

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5275 OF 2007

Sou. Ashwini Dhairyasheel Bhosale.] ... Petitioner

Versus

Shri Dhairyasheel Tukaram Bhosale.] ... Respondent

Mr. R. S. Khadapkar for Petitioner.

CORAM :- M. S. SONAK, J.

DATE :- DECEMBER 16, 2015

P. C. :-

1. Heard Mr. R. S. Khadapkar for petitioner.
2. The challenge in this petition is to the order dated 19/05/2007 made by the Joint Civil Judge, Senior Division, Satara, permitting the respondent to retain custody of their daughter, pending disposal of H.M.P. No.259 of 2006, seeking, *inter alia*, divorce.
3. On 22/02/2008, rule was issued and the matter and an interim order was made in the matter of access. The same reads thus :-

“Heard learned counsel for the parties.

Rule. Returnable early.

Learned counsel for the parties have agreed for the following interim order:

During pendency of this petition it is open for the petitioner to meet the child at Satara atleast once in every month. The petitioner would, however, inform the respondent-husband about her visit to Satara and the period during which she desires to stay atleast three days in advance. As long as the petitioner stays in Satara the respondent-husband will allow her to meet the child between 3 pm and 6 pm at their residence. The respondent shall allow the petitioner and the person accompanying her to meet the child separately. The respondent-husband will bear travelling expenses of the petitioner and her stay at Satara, at least for a period of four days, which he shall pay before she leaves Satara by cheque. It is open for the petitioner to intimate to the respondent-husband so also to his Advocate at Satara about her visit. Liberty to the parties to mention for fixed date of hearing in June, 2008. Pendency of this petition shall not operate as stay to the further proceedings pending in the Family Court."

4. Mr. Khadapkar is unable to state whether H.M.P No.259 of 2006 has been disposed of by the learned Civil Judge or not. In the order dated 22/02/2008, this Court had made it clear that the pendency of this petition shall not to operate as a stay to further proceedings before the Civil Court. As such, it is reasonable to proceed on the basis that the main proceedings have been disposed of, in which case the reliefs in this petition shall be infructuous. In case, however, the main proceedings are not yet disposed of, then, the learned Civil Judge is directed to dispose of H.M.P No.259 of 2006 as expeditiously as possible and in any case, within a period of six months from today.

5. Mr. Khadapkar has contended that custody was denied to the petitioner on the ground that she suffers from schizophrenia and that it is in the interest of the daughter that the custody is with the respondent-father. Mr. Khadapkar points out that the petitioner, by M.C.A. No.100 of 2007, had applied for transfer of proceedings from Satara to Wardha. This M.C.A. was, however, dismissed by order dated 12/12/2008, *inter alia*, on the basis of the contention of the respondent that the petitioner is physically and mentally fit to undergo journey from Wardha to Satara which is about 1000 kms. Mr. Khadapkar contends that if the petitioner is physically and mentally fit to undergo journey from Wardha to Satara, surely, he petitioner is fit to obtain custody of the minor daughter.

6. At this stage, it is not possible to consider the aforesaid contention. This is because, in all probability, the main proceedings have themselves been disposed of or in any case, directions have been issued for disposal of the main proceedings within six months from today. Besides, it is settled position in law that the observations made in interim order, are only tentative and therefore, the the learned Civil Judge is not required to take the same into consideration at the stage of final disposal on merits. Therefore, the observations in the impugned order that the petitioner suffers from schizophrenia or was not *prima facie* fit to obtain custody of the daughter, shall not be taken into consideration by the learned Civil Judge at the stage of disposal of the main proceeding on merits and in accordance with evidence that may have been led by the parties on record.

7. At this stage, the interim arrangement which is continued since 22/02/2008, shall continue, during H.M.P No.259 of 2006, in case the same is not yet disposed of. Therefore, in substitution of the directions contained in the impugned order on the aspect of access and custody, the interim directions contained in the order dated 22/02/2008 to operate. It is, however, clarified that the custody, during the pendency of the main proceedings, will remain with the respondent but the respondent would be duty-bound to comply with the interim direction dated 22/02/2008 in the matter of access to the petitioner. The petition is disposed of in the aforesaid terms. There shall be no order as to costs.

8. Registry is directed to transmit the authenticated copy of this order to the Court of Civil Judge, Senior Division, Satara, taking up petition, being HMP No.259 of 2006, within a period of 15 days from today.

9. All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)