

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 470 OF 2025
IN
FIRST APPEAL (St.) NO. 1145 OF 2025.

Niranajan Satish Gadiya

...Applicant.

Versus

Priyanka Niranjan Gadiya

...Respondent.

Mr. Naveen Sharma for Appellant (through VC.)

Coram : Sharmila U. Deshmukh, J.

Date : January 15, 2025.

P. C. :

1. The present Application has been moved urgently seeking stay of the impugned judgment and order dated 12th December, 2024 by which the present Appellant was directed to hand over the custody of the minor child to Respondent.
2. Learned counsel appearing for Appellant would submit that without permitting the parties to lead any evidence, District Court has decided the Application for custody of child. He submits that the Petition was filed on 24th September, 2024 and notice was issued to Respondent on 1st October, 2024. He would submit that the procedure was not followed before deciding the Custody Petition and custody is being directed to hand over to Respondent.

3. *Prima facie* upon reading of the impugned judgment, it appears that the Court has misdirected itself by considering the Petition as one under Section 6(a) of Hindu Minority and Guardianship Act, 1956, whereas the Petition was filed under Section 25 and Section 26 of Guardians and Wards Act, 1890. Section 11 of the Guardians and Wards Act, 1890 provides for the procedure to be followed by the Court on admission of Application, Section 13 provides that on the day fixed for the hearing of the Application, the Court shall hear such evidence as may be adduced in support of or in opposition to the Application. Section 17 provides for the matters to be considered by the Court in appointing guardian. *Prima facie* upon perusal of the impugned judgment, neither the Court has followed the procedure under Section 13 nor has taken into consideration the factors which are required to be considered under Section 17 of the Guardians and Wards Act, 1890. As such, the Applicant has made out the case for grant of ad-interim relief in terms of prayer clause (a), which reads thus:-

“(a) Pending the hearing and final disposal of the above Appeal, this Hon’ble Court be pleased to grant stay on the execution, operation or implementation on the impugned judgment dated 12.12.2024 passed in Civil Misc. Application No.1033 of 2024 by Ld. District Judge, Pune.”

4. Issue notice to the Respondent returnable on **12th February, 2025**. In addition to Court notice, Advocate for the Appellant to serve the Respondents by private notice by all possible modes of service and

file affidavit of service before the next date.

5. Till the next date, ad-interim relief in terms of prayer Clause 'a'.
6. This Court is informed that the Respondent has taken out the execution proceedings for execution of the impugned judgment and award. The execution proceedings are stayed till the hearing of the Appeal.

[Sharmila U. Deshmukh, J.]