

Common Order below Exh. 04 and 08

(dated 04/07/2022)

1. As per Exh.4 the application is file by applicant for seeking interim order for visiting of his minor son twice in the month on any Saturday and Sunday. As per Exh.11 in spite of service and appearance of respondent as she failed to file reply, the application proceeded without reply.

2. Meanwhile, as per Exh.8, the preliminary objection is raised by non applicant about tenability of the petition. It is submitted that the minor is not party to the proceeding for whom the relief is claimed therefore, claim is made to dismiss the petition. So also it is submitted that in the entire petition these non applicant is referred as a person suffering from physic problem and she is not physiologically fit therefore, she is not competent to be sued. Therefore, the main petition suffers from legal infirmities so claim is made for dismissal of petition.

3. Heard arguments at length. It is seen that initially the matter was pending at Mangaon- Raigad Court. Thereafter, it is transferred from there to this court. On the last date from both sides their respective both applications were pressed. At that time, it is seen that the present applicant is seeking for visiting right for the minor son. As per Exh.18 the respondent has filed

application for seeking the cancellation of no reply order. The said application is filed not along with the reply as submitted. The other side has given strong objection for the same.

4. Accordingly, the order is passed below Exh.1 and they both have directed to remain present personally before the court at 11 a.m. along with minor child before the court.

5. Considering the submissions from both sides today, it is submitted by non applicant that she is ill and so cannot attend the court along with minor today itself. Considering the enclosed documents filed along with today's application, it is clear that she had not carried minor son along with her for her travel and return from Mumbai. Therefore, under such circumstances, as the applicant is present today for meeting with the minor child, the non applicant is directed to visit along with minor child at 4.00 p.m. today in the court or arrange for the visit of minor with applicant through her parents or other relatives with whom she is residing now.

6. About the maintainability of the proceeding though the submissions are made in the application filed by non applicant, it is clear that the non applicant is travelling alone by railway as per document placed on record today, for the pleading made in the application the burden will be the applicant to prove

about her psychological condition. At this stage cannot be inferred that she is mentally ill person and cannot be sued. Therefore, the objection is not maintainable at this stage. During the subsequent proceeding both parties at liberty to file the relevant documents for establishing their submission about mental condition of non applicant. Under such circumstances, it is clear that application Exh.8 is not maintainable and for application Exh.4 ad-interim order as discussed above can be passed as follows:

ORDER

1. Application Exh.8 is not maintainable hence rejected.
2. Both parties are at liberty to proceed and file the relevant documents on record subsequently if required may raise the claim as per application Exh.8.
3. Application Exh.4 ad-interim order is passed by giving immediate direction to the non applicant to produce the minor at 4.00 p.m. before the court today through herself or through her parents or other relatives with whom she resides at Khamgaon.
4. Costs in cause.
5. Both Ld. Advocates to note.

Dt. 04/07/2022

(Smt. P.S.Kale)
Ad-hoc District Judge-1,
Khamgaon.

G. and W. case No.13/2019
Sachin Modi Vrs. Shital Modi
CNR: MHBU04000942-2019

Certificate

I affirm that the contents of this PDF file order as correct word to word as per the original Judgment.

Name of the Court : Adhoc District Judge-1., Khamgaon.

Name of steno and designation: C. N. Mahale, Stenographer (Grade-2)

Uploaded Date : 04/07/2022