



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 1342 OF 2025

Ashish S/o. Anandrao Patil,
Age : 46 Years, Occu. : Service,
R/o. Plot No.6, Anand Nagar,
Jaitala Road, Nagpur.

.... Petitioner

VERSUS

Mrs. Prajakta W/o. Ashish Patil,
Age : 42 Years, Occu. : Medical Practitioner,
C/o. Natthuji Lokhande,
R/o. Plot No.37, Dattatray Nagar,
Opposite Mahakalkar Sabhagruh,
Hudkeshwar, Nagpur.

.... Respondent

....
Advocate for Petitioner : Mrs. J.D. Dharmadhikari
Advocate for Respondent : Mrs. S.P. Girtakar
....

CORAM : PRAFULLA S. KHUBALKAR, J.

Dated : 24th FEBRUARY 2026

JUDGMENT :

1. Heard.
2. **Rule.** Rule is made returnable forthwith and by consent of learned Advocates appearing for the parties, the petition is taken up for final disposal.

3. By this petition, the petitioner-husband has challenged an order dated 01.02.2025, passed by the Family Court, Nagpur, allowing the application filed by the petitioner-husband, at Exhibit 100, for deciding the application for child custody along with the main petition for divorce and has also granted liberty to the respondent-wife to cross-examine the petitioner-husband on the issue of custody of child and to adduce her own evidence if required.

4. The petitioner-husband has filed a petition for divorce, which is contested by the respondent-wife and it is pending. During pendency of the said petition, the husband filed an application under Section 26 of the Hindu Marriage Act, 1955, at Exhibit 37, for grant of custody of their son viz. Adhiraj. After the divorce petition reached at the stage of final hearing, the husband filed an application at Exhibit 100 and prayed for consideration of the application at Exhibit 37, for custody of child along with the main petition for divorce. On this application, the Family Court passed an order and allowed the application, however, at the same time, granted liberty to the wife to cross-examine the husband. The petitioner has challenged this order to the extent of liberty to conduct cross-examination of the husband granted to the wife.

5. Mrs. J.D. Dharmadhikari, learned Advocate for the petitioner-husband vehemently submitted that the husband was

earlier cross-examined extensively by the Counsel for the wife and there is no need to grant further opportunity to the wife to conduct cross-examination. She submitted that the husband has filed his evidence on affidavit and led evidence in support of his petition for divorce as well as on the issue of custody of child. However, the Counsel for wife chose to cross-examine the husband only with respect to the issue of grounds of divorce and not on the point of custody of child. She submitted that, in view of this, further opportunity to the wife to conduct cross-examination on the point of custody of child is an opportunity to fill up the lacunae in the earlier cross-examination and same is not warranted. She submitted that the impugned order purported to have been passed under Section 151 of Code of Civil Procedure, 1908 (for short, "C.P.C."), is unsustainable since the same is passed on the basis of surmises and assumptions as recorded in paragraph No.5 of the impugned order.

6. By relying on judgment of the Hon'ble Supreme Court in the case of *K.K. Velusamy Vs. N. Palanisamy*, [(2011) 11 SCC 275], learned Advocate for the petitioner-husband submitted that, in view of deletion of Rule 17-A of Order 18 of C.P.C., court is prohibited from entertaining any application for recalling of witness.

7. Per contra, Mrs. S.P. Giratkar, learned Advocate for the respondent-wife strongly opposed the petition and submitted that the

impugned order is passed on an application filed by the husband himself, who has prayed for decision on the application at Exhibit 37, for custody of child along with the main petition. She submitted that the issues raised in the petition for divorce and the issues related to the custody of child are required to be decided simultaneously and in view of the impugned order allowing the application at Exhibit 100, it is imperative to grant an opportunity to the wife to cross-examine the husband on the issue of custody of child. She submitted that the trial court has rightly observed that, in order to resolve the entire controversy in between the parties and by considering the nature of litigation about the custody of child, the wife is entitled for an opportunity to cross-examine the husband on this issue. She submitted that the child is suffering from certain health issues and the wife, who herself is a doctor, is entitled to demonstrate her stand with respect to the custody of child. She submitted that the husband, who has claimed custody of the child, is living only with his old aged mother and the wife is, therefore, entitled to put forth her case through cross-examination on the issue of custody of child.

8. While considering the controversy involved in the instant petition, it has to be noted that the impugned order came to be passed on an application filed by the petitioner-husband. Thus, undisputedly, both the parties desire that the issue of custody of child

is decided along with the main petition for divorce. It is clear that the wife had not earlier cross-examined the husband on the issue of custody of child. As such, interest of justice demands that the wife is afforded an opportunity to conduct cross-examination of the husband on the issue of custody of child. It is also desirable that the entire controversy be decided at a stretch, particularly considering the peculiar nature of litigation about custody of child.

9. Although it is a fact that the permission to conduct cross-examination of the husband is granted at the stage of final hearing of the petition for divorce, it is crucial to note that the impugned order is passed on an application filed by the husband itself. Considering the peculiar nature of the controversy, it is rightly found necessary to frame the issue about custody of child and afford an opportunity to the wife to conduct cross-examination of the husband and adduce evidence if necessary.

10. A perusal of the impugned order shows that the Family Court has given due consideration to all the relevant factual and legal aspects. The approach adopted by the Family Court and the reasons recorded while passing the impugned order demonstrate a plausible view and no perversity is seen with the impugned order warranting interference.

11. The position of law as laid down by the Hon'ble Supreme Court in the case of **K.K. Velusamy (Supra)** is not disputed. However, in the instant case, considering the fact that the husband has himself applied for getting all the issues decided altogether, the wife also becomes entitled for an opportunity to lead evidence on the issue of custody of child. As such, the said judgment of the Hon'ble Supreme Court is of no assistance to the petitioner.

12. Having regard to the above mentioned factual and legal aspects, I am of the firm opinion that the view taken by the Family Court in the impugned order is reasonable, just and proper and does not need any indulgence under Article 227 of the Constitution of India with the impugned order. It is, however, clarified that the respondent-wife would be entitled to conduct cross-examination of the petitioner-husband and lead her evidence, if any, only on the issue of custody of child.

13. In view of this, no interference is warranted with the impugned order. The writ petition is, accordingly, dismissed with no order as to costs. Rule stands discharged.

[PRAFULLA S. KHUBALKAR]
JUDGE