

MHBU040009422019



Guardian Ward Case  
No.13 of 2019  
Sachin Vrs. Shital

**ORDER BELOW EXH.30**

(Passed on 02.02.2023)

1. Applicant-husband filed present application under Order 39 Rule 11 of the Code of Civil Procedure (the Code for short) for striking out defence of respondent-wife. Accordingly, respondent filed reply at Exh.32.
2. Applicant contended that as per order below Exh.4 this Court directed respondent to provide visiting right of the minor son to the applicant on 2<sup>nd</sup> and 4<sup>th</sup> Sunday of every month. However, whenever the minor remain present to meet the applicant at that time either respondent or maternal uncle of minor remain present with him. Respondent is avoiding to follow order below Exh.4. She is creating hurdle for meeting of applicant with his son. Applicant need to come to Khamgaon from Raigad District to meet his son. Non cooperation respondent amounts to violation of order below Exh.4. So applicant prayed for striking out defence of respondent.
3. Respondent objected application on ground that applicant is in habit of filing many miscellaneous applications on various grounds without there being any proper reason. Applicant is filing many applications on record to harass respondent. So that she should agree for divorce. Respondent

denied all the allegation of violation of order below Exh.4 and prayed for dismissal of Exh.30.

4. I have heard Advocate Mr.M.M.Sharma appearing for the applicant and Advocate Mr.K.V.Mishra appearing for the respondent at length.

5. The main limb of submission on behalf of applicant is that his son is always accompanied with someone and he seems to be under pressure. Considering age of the minor it is practically not possible for any child to go by himself to meet anyone. So necessarily someone has to be along with the minor as and when the minor meet applicant. So far as so called pressure on the minor is concerned it can not be ascertain only on the basis of present application. Because it involves nature, attitude, perception, reaction of both the parties towards each other and at the same time towards minor.

6. Earlier as per Exh.21 both parties has filed pursis on record about meeting of the minor with applicant. It appears there was consensus between the parties so that pursis was filed. So in such circumstance only on the basis of contents of application Court can not assume that there is violation of order by respondent. Application and reply are allegations and counter allegations against each other. So

without there being any positive evidence on point of violation of the order defence can not be strike of.

7. Rather considering welfare of the child both parties can take recourse to mediation and may settle their dispute amicably. In the alternative instead of filing so many miscellaneous applications both the parties can expeditiously offer their evidence and get the matter decided on merit at earliest. Thus, grounds are not satisfactory. Application is devoid of merit. Hence, following order is passed.

**ORDER**

Application Exh.30 is rejected.

Khamgaon  
Dt. 02.02.2023

(Prasad P. Kulkarni)  
Ad-hoc District Judge-2,  
Khamgaon.

**Certificate**

I affirm that, the contents of this P.D.F. file are correct, word to word, as per original Order.

Name of Court : Ad-hoc D.J.-2, Khamgaon,  
Name of Steno : Govinda D. Bhoite (Stenographer Grade-3)  
Dictated on : 02.02.2023.  
Typed on : 02.02.2023.  
Checked & signed on : 02.02.2023.  
Decided On : 02.02.2023.  
Uploaded On : 02.02.2023.