



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

WRIT PETITION NO. 1202/2026

(PAYAL PRAFUL GEDAM **VERSUS** PRAFUL SHANKAR GEDAM)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri Pravin Pandey, counsel for the petitioner.
Smt. Meera Kshirsagar, counsel for the respondent.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE ON WHICH ARGUMENTS WERE HEARD : MARCH 05, 2026

DATE ON WHICH ORDER IS PRONOUNCED : MARCH 10, 2026

Heard the learned counsel for the parties.

2. The petitioner assails the order dated 16.01.2026 passed by the trial Court i.e. Court of District Judge-16, Nagpur on an interim application at Exhibit 10 for directions about interim custody of the minor child to facilitate his medical treatment.

3. The controversy arises out of the proceedings filed by the husband under Sections 7, 12 read with Section 25 of the Guardians and Wards Act, 1890 bearing Civil M.A. no.18 of 2026 before the District Judge-16, Nagpur. By this application, the husband has sought for a declaration that he be declared as permanent guardian and custodian of minor son Master Vipul. In the said proceedings, the husband has also filed an application for grant of interim custody, which is pending. In the main proceedings, the trial Court has passed an order dated 08.01.2026 and directed issuance of notice to the wife. During pendency of the

proceedings, the husband filed application on 14.01.2026, at Exhibit 10 seeking direction to grant interim custody of the minor son to facilitate his medical treatment, which came to be allowed by order dated 16.01.2026. The wife has challenged the said order by way of instant petition.

4. The primary contention of Shri Pravin Pandey, learned counsel for the petitioner-Wife is that the impugned order is passed without any notice and opportunity of hearing to her. It is submitted that by the impugned order, the wife is directed to handover the interim custody of the minor son to the husband two days prior to the date of medical treatment and with a further direction to handover the custody of minor to the wife after the medical treatment is over. It is submitted that this kind of direction for interim custody without any opportunity of hearing to the wife and issued in haste cannot be considered to be in the interest of welfare of the minor son and in absence of any medical emergency, the impugned order is unwarranted. It is submitted that on the returnable date i.e. on 13.01.2026, the proceedings were adjourned to 22.01.2026, but the husband filed application at Exhibit 10 on 14.01.2026 and without any notice to the wife, the order was passed on the said application on 16.01.2026 which is apparently behind the back of the petitioner-Wife. It is contended that there is no need to grant the interim custody of the minor son to take him to Mumbai for medical treatment since the same kind of treatment can be given even at Nagpur.

5. Per contra, Smt.Meera Kshirsagar, learned counsel for the respondent opposed the petition and submitted that the petitioner has an alternate remedy to file an application for setting aside the ad-interim *exparte* order dated 16.01.2026. She also submitted that the wife was served with the notice of the main proceedings and the vakalatnama filed by her before the court of District Judge-16, Nagpur shows that it was signed on 13.01.2026 and thus the wife was aware about the proceedings. She therefore submitted that despite service of notice, the wife failed to appear in the main proceedings and the grievance raised by her about lack of opportunity of hearing is unsustainable. She submitted that the trial Court has passed the impugned order considering the exceptional and emergent circumstances to safeguard the life and limb of the minor child and in exercise of *parens patriae* jurisdiction, which need not be interfered.

6. In the backdrop of rival contentions of the parties, while considering the controversy it has to be noted that the grievance is about directions issued by the trial Court for interim custody of minor child. There is no dispute about the fact that the minor child is suffering from juvenile dermatomyositis and he is required to be given regular medical treatment. On account of the urgent need for providing medical treatment to the minor child and to avoid any further complications with his health, the husband has filed the application at Exhibit 10 for seeking interim custody to facilitate the medical treatment.

7. It has to be noted that by the impugned order, the trial Court has directed the wife to handover the interim custody of the minor son to the husband two days before the date of every medical treatment. It has also to be noted that the main proceedings were initially listed on 13.01.2026, which were adjourned to 22.01.2026. The wife had not filed her appearance on 13.01.2026. The application for interim custody at Exhibit 10 was filed on 14.01.2026, by filing a separate application for taking the case on that day's board. This application was allowed and the application at Exhibit 10 was entertained on which impugned order was passed on 16.01.2026. Thus, it is clear that the impugned order was passed even before the next returnable date i.e. 22.01.2026. Thus, it is clear that the impugned order is passed without affording any opportunity of hearing to the wife. Although the trial Court has recorded in paragraph 4 of the impugned order that despite service of notice, the non-applicant therein (wife) did not appear, it has to be noted that on 16.01.2026 the wife had not filed her appearance on record and as such, before passing the order to direct her to handover the interim custody of the minor child, an opportunity of hearing was not given to her.

8. It has to be noted that the husband, who is the biological father of the minor child has filed the application for interim custody only to facilitate minor child's medical treatment. Considering the urgent need and exceptional

circumstances, requiring urgent medical treatment to the minor, the trial Court has passed the impugned order. It has to be noted that by the impugned order, the Court has directed the husband to restore the custody of the minor child with the wife, after the medical treatment is over. As such, the impugned order although passed without an opportunity of hearing to the wife is passed in the interest of facilitating medical treatment of the minor son and considering the exigency of the situation. Having regard to the fact that in cases of custody of children, paramount consideration is the welfare of the children and considering the nature of *parens patriae* jurisdiction, such order cannot be considered to be *ex facie* illegal.

9. Hence, having regard to the entire circumstances, I do not find any need to interfere with the impugned order. However, since the impugned order is passed without affording any opportunity of hearing to the petitioner-Wife her contentions about entitlement of an opportunity of hearing are also worth consideration.

10. In view of the above mentioned factual and legal aspects, although no indulgence is warranted with the impugned order, the petitioner-Wife is entitled for grant of an opportunity to submit her contentions with respect to the application at Exhibit 10 and even to demonstrate that the same kind of medical treatment can be made available to the minor child at Nagpur. It appears that the

husband and wife have made several allegations against each other and have filed several litigations, however it is clarified that the instant petition is decided only on the limited aspect of challenge to the order dated 16.01.2026 directing interim custody of the minor son for medical treatment. Hence, considering this controversy, following order is passed:

- I. The writ petition is partly allowed with following directions.
- II. The order dated 16.01.2026 passed by the Court of District Judge-16, Nagpur on application at Exhibit 10 is maintained by mainly considering the need for medical treatment to the minor son, however the application at Exhibit 10 needs to be reconsidered by the Court of District Judge-16, Nagpur.
- III. The Court of District Judge-16, Nagpur is directed to grant an opportunity to the petitioner-Wife to file her reply to the application at Exhibit 10 and pass fresh orders after considering the contentions of both the parties.
- IV. It is also directed that the directions issued by the Court of District Judge-16, Nagpur by the impugned order dated 16.01.2026, being passed in the welfare of the minor child, shall remain in force till further orders are passed by the said Court on the application at Exhibit 10.

11. With aforesaid directions, the writ petition is disposed of with no order as to costs. Pending civil applications, if any, also stand disposed of.

(PRAFULLA S. KHUBALKAR, J.)

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