

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.734 OF 2015

Charu Piyush Gupta
aged 39 years, occ. Housewife
residing at 22, Jai Kiran Co-op. Hsg.
Society, Cuffe Parade
Mumbai-400 005.

.. Petitioner.

V/s

Piyush Subodh Gupta
aged 45 years, occ. Service.
Financial Consultant
residing at A-405, Oberoi Wood
Mohan Gokhale Marg,
Goregaon (East),
Mumbai-400 063.

.. Respondent.

Mrs. Shubhangi Gokhale, for the petitioner.
Ms. Rajani Iyer, Senior Counsel a/w Pradip Chavan i/b Ms.
Rutuja Ambekar, for the respondent.

Coram : Smt. R.P. SondurBaldota, J.

Date : 7th May, 2015

P.C.

1 The petitioner-wife files this petition to challenge the
common order dated 06th January, 2015 passed by the Family
Court on the applications at Exh. 88 and Exh.69. By the order,

the application at Exh.88 filed for adjournment by the petitioner is dismissed and the application at Exh.69 filed by the respondent-husband for striking off the defence of the petitioner to Petition No.D-108/2012 and Petition No.A3212/2013 as also for dismissal of Petition No. C-9/2014 is allowed.

2 Petition No.D-108/2012 is filed by the respondent for custody of the children and access to them, whereas Petition No.A-3212/2013 is filed by him for divorce. Petition No.C-9/2014 is by the petitioner for maintenance for herself and the children.

3 The reasons set out in the impugned order for the drastic steps taken against the petitioner read as follows:-

“Thus, the learned advocate do not know anything about this case. The learned advocate says that she is only instructeds to obtain an adjournment order and that too for today only. The earlier order dated 29/12/2014 below Exh.83 clearly recorded that wife has created

ground to frustrate the order. The Court rejected that application. It is apparent from submissions of the learned advocate that access order for overnight access is frustrated by respondent under the pretext that her children don't want to be with their father. The various orders of this Court, Hon'ble High Court and Hon'ble Principal Judge clearly record the conduct, demeanour and modus operandi of respondent of frustrating orders. The orders remain merely paper orders, so I believe that this application for adjournment and certificate is also one of the attempt to frustrate further proceedings and deprive children from love and affection of the father. Therefore, consequences stated in order dated 29/12/2014 below Exh.83 must be met with.”

4 There are as many as 19 orders passed relating to the access, out of which 13 orders are by the Family Court and 6 are by this court. The orders of interim access direct the petitioner to hand over the children to the respondent during the duration of the access. Undisputedly, the handing over has

not taken place at any time.

5 During the course of arguments before the Family Court as well as this court, various reasons have been claimed by the petitioner for the access not being successful. They are :-

(i) the place of access of Children Complex at Family Court, Bandra is inconvenient. The children have to travel for about one and half hours from Churchgate to reach the venue. They get exhausted by the journey in taxi. They feel so harassed by this arrangement and that they are reluctant to come and become rebellious; (ii) the elder son has robotic class in his school every Saturday which gets over by about 10.30 a.m.; (iii) the children are not allowed to travel out of Mumbai with their mother. This has made the children very upset and unhappy; (iv) The respondent does not co-operate even when the children are unwell and insists on the children being brought to the Children Complex; and (v) the respondent shouts and creates a scene and is abusive towards the petitioner in the presence of

the children. The respondent on the other hand, refutes each and every contention taken up by the petitioner. According to him, despite modification of the order granting access from time to time, to suit the convenience of the petitioner, the same has not been, deliberately, complied with by her, and every attempt has been made by her to frustrate the orders.

6 Considering the allegations, counter-allegations and the reasons stated in the impugned order, it becomes imperative to look into the various interim orders passed by the Family Court as well this Court and due compliance of the orders.

7 The first order of access passed by the Family Court is dtd. 11th January, 2013. It granted to the respondent, access to the children for three hours i.e. between 6.00 p.m. to 9.00 p.m. on 14th January, 2013. The petitioner was to handover the children to the respondent at the gate of her building. On completion of the three hours of access, the respondent was to

handover the children to the petitioner at the same place. The duration of three hours of access was to exclude the travel time. On the date of access the children were not handed over. It is the allegation of the respondent that the children refused to accompany him without the petitioner on account of tutoring by her. Finally he took all the three out to Food Court of CR 2 Mall, Nariman Point.

8 By the next order dtd. 5th March, 2013, the respondent's application for interim access i.e. Interim Application No.206 of 2012 was allowed and the respondent was granted access to the children on every Sunday between 10.00 am. To 2.00 pm. The children were to be again picked up from the residence of the petitioner and brought back to the same place. The order further directed the petitioner not to remove the children from the jurisdiction of the Family Court without permission. In case of any difficulty regarding smooth access, both the parties were implored to approach the child

psychologist alongwith the children, if necessary. The respondent was to bear the expenses of child psychologist.

9 The interim application for access had been contested by the petitioner contending that the application was nothing but an afterthought and filed only with the intent of pressuring her to withdraw the proceedings filed under the Domestic Violence Act. While deciding the interim application, the Family Court had noted various aspects of the matter. It had noted that the petitioner and the children are residing in the flat, provided by the erstwhile employer of the respondent, during the tenure of his service. The respondent has been taking care of the children by paying school fees, medical expenses and various other facilities, in addition to the maintenance of Rs.40,000/- per month. There was nothing on record to show that the respondent is unfit for access or his conduct would affect the children in future. The Family Court noted that both the parties are highly qualified and belong to a

higher economic class. Further in the past i.e. during the period October, 2010 to December, 2010, the respondent had exclusive custody of the children, since the petitioner had left them with him. But after matrimonial differences arose between the parties, the respondent was denied access to the children for three years. The photographs produced by the respondent indicated that the children had good rapport with him. But at the same time the Family Court took notice of the fact that there is reasonable gap of time between the last access to the children and the date of the application. From the pleadings, to the Family Court, there appeared possibility of tutoring of the children by the petitioner. It therefore felt that any sudden change as regards custody may affect the children adversely. In the circumstances it was necessary to establish rapport between the applicant and the children. Therefore, immediate overnight access was denied to the respondent.

10 The above order was carried to this court by both the parties. On 21st October, 2013, the Bench hearing the petitions had heard the parties in chamber. The order passed on that day made it clear that there was no stay of the order of access by the Family Court. The only concession made was in respect of the direction as regards the children being taken. It was however directed that if the petitioner intended to take the children out for vacation, she shall inform the respondent before she left, the location of her visit and intimation of her return. By the order dtd. 28th October, 2013, this Court granted the respondent access to the children on 30th October, 2013 after their classes. The petitioner, who was present in person had consented for that access. The petitioner was further directed by the court to co-operate and abide by the consent given by her. By the next order dtd. 26th November, 2013, the petitioner's petition to challenge the order was disposed off as having become infructuous in view of the consent for access given by her. However, by mutual consent, the venue of handing over the

children was shifted from the petitioner's residence to Inox Mall, Nariman Point.

11 Within a short time, the respondent had to move the application at Exhibit 46 before the Family Court alleging that there were problems in access to children in Inox Mall and that the conduct of the respondent-wife was causing severe emotional stress and discomfort to him. The application was decided by the Family Court by its order dtd. 2nd January, 2014 after hearing the parties. It noted that the access granted to the respondent was not successful. The children then aged 7 years and 5 years were suffering in the battle between the parents. The parties had been directed to attend group counselling event held in the Family Court on 7th May, 2013. The petitioner avoided the counselling session, but the respondent had attended the same. The Family Court noted from the pleadings that the petitioner had taken a Videographer alongwith her at the venue of access at Inox Mall and had tried to create evidence

to mis-guide the court so as to avoid the access. She had not obtained permission of the court to video shoot the events of access. The pleadings caused so much concern to the learned Judge that he had had following to observe in the order about the conduct of the petitioner :

“The respondent-wife took videographer with her to record event of access. That shows that she wanted to collect the evidence. That shows that she has poisoned the mind of children and has started behaving like paranoid person. Therefore, this is clear cut case where the poisoning of the mind of the child is being done.”

“The photographs filed alongwith Exh. 19 show that the children are very comfortable with the father. In fact they are enjoying the event.”

“She can not allow bitter feeling towards the husband to influence the relationship of her children with their father and extended family. By hating the husband and creating hurdles in access, she is in a way hating her own children, by not allowing them to be normal children. She can not be allowed to do that, she can not be allowed to emotionally abuse her own children. Therefore, the modification sought by husband is justified.”

The order further at paragraph-9 cautions the petitioner in following terms :-

“The access will not be successful unless wife prepares the children mentally to have access. She can fight with her husband with full of her energy and to the best of ability up to the Supreme Court on all other issues, but she should not drag the children between their dispute, she should not emotionally abuse the children and should consider overall wellbeing and interest of their beloved children”

The venue of access was then shifted from Inox Mall to the Children Complex in the Family Court. The Family Court provided regular access to the respondent on every working Saturday of the month between 10.00 am to 5.30 pm. The petitioner was directed to drop the children at Children Complex in the Family Court at 10.30 am., sign the register to record the presence of herself and the children at 10.30 am. The respondent was directed to take the children to his home or any other place where the access would be cherishable to the

children and drop them at the Children Complex at the end of the access. He was also directed to make an entry in the register to record about the children being dropped back. Considering the conduct of the petitioner, the Family Court directed the petitioner to deposit Rs.5,000/- for loss of each access day. The amount deposited was to be kept in fixed deposit for the benefit of the children with the respondent having control over the amount. Both the parties were once again directed to attend the group counselling event, that was took place on 1st March, 2014.

12 The petitioner had sought to challenge the above order by filing two petitions, but did not press the same. She also took out a Civil Application for the purpose in her disposed off petition, but later did not press it.

13 The next order is dtd. 16th May, 2014 passed by the Family Court for access during summer vacation. While granting the access, during summer vacation, the Family Court observed

as follows:

“5. In fact, it is the custodial parent, who has to prepare the mind of the child/children for smooth access. If the custodial parent herself creates doubt, creates adverse circumstances then the children get confused and immature mind of the children becomes insecure. In such circumstances, the children get clingy.”

“6 The aspect of overnight access/vacation access has to be looked into from the angles of the children. Summer vacation is the only vacation, when children will not have any school related activities. So the summer is the best time to explore surroundings, to explore individual hobbies, to explore new relationship, cultural relationship. The opportunity like summer can not be wasted in fights in court of law. It was expected from the custodial parent to come with plan to help the children, how they will spend their vacation and get benefit from custodial as well as non-custodial parent. It seems that immaturity of this custodial parent becomes deadlock so far as smooth access is concerned.”

As the summer vacation was about the start, on 26th May, 2014, the petitioner filed an application by way of purshis (Exhibit 60-A) informing the court that the children are reluctant to visit

father's place. The Family Court noted that the petitioner had apparently prepared her mind to display hostile attitude of non-compliance of the orders of the court and using psyche of the children to frustrate the access orders of the court. She was directed to bring the children before marriage counsellor on 29th May, 2014.

14 The petitioner challenged the order dtd. 16th May, 2014 in this court by filing Writ Petition No.5144 of 2014 and applied by interim stay. By the orders dtd. 28th May, 2014 and 18th June, 2014, this court refused interim stay to the petitioner.

15 In between the petitioner had unsuccessfully attempted to get the petitions in the Family Court transferred to another court. Her challenge in this court to the refusal by the Family Court for transfer also failed.

16 Finally the Family Court on the application of the respondent, by its order dtd. 13th June, 2014 issued notice to the respondent to show cause as to why her defence be not struck off under Order 39, Rule 11 Code of Civil Procedure. The petitioner filed her reply to the notice on 1st October, 2014 and then went on seeking adjournments. After granting two adjournments by the orders of the 12th September, 2014 and 16th October, 2014 with caution that there will not be any further adjournment, the Family Court dismissed her third application for adjournment by its order dtd. 17th November, 2014. The relevant observations in the order read as follows”

“Various orders in this case only portray that smooth access is not happening. The parties blame each other for guilt. In fact, in order dtd. 16th October, 2014, it was observed that the wife has not taken reasonable approach and has in fact tried to frustrate the access relating orders by not preparing mind of the child and by showing over litigativeness before this Court, before Hon'ble High Court and before Principal Judge also. So from earlier orders dtd. 16.10.2014, 12.9.2014 and 14.8.2014, the wife has already availed sufficient time for seeking appropriate orders from Superior Courts. Now, I do not think that it will be fair on husband's side to allow further time and allow the wife further to protract the

matter without giving any meaningful access to the father and without allowing the father to have quality time with the child. She has already availed sufficient time since August, 2014. No further time can be granted. The application is rejected with cost of Rs.5,000/-”

The petitioner was also issued notice calling upon her to show cause as to why interim custody of the children be not shifted to the husband for committing breach of the orders of the Court and interference in the access.

17 In view of the above conduct of the petitioner recorded by the Family court as well as this Court from time to time it is patent that the reasons given by the petitioner for failure of access are not genuine reasons and they need to be rejected without any further discussion. Despite such conduct of the petitioner, one more opportunity was given to the petitioner by this Court in the very petition. On 16th April, 2015, when the petition was posted for orders the petitioner addressed the Court in person and made a statement that she was willing to give

meaningful access to the respondent. In fairness the respondent accepted the offer. It was then recorded that the interest of justice would require one more chance to be given to the petitioner. It was hoped that with the future prospect as regards the petitions in the Family Court, the petitioner may mend her ways and stop harming the children as well as herself. The petitioner had agreed to take the children to the children complex at the Family Court for the purpose of handing over to the respondent. However, unfortunately, the history repeated itself. The children were not handed over and no meaningful access was given. The petitioner has filed an affidavit, once again using the children as a shield saying that they did not want to go with the respondent. The claims made by the petitioner have been denied by the respondent in the reply filed by him. He also states his version of the incident. In any case the fact remains that no meaningful access was given to the respondent.

18 In all the above circumstances, the order impugned in the petition is seen to be fully justified. Hence, the petition is dismissed.

(Smt. R.P. SondurBaldota, J.)

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Mrs. Shubhangi Gokhale, for the petitioner.
Ms. Rajani Iyer, Senior Counsel a/w Pradip Chavan i/b Ms.
Rutuja Ambekar, for the respondent.

Coram : Smt. R.P. SondurBaldota, J.
Date : 7th May, 2015

P.C.

1. At the request of Mrs. Shubhangi Gokhale, the learned advocate for the petitioner, ad-interim order dated 22nd January, 2015 is continued for the period of 12 weeks

from today.

2. At the request of Mr. Chavan, the learned advocate for the respondent, it is clarified that ad-interim order shall be restricted only to the main petition and shall not affect any other application made in the main proceedings.

(Smt. R.P. SondurBaldota, J.)