

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.14526 OF 2018

Prasad Vilas Kulkarni ... Petitioner  
Vs.  
Gauri Prasad Kulkarni ... Respondent

Mr. Bharat J. Avasarmore a/w. Mr. Mr. Ajinkya M. Udane for Petitioner.  
Mr. Pradeep D. Dalvi for Respondent.

**CORAM : R. G. KETKAR, J.**  
**DATE : JANUARY 31, 2019**

**P.C. :**

Heard Mr. Avasarmore, learned Counsel for the petitioner and Mr. Dalvi, learned Counsel for the respondent at length.

2. This Petition takes exception to the order dated 27.09.2018 passed by the learned Judge, Family Court, Kolhapur below exhibit-6 in Petition D-4/2018. By that order, the learned trial Judge rejected the application exhibit-6 made by the petitioner, Prasad Kulkarni, hereinafter referred to as 'Prasad', for interim custody of his son, Ishan. The learned trial Judge directed the respondent, Gauri Kulkarni, hereinafter referred to as 'Gauri' to handover son, Ishan on every Sunday at 9.00 a.m. till 5.00 p.m. to Prasad so that he would enjoy company of their son. The learned trial Judge also directed that whenever Prasad is present in the country during the vacation i.e. Diwali, Summer, Christmas, etc, he shall be entitled to interim custody of Ishan for the first half of vacation. Gauri shall positively handover custody of Ishan to Prasad before Counselor attached to the Family Court without fail. During the period of interim custody of Ishan with Prasad, he will take proper care of son Ishan so that his studies will not be affected.

3. Rule. Mr. Dalvi waives service for the respondent. Having regard to the narrow controversy raised in the Petition as also at the request and

by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. The marriage between the parties was solemnized on 10.03.2003. Some time in August 2003, parties shifted to U.K. After one year, Prasad and Gauri shifted to India and stayed in Sangli. Son Ishan is born on 03.02.2006. It is the case of Prasad that for the betterment of son Ishan, they decided to shift from Sangli to Pune along with grandparents of Ishan. In the same year, Ishan was admitted in Indus International, I.B.S. Board School. It is the case of Prasad that on 22.03.2018, Gauri forcibly took away Ishan to Kolhapur. Prasad, therefore, instituted Petition D-4/2018 in the Family Court at Kolhapur under Section 25 of the Guardians and Wards Act, 1890 read with Section 7 of the Family Courts Act, 1984 for custody of Ishan. During the pendency of the proceedings, Prasad took out application exhibit-6 for interim custody on 14.08.2018. Gauri filed reply at exhibit-12 opposing the application. By the impugned order, the learned trial Judge rejected the application. It is against this order, present Petition is instituted.

5. In paragraph 25 of the impugned order, the learned trial Judge observed that during the course of interaction with Ishan, he found that he is very brilliant and is able to understand right or wrong. He also found Ishan has sufficient understanding. The learned trial Judge further went on to observe that during the meeting, it was found that Ishan is having certain apprehension in his mind about his father and his grandfather. He showed his desire to pursue further education at Kolhapur itself instead of any international school at Pune and informed the learned trial Judge that he has now adjusted himself at Vibgyor School, Kolhapur. Within 3-4 months, he has mingled with his other friends. Teachers and other students in the school are helpful as compared to the students and teachers at International School at Pune.

6. In paragraph 26, the learned trial Judge observed that after interacting with Ishan, who is more than 12 years of age, it became clear that he is reluctant to go with his father and also not willing to pursue education at Pune. The learned trial Judge further noted Prasad remains out of country for the period of six months. He will not be in a position to give any kind of attention during this period. Ishan wants to stay with his mother and does not want to go with his father. After ascertaining wishes of Ishan, the learned trial Judge rejected the application, as indicated earlier.

7. In grounds No.5 and 6 of the Petition, Prasad asserted that the learned trial Judge did not appreciate the fact that on 12.11.2018, Ishan told the learned Judge on his own that he is not able to cope up with CBSE Board Curriculum at all and that he is facing lot of mental tension and is getting unstable and sleepless due to the same. He also orally informed the learned trial Judge that he wants to shift back to Pune and stay with his father and grandparents as well as to study in Symbiosis School and continue his sports activities in Golf.

8. As these assertions were made in the Petition and the impugned order was passed in September 2018, by order dated 24.01.2019, I fixed the matter today at 2.35 p.m. at my Chambers for interacting with the parties. I have interacted with Master Ishan as also with the parties and their Advocates. Grandfather of Ishan, Mr. Vilas Kulkarni was also present in the Chambers. I have also interacted with him.

9. Accordingly, I have interacted independently son Ishan. Presently, he is studying in the 7<sup>th</sup> Standard in Vibgyor School, Kolhapur (English medium). The school has C.B.S.E. Board. Sports activities of that School mainly include football, cricket and swimming. Earlier, he was studying in Symbiosis International School situate at Viman Nagar for two years, which is an I.B. curriculum school. Sports activities of

Symbiosis International School include football, cricket and badminton. Apart from that, classes for self confidence, learning leadership qualities known as 'All for Kids' are available in the said school. He used to play Golf in Poona Golf Course, Yerwada. The parties were earlier residing in Lunkad Gold Coast, which is near to Symbiosis School. The premises were taken on leave and licence basis. During the course of interaction, he emphatically made it clear that he wants to stay in Pune and join Symbiosis school so that he can pursue his hobbies in sports, and more particularly in Golf. I have also made enquiry with him that in case his mother is not willing to shift from Kolhapur to Pune whether he is still willing to shift to Pune. He stated that he is willing to stay along with his grandparents in Pune.

10. I have also interacted with the parties. During the course of interaction, Prasad clarified that Ishan's admission in Symbiosis school is not cancelled. The first semester is started in August, 2018. The school is ready and willing to hold special classes so as to give tuitions to Ishan. He further stated that he has already paid school fees on 03.01.2019. I have also interacted with Ishan's grandfather, Mr. Vilas Kulkarni, who stated that he has retired from Syndicate Bank and is presently staying with his wife at Sangli. He is ready and willing to shift alongwith his wife from Sangli to Pune. Prasad also assured that in a few days, he will arrange for their accommodation in Pune.

11. I have also interacted with Gauri in Chambers. She gave no objection if son Ishan wants to shift to Pune and study in Symbiosis International School. She, however, expressed her apprehension that in case Ishan suffers from any ailment, she should not be held responsible and the grandparents of Ishan and Prasad should take care of him during such period. She also submitted that during Summer, Diwali and Christmas vacations, Ishan should be sent to Kolhapur and the said

arrangement shall be made by Prasad. Ishan agreed for going to Kolhapur during the Vacations. Prasad also expressed his willingness to make the arrangements and bear the expenses in that regard.

12. After considering the material on record and after ascertaining the wishes of Ishan, I am satisfied that he genuinely and sincerely desires to stay in Pune. I agree with the learned trial Judge when he made observations that Ishan is very brilliant and is able to understand right or wrong. He has sufficient understanding. After interacting with Ishan, I am really impressed with his honesty and sincerity. It is settled law that while considering the interim custody, welfare of the child is paramount consideration. In my opinion, the welfare of Ishan lies in his shifting to Pune and studying in Pune so as to pursue his hobbies.

13. In view thereof, impugned order dated 27.09.2018 is set aside and application exhibit-6 is disposed of in the following terms:

a. Gauri shall handover custody of Ishan today to Prasad. Prasad is at liberty to take Ishan from the Court premises;

b. During Summer, Diwali and Christmas Vacations, Prasad will ensure that Ishan is sent to Kolhapur and he spends vacation with his mother. Prasad will make the necessary arrangements and bear the expenses;

c. Prasad shall handover son Ishan, after every 15 days, on Sunday at 9.00 a.m. till 5.00 p.m. to Gauri so that she will enjoy company of Ishan. Gauri will return the custody of Ishan to Prasad after 5.00 p.m.

14. Rule is made absolute in the aforesaid terms with no order as to costs.

15. All parties to act upon the authenticated copy of this order.

**(R. G. KETKAR, J.)**