

MHBU040000662020



Order Below Exh.58
(Passed on 21/2/2024)

1. This petition is filed u/s 25 of the Guardian Act, 1890, by petitioner/father claiming as a natural guardian of his minor children i.e. respondent No.2 & 3 for returned of their custody from his wife respondent No.1. In this petition, respondents appeared and filed their written statement. After framing of issues, petitioner has filed his affidavit of evidence vide Exh.45. In this proceeding at the stage of cross examination of petitioner the respondent No.1 has filed present application Exh.58 under Order 6 Rule 17 and section 151 of the Code of Civil Procedure for amendment in written statement.

2. Petitioner has resisted the application by filing say vide Exh.59. It is contended that matter is at the stage of cross examination of the petitioner and respondent No.1 has avoided the cross examination on frivolous grounds each time since September 2022. It is contended that the proposed amendment Paragraph No.146-A to 146-C is regarding the alleged incident of November 2022 and June 2023 and moved this application on 24.1.2024. The subject matter of this petition is regarding custody of minor children. Hence, he requested to reject the application with costs and defence be struck out.

3. Mr. K.C.Bhate learned advocate for the respondents has submitted that the proposed amendment is in respect of subsequent event i.e. the incident of 2nd November 2022 and relationship of petitioner with Shipra Todi and her visits with the petitioner abroad which is necessary to come on record. He submitted that if proposed amendment is allowed then there will be no change in the nature of defence. It is necessary for proper adjudication of the matter because petitioner is claiming the custody of minor children on the ground of mental illness of respondent No.1. Hence, he urged to allow the application.

4. On the other hand, Mr.Ashwin Duggal learned advocate for the petitioner has submitted that the proposed amendment is not relevant while deciding the present matter. Present application has been filed only to delay the hearing of the main petition as matter is time bound by the Hon'ble High Court. Hence, he urged to reject the application.

5. I have considered the submissions of both sides. Perused the application as well as say. I have gone through the record and proceeding of this case.

6. The record shows that petitioner Nikunj Ramakant Harlalka has filed petition under Section 25 of the Guardian and Wards Act, 1890, for return the custody of minor respondent No.2 Avdit Harlalka, aged 07 years and respondent No.3 Saashmit Harlalka, aged 02 years old against his wife respondent No.1 Prachi Nikunj Harlalka. After

appearance of respondents they filed written statement. The issues were framed. Petitioner has filed his affidavit of examination in chief vide Exh.45 on 29.9.2022. The respondents had filed application Exh.47 praying that some portion of affidavit of examination in chief are beyond pleading and it may be strike out. Said application was allowed as per prayer. At the stage of cross examination of petitioner, the respondents have filed present application on 24.01.2024 seeking amendment in the written statement which is proposed as Para No.146-A to 146-D regarding the subsequent event. Though the petitioner has denied the contention in the application and resisted the application, but the respondents have placed on record the documents in support of application below Exh.62 and 65.

7. By this petition petitioner is seeking custody of his minor children i.e. respondent No.2 & 3 from his wife respondent No.1 on the ground that respondent No.1 is suffering from mental illness and unable to look after the respondent No.2 & 3. On the other hand, by this application, the respondent No.1 is seeking proposed amendment on the basis of subsequent event. Respondent No.1 is entitled to take defence as per her choice. Considering above aspects, if the proposed amendment is allowed then the petitioner will not be prejudiced because mere allowing amendment in written statement is not sufficient and the respondent No.1 would have to proved her defence. I am of the opinion that for proper adjudication of the matter the proposed amendment is necessary. The record shows that the respondent No.1 has knowledge about the incident dated 2nd November 2022 and the photographs of dated 27.6.2023, but the

present application is filed on 24.01.2024. Matter is time bound as per order of the Hon'ble High Court but the respondents by filing different applications prolonging the cross examination of petitioner. Considering the above aspects, while allowing the application, it is necessary to impose cost against the respondent No.1 to compensate the petitioner. Therefore, application deserves to be allowed. In result, I pass the following order :-

ORDER

- 1] Application Exh.58 is allowed subject to cost of Rs.1500/- (Rs.One Thousand Five Hundred only) payable by the respondent No.1 to the petitioner on or before next date.
- 2] Respondent No.1 shall carry out amendment in the written statement within 14 days from the date of payment of cost and submit the copy of amended written statement accordingly.

Date 21/2/2024

(G.B.Jadhav)
District Judge-1, Khamgaon.

Certificate

I affirm that the contents of this P.D.F. file order are same word for word as per original order.

Name of Steno : Mrs.Nishat Anjum Mohd.Rafique.

Name of Court : District Judge – 1, Khamgaon, Dist. Buldana.