

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 272 OF 2015

Samira Ibrahim Shah & anr.

..... Petitioner

V e r s u s

Ibrahim Shah

..... Respondent

Ms. Susan Linhars, Advocate for the Petitioner.

Mr. S. N. Joshi, Advocate for the Respondent.

Coram :- **F. M. REIS, J**

Date : **17th July, 2015.**

ORAL ORDER

Heard Ms. Susan Linhares, learned Counsel appearing for the Petitioner and Mr. S. N. Joshi, learned Counsel appearing for the Respondent.

2. The above Petition challenges an Order passed by the learned Civil Judge Senior Division, at Margao, whereby an application for police protection for restitution of the minor child in the custody of the Petitioner came to be dismissed.

3. Briefly, the facts of the case as required for considering the above Petition, is that the minor child was in the custody of the Petitioner but, however, the Respondent filed an application before the learned Judge for the interim custody of the child. Such application was apparently served on the Petitioner and ultimately on 20.09.2013, the child was delivered to the Respondent. The Respondent sought police protection to take the child from the custody of the

Petitioner. Thereafter, the Petitioner filed an application before the learned Judge to recall the said Order dated 20.09.2013 on the ground that the Petitioner had not been served. The learned Judge by an Order dated 28.11.2014, recalled the said Order after allowing the application filed by the Petitioner. The matter was thereafter posted for considering the claim for custody and interim custody of the minor child. In the meanwhile, the Petitioner filed an application for restitution of the minor child in the custody of the Petitioner by police protection. The learned Judge by the impugned Order dismissed the said application on the ground that whilst recalling the Order there was no specific directions to deliver the child to the Petitioner. Being dissatisfied with the said Order, the Petitioner has filed the present Writ Petition.

4. Shri S. N. Joshi, learned Counsel appearing for the Respondent, has pointed out that the Respondent is presently in Dubai and the child is in the custody of his parents as, according to him, at the behest of the Petitioner, the Respondent has been detained by authorities at Dubai. Learned Counsel further submits that the Respondent has apprehension that the child will not be in the custody of the Petitioner as, according to him, the mother of the Petitioner has some psychological problems and, as such, keeping the child in the custody of such person is not in the benefit of such child. It is further submitted by Shri S. N. Joshi, learned Counsel, that as the Respondent is presently in Dubai, no Orders may be passed unless the Respondent is personally present in this Court.

5. On the other hand, Ms. Linhares, learned Counsel appearing for the Petitioner, has submitted that the Petitioner is personally present in Court to take

the custody of the child as she has travelled all the way from Dubai for that purpose. Learned Counsel further submits that once the child has been taken from the custody of the Petitioner on the basis of the police protection granted by the learned Judge, there is no reason to allow the child to continue in custody of the parents of the Respondent though the Order directing the custody to be handed over to the Respondent has been recalled by the learned Judge. Learned Counsel has thereafter taken me through the impugned order to point out that the impugned Order cannot be sustained and deserves to be quashed and set aside.

6. I have given my thoughtful consideration to the rival contentions. I need not go into the legalities or otherwise of all the contentions raised by both the learned Counsel. But the fact remains that as of today the Respondent is not in Goa and the child is in the custody of his parents. The apprehension of the Respondent that it is not advisable that the child should be in the custody of the mother of the Petitioner does not any longer survive as the Petitioner is personally present to take the custody of the child. As opposed between the grandparents and the Petitioner, who is the mother, there can be no quarrel with the fact that the interim custody has to be with the mother who is present in Court for the proper growth and health of the minor child. In such circumstances, I find that without prejudice to the rival contentions raised in the proceedings for custody pending before the learned Civil Judge, Senior Division, at Margao, it would be proper by an interim order to direct that the child be handed over in interim custody of the Petitioner, who is the mother of the child subject to conditions mentioned herein below :

(i) The Petitioner shall not take the child outside India without specific permission from the learned Civil Judge, Senior Division at Margao.

(ii) Before the Petitioner takes interim custody of the child, the Petitioner shall surrender the Passport of the minor child before the Registrar (Judicial) of this Court.

(iii) The Respondent shall hand over the minor child in custody of the Petitioner at "Shivneri Complex", Housing Board, Gogal, Margao, Goa, on or before 11.30 a.m. tomorrow i.e. 18.07.2015.

(iv) Only ad-interim custody of the child is kept with the Petitioner and such custody will be subject to any further Orders that may be passed for the custody by the learned Civil Judge, Senior Division, at Margao.

(v) Liberty to the Respondent to file an application before the learned Civil Judge Senior Division at Margao, to decide and work out the modalities of the visiting rights to the minor child by the Respondent.

(vi) The learned Judge shall proceed to decide the application for custody of the minor child bearing Portuguese Civil Misc. ApIn. No. 112/2013/II pending before the learned Civil Judge Senior Division, at Margao, as expeditiously as possible in any event within six months from the receipt of this Order.

(vii) Petition stands disposed of accordingly with the above terms.

F .M. REIS, J.

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