IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1398 OF 2024
WITH CIVIL APPLICATION NO. 1590 OF 2024
WITH CIVIL APPLICATION NO. 1997 OF 2024
WITH CIVIL APPLICATION NO. 2357 OF 2024
WITH CIVIL APPLICATION NO. 3398 OF 2024

S[redacted] S[redacted] [redacted]

VERSUS

[redacted] S[redacted] [redacted]

Mr. R. G. Joshi, Advocate for Petitioner
Mr. P. S. Shendurnikar, Advocate for Respondent

CORAM : R. M. JOSHI, J.
DATE : 18th February, 2025

PER COURT :-

1. Petitioner-husband is seeking reversal of the order passed by the Family Court directing custody of the child aged below 2 years to be handed over to the respondent-mother and seeks custody of the child.

2. Facts are not in dispute such as petitioner and respondent are legally weeded husband and wife. A male child is begotten from the said wedlock on 12.06.2023.

3. It is the case of the petitioner that the respondent left matrimonial home. Proceedings came to be filed before the Family Court being petition D-3/2024 at the instance of the respondent-mother under the provisions of Guardians and Wards Act, 1890 (for short "**the Act**"). In the said proceedings, final relief is sought of the permanent custody of

the child. An application came to be moved for interim relief wherein his temporary custody is asked. Learned Family Court after hearing both sides passed impugned order dated 30.01.2024 directing handing of the custody to the mother on 02.02.2024. The father was permitted to meet child on first and third Saturday of every month in the Children Complex, Family Court, Pune between 1 PM to 2 PM. Father was also directed to deposit cost of Rs. 5,000/- with District Legal Service Authority, Aurangabad for using inappropriate language in the reply.

4. Learned counsel for petitioner submits that having regard to the medical evidence on record, it is clear that the respondent is unable to take care of the child. To support his submission, he has placed reliance on the certificate issued by the medical practitioner who has diagnosed her to be the patient of depression post delivery. The medical papers of Civil Hospital are also referred in order to contend that there is psychiatric illness to the respondent. Thus, it is his contention that on the basis of medical evidence on record, Family Court ought not to have order passed granting custody of child to respondent. It is also argued that the Family Court has granted final relief at the interim stage which is wholly impermissible in law. To support his submission, he placed reliance on the judgment of Hon'ble Supreme Court in case of ***State of U.P. Vs. Ram Sukhi Devi (2005) 9 Supreme Court Cases 733*** and

Bukharee Aezazalee Makhadumalee Vs. State of Gujarat LAWS(GJH)-2013-2-22 .

5. On the other hand, learned counsel for the respondent supported the impugned order. It is his contention that there is absolutely no evidence in order to hold that the respondent is unable to take care of the child. He drew attention of the Court to the Medical Certificate which according to him does not indicate such incapacitation on her part. He placed reliance on the Medical Certificate filed along with Civil Application No 1590/2024 to indicate that she is capable of taking care of herself and her baby. It is his submission that relief granted by the Family Court is not final in nature though the custody is directed to be handed over. It is his submission that the burden is on the father to show that mother is unable to take care of the child below age of 5 years and in absence of any material to that effect, there is no reason to cause any interference in the impugned order. To support his submission he placed reliance on the judgment of Hon'ble Supreme Court in case of ***Roxann Sharma Vs. Arun Sharma (2015) 8 Supreme Court Cases 318 , Pushpa Singh Vs. Inderjit Singh 1990 Supreme Court Cases (Cri) 609*** and the order passed by this Court in case of ***Swapnil s/o Dinesh Adhyapak and ors Vs. Mansi w/o Swapnil Adhyapak in Criminal Revision Application No. 60/2021.***

6. There cannot be any dispute with regard to the proposition that the interest of the child and his welfare is of paramount importance. The Court, therefore, will have to see as to whether the interest of the child is taken into consideration by the Family Court while passing order impugned.

7. The Hon'ble Supreme Court in case of Pushpa Singh (supra) has held that there is burden on the father to show that the mother is incapable of taking care of child below age of 5 years to deny custody to her. In this regard, learned Family Court in the order impugned considering material placed before the Court has made following prima facie observations which are reproduced thus :-

> *9. From the documents on record, it seems that the petitioner is suffering from anxiety/depression. It is advised that the baby shall be under supervised care of the family members. However, it does not mean that the baby is unsafe with his own mother. Anxiety/ depression 4 is not a very serious issue. Feeling nervous now and then is not so much abnormal. It is normal response to the stressful situation. No instance is quoted by the respondent that the petitioner caused/tried to cause harm to the child and that the child is not safe in her custody Admittedly the petitioner is a well-educated lady. During the course of arguments, she was present in Court. She has a 4-wheeler driving license and she drives a car owned by her brother in a city like Pune. All these things show that though she is having some kind of anxiety issue, she is leading her life as a normal human being.*

> *10. According to respondent, the petitioner herself left the matrimonial house, and according to the petitioner, the respondent drove her out of house when the baby was only 2 months old. At this stage, it is difficult to comment upon this. And this is not the stage to decide who was at fault. The important thing is whether a child of barely 6-7 months old can be kept away from the mother. The respondent has produced one certificate of the son issued by a Civil Surgeon, Aurangabad that the child is physically and mentally fit and his health is normal. However, the certificate can not take away the right of the child to be in the company of the mother. Mother's milk is most important for a child's physical and mental development. Breastfeeding is an inalienable right of a lactating mother protected under Article 21 of the Constitution of India. Similarly, it is the right of the suckling infant for being breastfed too. It is assimilated with mother's right. It is necessary for the child's protection from certain illness and diseases.*

8. If these observations are considered in the backdrop of the medical certificate placed on record by both sides, it can be said apparently that the respondent is not incapacitated in any manner to take care of the child. The certificate placed before this Court even by the petitioner also does not indicate so. This Court (Coram :- Arun R. Pednekar, J) on 06.02.2024 interacted with the respondent and her family members. He recorded his prima facie satisfaction that the mother would be of no harm to the child. It is also recorded that he has not seen any symptom of anxiety in the mother. Though, the Court has further

observed that the Court intends to seek evaluation of mother by competent board on the next day, no further order came to be passed in this regard. Pertinently, this order is passed on 06.02.2024 and, therefore, respondent is examined by expert Doctor and the certificate dated 03.02.2024 relied upon by the respondent, which is filed along with the reply to Civil Application No. 1590/2024. There is no rejoinder in order to challenge the expertise of the Doctor who has issued the said certificate. This Court, therefore, finds no reason not to accept the observations recorded by this Court though prima facie, so also findings recorded by the Family Court. The petitioner-father of the child was unable to substantiate before this Court that the respondent-mother is incapacitated from taking care of the child. Thus, it can be said that petitioner has failed to make out any case to seek interference in the order impugned.

9. There is no dispute about the fact that for last about 8 months, child is with mother. Nothing absolutely is brought on record to indicate that child's custody with the mother is not in his interest. It is sought to be argued on behalf of the petitioner that the respondent is not personally taking care of the child and that she has appointed the maid servant for the said purpose and she claims maintenance from the petitioner on this ground. Even if it is accepted that a maid servant is

engaged by respondent, it is not uncommon for a maid servant to be engaged where there is small child in the house. In such circumstances, the said fact even if it is accepted to be true will not become a ground to cause interference in the impugned order.

10. On the point of contention of petitioner that final relief being granted by the Family Court, it is necessary to take note of the prayer clause in main application. Prayer clause in the main application reads thus :-

> *अ) अर्जदार यांचा प्रस्तुतचा अर्ज मंजूर करून, नवजात बाळाचा ताबा/कस्टडी कायमस्वरूपी अर्जदारास देण्यात येवून त्यांचे संपुर्ण पालकत्व देण्याचा आदेश करण्यात यावा व अर्जदारास बाळाच्या भविष्यातील सर्व निर्णय घेण्याचा हक्क व अधिकार देण्यात यावा.*
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> *ब) अर्ज दुरूस्तीस परवानगी दयावी.*
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> *क) इतर योग्य ते न्यायाचे हुकूम व्हावेत.*

As against this, an interim application was filed with following prayers :-

> अ) अर्जदार यांचा इंटरिम अर्ज मंजूर करण्यात यावा.
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> ब) नवजात बाळाची प्रकृती खराब होवू शकते. त्यामुळे बाळाच्या प्रकृतीचा विचार करून, बाळाचा ताबा आई म्हणजेच अर्जदार यांना देवून जाबदेणार यांचे विरूध्द त्वरीत कारवाई करण्याचे आदेश दयावेत.
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> क) मुळ अर्जाचा निकाल लागेपर्यंत मुलाचा ताबा हा अर्जदार यांचेकडे ठेवण्याचे आदेया व्हावेत.

In the light of these prayers, when Family Court directs the custody of child to be handed over to the respondent herein, the same cannot be treated as a permanent custody being handed over. Pertinently, there is no order of granting permanent custody of the child to the respondent herein. In such circumstances, this court finds absolutely no reason of justification to cause any interference in the impugned order.

11. As regards, direction issued to the petitioner to deposit cost of Rs. 5,000/-. Learned Family Court judge has recorded cogent reasons for imposing such cost to relevant portion of the order reproduced itself in paragraph 13 and 14 as under :-

> *13. It is necessary to mention that, the reply/ pleading of the respondent is much lengthy and at many places unwarranted. Even the language used by the respondent is derogatory to the womanhood. The respondent has pleaded that (1)* आपल्या मातृत्वाला या जन्मदात्रीनेच बळजबरी म्हणत शिवी देण्या सारखा हा प्रकार आहे. *(2)* ज्या बाईला लेकरु सिझरीन प्रक्रियेद्वारे जन्मास घालता येते, तिला अंगावरचे दूध येण्यासाठी औषधं देण्याची गरज भासावी, हीच वास्तवतेची शोकांतिका आहे. *(3)* दोन महिन्याचे बाळ सोडून पुढील पाच महिने अट्ठासाने आपल्या माहेरी जाणा-या आईला बाळासाठी दूध येत नाही. *(4)* ज्या आईने ममत्वाचा डिंडोरा पिटण्या शिवाय, कोर्टकचेरी शिवाय काहीच केले नाही, तीला आता बाळाच्या दुधाची काळजी वाटू नये. *(5)* त्यांनी या मा. न्यायालयातूनच नांदण्यासाठी आपल्या सासरी परतावे. बाळ तेथेच आहे. काय हंडाभर दूध पाजायचे असेल, ते पाजावे.
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> *14. Use of such language is improper. Recently the Honourable Supreme Court has published a Handbook*

Combating Gender Stereotypes. It is mentioned in the said Handbook that Language is critical to the life of law. Words are the vehicle through which the values of the law are communicated. The words transmit the ultimate intention of the lawmaker to the nation. However, the language a judge uses reflects not only their interpretation of law, but their perception to society as well. The said advisory is to assist not only to the judges, but also to the legal community in identifying understanding and combating stereotypes. The use of inappropriate and derogatory phrases/words in legal pleadings undermines the dignity of individuals, based on their gender, and falls beyond the permissible bounds of language expected in such pleadings. As such, for using such inappropriate language, some amount of costs needs to be imposed on the respondent. Considering this, I answer point no. 1 accordingly, and in the result, I pass following order :-

12. In the light of facts recorded by the learned Family Court Judge, this Court finds that learned Judge of Family Court was lenient in in imposing cost of Rs. 5,000/- only. In absence of challenge to the said portion of the order by respondent, this Court does not wish to enhance the said cost. Suffice it to say that there would be absolutely no reason or justification to cause interference in the impugned order. Hence, petition stands dismissed. Pending civil application, if any, stands disposed of.

(R. M. JOSHI, J.)

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