children). She alongwith her 3 year old minor son is residing at Kolhapur, therefore, the Guardianship/Custody Petition should have been filed at Kolhapur.

8) Considering the facts of the present case, I am convinced that the present petition requires to be allowed as it will be inconvenient for the applicant, whose one minor son, aged 3 years is residing with her, and two other minor children aged 14 years and 5 years, are illegally taken over by her brother-in-laws, to attend the court proceedings at Thane, which is around 550 kms away from her residence at Post Shipur, Vai Nesari, Taluka Gadhinglaj, District Kolhapur and return back on the same day. So also, considering the

fact that both the respondents are influential people and even the safety of the applicant will be a matter of concern, I am convinced that the present Miscellaneous Civil Application requires to be allowed.

8.1) The present **Miscellaneous Civil Application stands allowed in terms of prayer clause (a).** The said prayer clause (a) reads as under :-

(a) That this Application may kindly be allowed and this Hon'ble Court may kindly Transfer the Civil Misc. Application No. 268 of 2024 pending before the Hon'ble District and Session Court at Thane to Hon'ble Addl. District and Session Court at Gadhinglaj, Dist-Kolhapur.

8.2) The proceeding of Civil Misc. Application No. 268 of 2024 pending before the District and Sessions Court at Thane to be transferred to the Additional District and Sessions Court at Gadhinglaj, District Kolhapur within a period of four weeks from today

8.3) The hearing of the said proceedings is expedited and to be disposed off by end of December 2026.

8.4) Parties to act on the authenticated copy of this order.

[RAJESH S. PATIL, J.]