

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO. 54 OF 2015

Almas Mehmood Whewaria.

..Appellant.

Versus

Omar Haroon Shaikh.

..Respondent.

Mr. S. I. Memon for the Appellant.

Mr. Ayaz Khan for the Respondent.

Coram : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.

Date : **April 28, 2015.**

P. C. :

1. Heard. Admit.

[SMT. ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
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CIVIL APPLICATION No. 99 OF 2015
IN
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Almas Mehmood Whewaria. ..Appellant.

Versus

Omar Haroon Shaikh. ..Respondent.

Mr. S. I. Memon for the Appellant.

Mr. Ayaz Khan for the Respondent.

Coram : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.

Date : **April 28, 2015.**

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1. By this application, the Appellant is seeking stay to the order impugned in the aforesaid family court appeal. Appeal is admitted by separate order.

2. The Respondent – father initiated the proceedings under section 25 of the Guardians & Wards Act, 1890 against the Appellant–mother. By the impugned order, the Respondent's prayer for permanent custody of the minor son is rejected, however, he is granted access as stipulated in the said order. The order reads thus :

“1] The petition is partly allowed.

2] The claims of the Petitioner for declaration of guardianship and permanent custody of his son are dismissed.

- 3] The Petitioner is entitled to have access to his minor son as follows :
- a] the Petitioner is entitled to have access to his son on 2nd Sunday of every month from 9.00 a.m. to 3.00 p.m. During that period, he is entitled to take his son to his residence or any public place.
 - b] the Petitioner is entitled to have overnight access to his son from June 2015 onwards on 4th Saturday from 4.00 p.m. to 8.30 p.m. of following Sunday of every month.
 - c] the Petitioner is entitled to have overnight access to his son during first 50% part of every Winter/ Christmas and Summer Vacation of the son. During that period, the Petitioner is entitled to take his son out of Mumbai and even abroad after giving entire information of such trip to the Respondent.
 - d] the Petitioner is entitled to have access to his son on every Muslim festival from 10.00 a.m. to 4.00 p.m. and during that period, he is entitled to take his son to his home.
 - e] the Petitioner is entitled to have access to his son on the birthday of son from 10.00 a.m. to 6.00 p.m. and he may take his son to his residence or any public place.
 - f] the Petitioner is entitled to have access to his son on his own birthday from 10.00 a.m. to 4.00 p.m. and during that period, he may take his son to his residence or any public place.
 - g] on every access occasion, the Petitioner shall pick up his son from gate of the house of the Respondent and reach back him on the same place.
 - h] Both the parties are at liberty to decide any mutually agreed place for pick up and drop off of the son.
 - i] if the Respondent does not give access of the son to the Petitioner without any reasonable excuse, then the Petitioner is entitled to recover Rs.3,000/- for loss of access of each day.
- 4] The Petitioner shall take care of the health insurance of the son.
- 5] Both the parties shall take major decisions regarding health and educational issues of the son, jointly or consulting with each other.
- 6]
- 7]"

3. We have heard at length the learned Counsel appearing for the respective parties and gone through the impugned order and evidence on record. The main objection of the Appellant – mother to give access of the minor son to the Respondent – father is that the Respondent has suicidal tendencies and has other vices like, smoking. The learned Counsel appearing for the Applicant to buttress his submissions has relied upon the facebook posts of the Respondent.

4. The learned Counsel appearing for the Respondent – father drew our attention to the dates of the said facebook posts and submitted that these posts were for the period prior to talaq between the couple, which took place on 6th November 2011. We find that the facebook posts were posted when the relations between the parties were strained, which ultimately led to talaq. That at the most only shows the disturbed mindset of the Respondent due to strained marital relations. We are aware that smoking is a bad vice. However, the same itself cannot disentitle the Respondent – father to the access of his minor son.

5. The learned Counsel appearing for the Respondent submitted that the Respondent is residing with his parents, who will also look after and take care of the minor child when the child is with the Respondent. The learned Counsel appearing for

the Respondent having taken instructions from his client submits that without previous permission of this Court, the child would not be taken abroad and that the Respondent will deposit in the Family Court, within four weeks from today, the arrears of maintenance granted to child. Statements are accepted as undertakings to this Court.

6. In the light of above discussion, we do not see any reason to stay the impugned order. We, however, in the facts and circumstances of this case, modify Clause 3 of the said order as stated hereinunder. This arrangement shall operate during the pendency and till the final disposal of the appeal.

7. Clause 3 of the impugned order is modified to the following extent :

- 3] The Respondent - father is entitled to have access to his minor son as follows :
 - a] the Respondent - father is entitled to have access to his son on 2nd Sunday of May 2015 from 9.00 a.m. to 5.00 p.m. During that period, he is entitled to take his son to his residence or any public place.
 - b] the Respondent - father is entitled to have overnight access to his son every month on 4th Saturday from 11.00 a.m. to 8.30 p.m. of following Sunday.
 - c] For the summer vacation of 2015, the Respondent –

father is entitled to have overnight access to his son for the period between 1st June 2015 from 10.00 a.m. to 6.00 p.m. of 5th June 2015.

- d] the Respondent - father is entitled to have overnight access to his son during first 50% part of every Winter/ Christmas and Summer Vacation of the son. During that period, the Respondent - father is entitled to take his son out of Mumbai but shall not take him out of India without prior leave of this Court.
- e] the Respondent - father is entitled to have access to his son on every Bakari-Id and Ramzan-Id from 6.00 a.m. to 2.00 p.m. and during that period, he is entitled to take him to the mosque and his home.
- f] the Respondent - father is entitled to have access to his son on the birthday of son from 2.00 p.m. to 5.00 p.m. if the birthday falls on school day and from 10.00 a.m. to 2.00 p.m. if birthday falls on holiday and he may take his son to his residence or any public place.
- g] the Respondent - father is entitled to have access to his son on his own birthday from 2.00 p.m. to 5.00 p.m. if the birthday falls on school and from 10.00 a.m. to 2.00 p.m. if birthday falls on holiday and he may take his son to his residence or any public place.
- h] on every access occasion, the Respondent - father shall pick up his son from the gate of the house of Respondent and drop him back at the same place.

- i] Both the parties are at liberty to decide any mutually agreed place for pick up and drop off of the son.”

8. Civil Application stands disposed of.

[SMT. ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]