

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL APPLICATION NO. 105 OF 2015
IN
FAMILY COURT APPEAL (ST) NO. 4391 of 2015

Keshav Arjun Charania

..Applicant

v/s.

Indira Keshav Charania

..Respondents

Mr. J.S.Kini i/b. Suresh Dubey for the Applicant.

Ms. Susy Mathew for the Respondent.

**CORAM : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI,JJ.
DATED : AUGUST 10, 2015.**

P.C.

1. Heard. Civil Application is filed for stay to the operation of the of the Family Court order dated 28.10.2014 passed in Petition No.D-52 of 2011.
2. The applicant filed petition A-1861 of 2008 for divorce and the respondent filed Petition 52 of 2011 for custody of the minor daughter. Both the petitions were disposed of by common order dated 28.10.2014. The petition for divorce filed by the applicant came to be dismissed. So far as the petition filed by the respondent

wife is concerned, the respondent was held primary custodian of the child Priyanka, aged 14 years, whereas the applicant father was held the secondary custodian of the said child. The minor child Priyanka was declared to be in joint custody of the applicant and the respondent. The applicant was directed to drop the child at the gate of the respondent on the last day of the current academic education year 2014-15 and from that date the respondent was to be held primary custodian of the child Priyanka. It was further provided that after the custody of the minor child Priyanka, is shifted to the respondent on the last day of the current educational year 2014-15, the applicant will get access of the child Priyanka on the similar basis which the respondent was getting.

3. In terms of the impugned order referred above, the applicant was duty bound to hand over the custody of the minor daughter to the respondent on the last day of the educational year 2014-15. Admittedly, the educational year 2014-15 expired in the month of April 2015. However, custody of the minor daughter was not given to the respondent. Though the above appeal was filed in the month

of February, 2015, it was kept pending and the office objections were not removed. When the respondent filed execution proceedings, the applicant has rushed to this court. The fact remains that the applicant has not complied with the order.

4. Learned Counsel for the applicant submits that the respondent is working in Navy and at present she is posted at Goa. He submitted that the applicant, on the contrary is working at Videsh Sanchar Nigam, and is posted at Mumbai, and the minor daughter Priyanka is admitted in 10th standard, with Don Bosco School, at Marol. In these circumstances, if the custody of the minor child is given to the respondent wife then not only the educational career of the child will be hampered, but she would miss the entire year.

5. Learned Counsel for the respondent, having taken instructions from the respondent-wife who is personally present in the court makes a statement that the respondent will be taking leave for one year. Since the respondent will be taking leave, she will be along with the minor child. Statement accepted. Learned Counsel for the respondent states that respondent is staying at Ghatkoper with her parents, whereas the applicant is staying at Chembur. There are

other members in the respondent's family, apart from her and her sister. On the contrary the applicant is staying along with his three brothers and his aged mother. The applicant's brothers are not married and there is no female member in the family of the applicant to take care of the minor daughter Priyanka who is aged about 14 years, inasmuch as the applicant's mother is aged.

6. The learned Judge of the Family Court has discussed in detail the family background of the applicant as well as the respondent and considering the welfare of the minor child Priyanka, passed the impugned order. The interest of the applicant is also protected inasmuch as, he is given access to child Priyanka on the similar basis which the respondent was getting prior to the passing of the order, as per the consent terms arrived at between the parties. The impugned order is just, reasonable and supported by cogent evidence. The operation of the order, in our considered view need not be stayed during the pendency of the above appeal. We, therefore, dismiss the application.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)