

MHRT040002392025



Received on :- 20.05.2025

Registered on :- 20.05.2025

Decided on :- 29.04.2026

Duration :- Ys. Ms. Ds.
00 11 09**BEFORE THE ADDITIONAL SESSIONS JUDGE, KHED****TAL. KHED DIST. RATNAGIRI**

(Presided over by P.S.Chandgude, Khed)

PWDVA APPEAL No.4/2025**Exhibit No.31**

Sudhir Subhash Pawar) **Appellant**
Age 35 years, occupation-service)
R/o Agarwayangani, Pawarwadi,)
Tal.Dapoli Dist.Ratnagiri)
Mobile No. 9529227464)
Aadhar card No. 791655275087)

Versus

Swadhinata Sudhir Pawar)
Age 30 years, Occupation-service) **Respondent**
R/o Room No.03, Ganesh Krupa Chawl)
Sambhaji Nagar, Ashok Van, Near Saibaba)
temple, Dahisar East, Mumbai No.400068)

Appeal under section 29
of the Protection of
Women From Domestic
Violence Act, 2005

Appearance :-

Shri. S.S.Butala, the learned Advocate for the Appellant

Smt.A.S. Mahajan the learned advocate for the Respondent

J U D G M E N T(Delivered on :29th day of April 2026)

1. Aggrieved by the order below Exh.7 dated 09-05-2025

passed by Ld. JMFC Dapoli in PWDVA Application No.36/ 2024 the original Respondent has preferred this appeal. Herein the parties are referred as per their original nomenclature.

2. The case of the applicant is as under-

That the Respondent has preferred application u/s 12 of PWDV Act on 28-11-2024 having No.36/2024. The application below Exh.7 was preferred for interim custody of son Rajvir. The Appellant has filed say. However the learned trial Court by order dated 09-05-2025 passed order to hand over custody of son Rajvir to the Respondent. Therefore this appeal on the ground that no report of protection officer was called by the learned trial Court before passing the order. The trial Court has not inquired with the child about the custody. The learned trial Court has overlooked the fact that son Rajvir was with his father, the Appellant for more than seven months. The Respondent is residing in a slum area in Mumbai and considering the upbringing of the child it is not proper to hand over custody of son Rajvir to the Respondent.

3. The Respondent did not file say and remained absent on the date of hearing. The lawyer has withdrawn her Vakalatnama. However as per the application below Exh.7 in PWDVA Application No. 36/2024 her case is that there was dispute between Appellant and the Respondent due to which she left her matrimonial house along with son Rajvir and went to her parental house. Then on one day the Appellant came there representing that he has come there to take them back. He told the in laws that he will take the son outside and did not return thereafter. The Appellant by playing fraud upon the Respondent has taken son Rajvir with him. Thereafter when tried to contact with him, the Appellant did

not allow the Respondent to contact with her son. On 6 to 7 occasions he did not answer phone calls made by the Respondent. On 12-11-2024 Respondent went to her matrimonial house at about 11.00 A.M. but the Appellant did not allow her to meet her son. She went to Dabhol police station to lodge FIR. However the Dabhol police asked the applicant to settle the matter between them as it is a family matter. The meeting was called at Agarwayangani. However at that time the Appellant insulted the Respondent due to her breast operation. The Respondent has contended that the son Rajvir was 3 years old. He requires care and attention of the mother. The Appellant used to come home after drinking liquor and used to abuse when they were residing together. Under such circumstances it is not in the interest of the minor to allow his custody with the appellant.

4. After hearing both the parties the learned trial Court has passed the order and directed the Appellant to deliver interim custody of son Rajvir to Respondent u/s 21 of the Protection of women from Domestic Violence Act 2005 till further order. The learned trial Court has considered that the child is below 5 years of age. There must be something exceptional derogating from the child's welfare is to be shown. It is observed that in the present case the Appellant has not come up with any such case where the mother may be judged unsuitable to raise the minor. It was further considered that as per Hindu Minority and Guardianship Act the custody of the infant or tender aged child should be given to his or her mother unless the father discloses cogent reasons that are indicative of presage the likelihood of the welfare and interest of the child being under mind or jeopardize if the custody is retained by mother. Being aggrieved by the said order the present appeal.

5. From the arguments advanced by both the parties following points arise for my determination. I have given findings and reasons thereon as under-

POINTS

1. Whether it is in the interest of the child to maintain the custody with mother?
2. Whether the order of learned trial Court needs interference?
3. What order?

FINDINGS

Yes.

No.

As per final order.

REASONS**AS TO POINT NO.1 TO 3**

6. The learned advocate of the Appellant Shri. S.S. Butala relied upon the ruling of **Hon'ble Sessions Judge, Delhi** in support of submission that the Hon'ble Sessions Court has considered ruling of Hon'ble Supreme Court in Aparna Ajinkya Firodiya Vs. Ajinkya Arun Firodiya dated 20-02-2023 that best interest of child shall be primary consideration. He submitted that a child born to a couple is responsibility of both of them and neither can exclude or singularly claim entire rights and obligations over the child. It is the natural reason that mother and father both should be presumed to have constructive custody of the child so that both can contribute towards his upbringing. With due respect to the ruling of Hon'ble Sessions Judge Saket Courts Delhi I would like to consider that the Judgment is not binding on this Court as the said Judgment is neither of any High Court or Supreme Court. However ration laid down in the ruling of Aparna Firodiya's case (cited supra) can be taken into consideration.

7. The learned advocate of the Appellant submitted that the Aparna Firodiya case in which the Hon'ble Supreme Court has

considered that best interest of the child shall be of primary consideration. He submitted that in this particular case the Respondent is residing in slum area in Mumbai. There will not be proper upbringing of the son of the Appellant and the Respondent in Mumbai and therefore he submitted to set aside the order of learned trial Court.

8. However it must be considered that interim custody was granted by the learned trial Court during the pendency of PWDVA Application. As discussed hereinbefore the learned trial Court has considered that the child is below 5 years of age. Furthermore there was no contention of the Appellant that the conduct of the Respondent mother is such that the welfare and interest of the child would be undermined or jeopardize if the custody is retained by the mother. Living in slum area does not mean that the Respondent would be unable to consider welfare and interest of the child. The learned trial Court has considered the fact that welfare and interest of the child will be protected by handing over the custody with mother. No exceptional circumstances indicated by the Appellant that the Respondent is demonstrably leading an immoral life. Furthermore there is no allegation that she has remarried and the new home is not suitable for the child. Thus the order passed by the learned trial Court needs no interference. As discussed earlier as the child is 5 years or below 5 years old, it is proper to keep the custody of the child with his mother.

9. The learned advocate of the Appellant Shri.S.S.Butala had relied upon ruling of **Hon'ble Supreme Court** in Mausami Moitra Ganguli Versus Jayant Ganguli reported in AIR 2008 SUPREME COURT 2262 in support of submission that each case has to be decided

on its own facts and other decided cases hardly serve as binding precedent. In so far as the factual aspects of the case are concerned. However as discussed earlier it must be considered that the child of Appellant and Respondent is below 5 years age. Furthermore though the learned advocate of the Appellant has produced the mobile chat on record to show that the Respondent has only concern to call the Appellant at Mumbai and to reside with her at her parental place and to work there. With this hidden interest she is seeking custody of the minor child. But considering the pleading of the Respondent that she tried to convince the Appellant to reside with her at Mumbai and work there but Appellant made quarrel with her and left the place with minor child without informing anyone.

10. There might have been pleading that the Respondent convinced the Appellant to reside with her and work at Mumbai but that does not mean that she has left the house with the ulterior motive. May it be as it is. That will be decided on the merit. But the appeal is only in respect of order of learned trial Court to grant interim custody of the child to the Respondent. It must be considered that the Respondent is residing in a village in Dapoli, is working on wages or as a driver. There are serious allegations of harassment against the Appellant by the Respondent. In PWDVA Application. The fact needs to be also considered that in spite of order of the learned trial Court the Appellant has not allowed the Respondent to meet the child. Under such circumstances according to me the interest of the child is to have a custody with the mother.

11. Learned Advocate of the Respondent relied upon the ruling

of **Hon'ble Punjab and Haryana High Court** in Anju Sharma Vs. State of Haryana 2024: PHHC: 106868. I have gone through the ruling. It is on the point that "what is important is the welfare of the child". There is presumption that welfare of child of a tender age should be in the custody of mother. It must be considered that the child of Appellant and Respondent is below 5 years who is taking education in Anganwadi. There would be no question of loss of his education if interim custody is given to the mother by the learned trial Court. The order of learned trial Court needs no interference. Hence I answer the Points accordingly. In the result, I pass following order.

ORDER

1. Appeal is dismissed.
2. The impugned order below Exh.7 dated 09-05-2025 passed by Ld. JMFC Dapoli in PWDVA Application No.36/ 2024 is made confirm.
3. The Appellant is directed to place the child in custody of Respondent within a week from the date of this order.

Place :- Khed.

Date :- 29.04.2026

(P.S.Chandgude)

Additional Sessions Judge, Khed
Tal. Khed, Dist. Ratnagiri.

Certificate

I affirm that the contents of this pdf file Judgment are same word as per original Judgment.

Case No.PWDVA Appeal No.4/2025

Name of Stenographer : Mrs.V.S.Kulkarni

Court Name : Addl. Sessions Judge, Khed.

Date of Decision : 29.04.2026

Judgment Signed by P.O. on : 29.04.2026

Judgment uploaded on : 29.04.2026