

**IN THE HIGH COURT OF BOMBAY AT GOA****APPEAL FROM ORDER NO.14 OF 2026**

Chandan Digambar Pawaskar,
S/o Digambar Raghuvir Pawaskar,
Aged about 43 years, Business,
R/o Rukmini Niwas,
178/10, Ganeshpuri, Mapusa, Goa.
Presently residing at 1105 H,
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Phase 3, Pune, MH.
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... Appellant.

v/s

Mrs. Tanvi Dattaraj Gad, previously
Mrs. Tanvi Chandan Pawaskar, alias
Tanvi Ashok Xete Raikar,
Wife of Dattaraj Gad,
Aged about 37 years, Service,
R/o 361/1/A, Tambudki Waddo,
Arpora, Bardez, Goa
Email: shetraikartanvi@gmail.com
Mobile No. 9168690692

... Respondent.

Appellant in person (through V.C.).

Ms. Ashwini Agni with Mr. Junaid Shaikh, Advocates for the
Respondent.

CORAM: VALMIKI MENEZES, J.**RESERVED ON: 19th AUGUST, 2025**

PRONOUNCED ON: 18th APRIL, 2026

ORDER:

1. Registry to waive office objections and register the matter.
2. This appeal is directed against order dated 21.10.2024, passed by the Civil Judge Senior Division Mapusa, in Portuguese Civil Miscellaneous Application No.83/2024/C. By the Impugned order, the trial court has disposed of an application at Exhibit B-1 filed by the Appellant, who is the original applicant, partly allowing his application for full custody of his child; the Respondent is the mother of the child and divorced wife of the Appellant.

By the impugned order, the trial court has granted the Appellant with weekend custody on Saturday and Sunday at his Mapusa residence in the state of Goa, subject to school timings and exams of the child. In addition, the Appellant has been granted vacation custody during, Summer, Diwali and Christmas vacation subject to the best interest of the child.

3. It was the Appellant's case in his application seeking full custody of the child, which was filed on 14.12.2018, that the Applicant who is the father of the child, is best suited to have full custody of the child for various reasons, amongst which is the fact that the Applicant is main caregiver to his child since he

spends play time with his child, looks after his studies and academic needs and bears all the expenses of the child's upbringing and schooling.

It is the Applicant's case that the Respondent mother is not fit to have their child's custody since she has greatly neglected the child whilst being in an adulterous relationship. The Application alleges that the Respondent spent long hours away from home, leaving the child at home without care and often missing school on account of sickness, and she even suffered from suicidal tendencies. The Application further alleges that the Respondent forcibly takes the child for outings with her family at which time the child misses school, adversely affecting his studies and his health. On these facts the Applicant claims full custody of the child.

4. The Respondent has opposed the grant of full custody by filing an Affidavit in reply, denying the Applicant's contentions. The Respondent has contended that the Court of the Civil Judge Senior Division at Quepem, by Judgement and Decree of 06.05.2023, has granted a decree of divorce to the Respondent, dissolving her marriage with the Applicant. The Respondent further states that she is now married to Dattaraj Gad, their marriage being registered on 06.11.2023. Post her second marriage, she has shifted with her minor child into the residence

of her present husband. She states that her husband, Dattaraj, was previously married and divorced and has a daughter from his first marriage who is in his custody and residing with them and her minor child.

In her reply, the Respondent has alleged that the applicant is an unfit father as he has not been present for his son throughout their married life and has not been participating in his child's life as a father. In her reply, she alleges that their child has suffered stress in the company of the father, who has not looked after the financial needs of the child. The reply recounts various incidents which had traumatized the child and also makes reference to various police complaints, including complaints filed at the Porvorim Police Station. The Respondent also alleges that the Applicant demonstrates aggressive behavior. Reference is also made to the orders of this court passed in habeas Corpus Petition through which the Applicant sought custody of the child. The respondent alleges that the Applicant is unable to look after the emotional and other needs of the child and should not be granted custody of the child.

5. The trial Court dismissed the custody application filed by the Applicant, without deciding it on merits, holding it not to be maintainable in view of the dismissal of the Applicant's Matrimonial suit as being infructuous after the Respondent was

granted a Decree of divorce by the Quepem Court. That order came to be passed on 29.02.2024, which was set aside by this Court vide Judgment dated 26.06.2024 passed in a Misc. Civil Application No. 1078/2024(F) filed by the Appellant herein, and the application for custody of the child of the Appellant was remanded back to the Mapusa Court with the direction to register the application separately, and after giving the parties an opportunity, to decide the same within two months.

6. The trial court has framed the following point for determination:

“Whether the applicant proves that he is entitled for full custody of the minor child?”

7. Both parties led evidence. The Applicant has only examined himself whilst the Respondent has examined herself and 3 other witnesses. Upon considering the evidence, the trial court has granted only weekend custody and vacation custody to the Applicant whilst refusing his application for full custody.

8. After notice was issued in this Appeal, the Applicant has chosen not be represented by any counsel and has refused appointment of an advocate through legal aid, stating he would argue his own case. Throughout the Appeal proceedings the

Applicant has appeared through Video conferencing and chosen not to physically address the court. His Appeal and all annexures therein have been filed online. The Applicant has filed written notes of arguments.

Mrs. Ashwini Agni, Advocate for the Respondent, has advanced short oral submissions in addition to which she has relied upon written submission which were taken on record.

9. On considering the rival submissions and the case of the Applicant and the Respondent as set out in their pleadings in the trial court, the following point for determination arises for my decision:

(a) Based upon the pleadings of the parties and the evidence led by them, does the Appellant make out a case for full custody of his minor child.

10. Before considering the submissions and evidence on record, to answer the point for determination, it is relevant to note a fact that has transpired after the passing of the Impugned order. From the record remitted to this Court by the Civil Judge at Mapusa, besides the present custody application filed by the Appellant, a custody application No. Portuguese Civil

Miscellaneous Application no.69/2024/A came to be filed before the Civil Judge Senior Division 'A' Court at Mapusa by the Respondent mother, claiming exclusive and permanent legal custody of their minor child. That matter was contested by the present Appellant(father) and an order dated 12.12.2024 came to be passed therein (after the passing of the present impugned order on 21.10.2024), granting the Respondent (mother) custody of the child, subject to weekend custody on Saturday and Sunday to the present Appellant at his Mapusa resident, subject to school timings and examination of the child, and further granting the present Appellant vacation custody during summer, Diwali and Christmas vacation, subject to best interest of the child.

11. This order granting full custody to the Respondent (mother) does not appear to have been assailed by the Appellant or at least, if assailed, such Appeal has not been brought before me by the Appellant. Perusal of the file of Portuguese Civil Miscellaneous Application No. 69/2024/A, which was remitted to this Court along with the record of Appellant's Portuguese Civil Miscellaneous Application No. 83/2024/C reveals that the Appellant herein was heard through Video Conferencing. The Appellant has participated in those proceedings pursuant to orders of transfer of that petition vide order dated 23.09.2024. The Appellant's custody application, as observed earlier, was remanded back to the Civil Court to decide on merits in a time

bound manner. It is under those circumstances that the Civil Court has passed orders on the Respondent's (mother) application for custody at a later date, which has not been separately challenged.

12. The Applicant (father) led evidence by filing an affidavit in evidence in view of examination in chief. The affidavit is dated 29.07.2024 and contains three paragraphs with documents referred to as "Arguments Submissions" of 812 pages annexed to it. Apart from this three paragraphed affidavit, by the Appellant, there is no substantive deposition recorded by the Appellant. The examination in chief was recorded through Video Conferencing on 25.07.2024, where after production of the affidavit, the Applicant submitted that he was relying upon the documents containing 812 pages E-mailed to the Court. The examination in chief does not attempt to prove the contents of each of the relied documents and on most of which is in the form of electronic evidence.

Extensive cross examination has been conducted by the Respondent, of the Applicant.

13. The first question that would arise before me is whether the contents of the three paragraphed affidavit and the documents produced in electronic form, could, by themselves be construed

as evidence under Section 3 of the Evidence Act. Having perused the PDF uploads comprising around 812 pages annexed to the affidavit, at the outset, I am constrained to hold that not a single of his document has been marked as an Exhibit or the Appellant attempted to even prove their contents by referring to them. In fact, some of the documents relied upon are voice recordings of what the Appellant alleges is recorded on spy app, that he loaded on the phone of the Respondent to prove the allegation that the Respondent was in an adulterous relationship.

14. There is absolutely no proof of this electronic evidence, much less compliance to the provisions of Section 65-B of the Indian Evidence Act, 1872 or with the provisions of the Information Technology Act, 2000 and the Rules framed thereunder. This apart, there is absolutely no expert evidence led by the Appellant, even if we assume that the contents of the voice recording is of the Respondent, since it would be incumbent to demonstrate by expert evidence and comparison of voice samples of the Respondent with the voice recording on the spy App that it was in fact Respondent's voice recorded therein. Apart from this electronic evidence not having been proved, reliance upon the same would be unsafe and therefore must be discarded. Even assuming that the voice recordings, which allegedly point to the Respondent being involved in an alleged relationship with a third person, that by itself would not be the

only piece of material which could form the basis for granting full custody to the Appellant.

15. In my opinion, merely because the Respondent is alleged to be in an extra marital relationship, does not disentitle her, as the mother of the child, to the custody of the child. What the Appellant was required to prove by evidence was the fact that the Respondent's conduct as a mother was so detrimental to the wellbeing of the child that it precludes her from having a custody of a child, who was at the relevant time was 6 years old.

16. The pleadings of the Applicant seeking custody of the child, are restricted to making the following allegations, which form the basis and grounds for alleging that the mother is unfit to retain custody of the child;

- a. That the Respondent has greatly neglected the child whilst being in an adulterous relationship.
- b. When the child fell sick, the Respondent would prefer not to miss office and would leave their ill son with the Petitioner.
- c. The Respondent had suicidal tendencies or pretends she does; when the Respondent goes out with a family, the child is taken along and misses

school, adversely affecting his studies and health.

On these pleadings, the Petitioner has pitched his case for full custody.

At the outset, I must note that merely on the aforementioned allegations, even if they were true and the pleadings proved, they might not constitute sufficient grounds to deprive the Respondent of the custody of the child. The child, as on the date the application was filed, was about 6 years old. Obviously, his mother was the primary care giver at the relevant time, considering the age of the child. At that time, their child was in joint custody of both the parents, and there were no interim orders passed by any Court granting custody during the pendency of the application to either parent.

17. The Respondent's reply has denied the allegations made in the application. The averments made therein, by which the Respondent opposes the Petitioner's application are the following:

- a. Essentially the Respondent alleges that the Applicant was never present, emotionally for his child. Further, she alleges that though the Applicant

was extremely well off he has shirked of the household on to the Respondent and the Respondent was constrained to use all her earning to pay household bills, EMI, groceries and for all other needs of the child.

b. That the Applicant had subjected the child, on multiple instances to abuse, use of filthy language in his presence, affecting the mind of the child; it is also alleged that the Applicant as also his parents are aggressive and dominating in nature.

c. The Respondent then averred that the Civil Judge Senior Division at Quepem had granted her a decree of divorce on 06.05.2023, in Matrimonial Petition No. 42/2022/A and after the cancellation of the registration of her marriage with the Applicant, she had remarried Shri Dattaraj Gad on 06.11.2023. She has stated that Dattaraj Gad had divorced and his daughter from his first marriage lives along with the Respondent's child. She has also stated that their child is academically very bright and there is no reason why the custody, which has always been exercised by her over a child, should be changed. She has also stated that her child is enrolled in football

classes and various other sports activities and regularly attends school where he has an excellent academic performance.

18. On these pleadings, as discussed by me in preceding paragraphs, the Applicant has not produced and proved any of the documents relied upon by him in his application. In contrast, the Respondent has examined herself by filing an affidavit in evidence and producing a large volume of documentary evidence in support of her case. The Respondent has produced the divorce decree granted by the Quepem Court, the academic record of the child, various photographs where the child is seen indulging in sports activities or interacting with family members and friends. In addition, the Respondent has also produced a Marriage Certificate recording a marriage with Dattaraj Gad. The report cards of the child generally assess the child with good academic performance with excellent or very good academic performance.

19. The cross-examination of the Respondent, does not in any manner indicate that the evidence of the Respondent has been shaken or a doubt is created as to its truth. In fact, most of cross-examination is irrelevant to the main issue which was required to be proved that is the fitness of the Respondent mother to retain the custody of her child.

20. The Respondent has then examined witness Rw-2 Dattaraj Gad, i.e. her husband in her second marriage. He has filed his affidavit in evidence, corroborated the statement made by the Respondent as to her second marriage and the arrangement by which the Respondent lives along with her husband Dattaraj Gad with their respective children in the same household. Rw-2 has also deposed as to his relationship with the Respondent's child and that the child treats him as his own father. He has been extensively cross-examined by the Applicant. Perusal of the entire cross-examination does not disclose any evidence which could be considered adverse to the refusal of grant of custody to the Respondent. In fact, the entire evidence of Rw-2 supports the case for grant of custody to the Respondent mother. Here again, most of the cross-examination is irrelevant to the main issue in the case.

21. The Respondent then examined Rw-3 Ms. Ranjana Mandrekar, who is a family friend of Rw-2 Dattaraj. She has deposed that she knew Dattaraj was previously married and the marriage was dissolved, from which Dattaraj has one daughter, Roshni who is in his custody and living with Dattaraj and the Respondent. The witness has further deposed that she regularly visits the house of the Respondent and has observed that the relationship between the Respondent and Dattaraj is very good, and the Respondent's son Athang, is well looked after by

Dattaraj. She has also deposed that Athang is very attached to Dattaraj and to Dattaraj's mother Surekha, so also to his step sister Roshni. Again in cross-examination of this witness has not been shaken in any manner.

22. The Respondent has then examined Rw-4 Shri Amrut Singh on summons, Rw-4 has deposed that he knows the Respondent, Athang and Dattaraj and he has seen all of them living happily together. He has further deposed that he has attended football tournament in which Athang has participated and has also deposed on the high scores achieved by Athang of more than 90 % in his school.

In cross-examination he has stated that he is an electronic engineer and has his own business. Various irrelevant questions put to this witness are disallowed by the Court and cross-examination was closed. In substance, the deposition of Rw-4 has remained intact without being shaken.

23. Considering the evidence on record, in my opinion, there is practically none led by the Applicant to prove the pleadings in his application. In fact, even the application for full custody of the child hardly has any material pleaded therein, on the basis of which, even if such facts were proved, custody could have been granted to the Applicant. In contrast, from the evidence

discussed above the Respondent has, apart from examining herself in detail as to the circumstances under which she should have full custody of the child, she has examined her second husband whose deposition inspires confidence and appears to be truthful, mainly setting out the fact of the relationship between him and Athang and the atmosphere in the Respondent's new matrimonial home. In addition, the witnesses Rw-3 and Rw-4 have fully corroborated the evidence led by the Respondent, both on the fact that Athang has a stable home and has done well academically and in sports, justifying no change in custody.

24. Having perused the impugned order, I am of the opinion that the findings rendered by the Trial Court on the point for determination are entirely based upon evidence led by the parties, which have been reappreciated by me in the preceding paragraphs; none of the findings can be termed as perverse, contrary to the evidence on record or in any manner, against the best interest of the child. It is settled law, that the best interest of the child is the paramount consideration in matters of custody, and this principle has been followed by the Trial Court in assessing the evidence before it. No interference is called for with the impugned order. I accordingly answer the point for determination framed by me in the negative. Consequently, the appeal stands dismissed, and the impugned order dated 21.10.2024 passed by the Civil Court stands confirmed.

25. Records and proceedings of Matrimonial Petition No.8/2018/B, on the file of Civil Judge Senior Division at Mapusa, Matrimonial Petition No.42/2022/A, on the file of Civil Judge Senior Division at Quepem, Portuguese Civil Misc. Application No.83/2024/C and Portuguese Civil Misc. Application No.69/2024/A on the file of Civil Judge Senior Division at Mapusa shall be remitted to the respective Courts.

26. The Appeal stands dismissed. The impugned order dated 21.10.2024, granting the Appellant custody on Saturday and Sunday at his Mapusa residence at Goa, and vacation custody during summer, Diwali and Christmas vacations, subject to the best interest of the child and subject to school timings and exams of the child as may be applicable, stands confirmed.

VALMIKI MENEZES, J.