

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4798 OF 2015

Ujawala Pramod Khope @
Ujawala Laxman Vankar

... Petitioner

Vs.

Pramod Purshottam Khope

... Respondent

Mr. Harshad E. Palwe, Advocate for the petitioner.

Mr. Satyavrat Joshi a/w. Ms. Nikita Sawant, Advocate for the respondent.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE : JULY 2, 2015

P.C.:

Rule. Rule made returnable forthwith. By consent, the petition is heard finally at the stage of admission.

2. The Petition is directed against the order dated 27th April, 2015 passed by the learned Judge of the Family Court directing the petitioner/wife to give access of son Akhilesh on the working 1st and 3rd Saturday in the Court premises from 3 p.m. to 6 p.m. to the respondent/husband.

3. The learned counsel for the petitioner/wife has submitted that the learned J.M.F.C., Nashik on 16th November, 2011 under Domestic Violence Act has granted ad-interim injunction against the respondent/husband restraining him from approaching the petitioner/wife

and their son. The learned counsel submitted that once the order of the learned JMFC is enforced, that cannot be set aside by the learned Judge of the Family Court and the order passed by the Family Court is in consistent with the order of the learned JMFC. The learned counsel pointed out the averments made in paragraph 7 of the Petition that the learned Judge of the Family Court has taken initiative and asked the respondent/husband to make an application for access in the midst of the cross-examination of the petitioner/wife. He further submitted that the order of the learned Judge of Family Court is thus perverse and illegal. On facts, he submitted that the learned Judge of the Family court ought to have considered the threats of life given by the respondent/husband to the petitioner/wife and their son.

4. The learned counsel for the respondent/husband opposed the Petition and supported the order passed by the learned Judge of the Family court.

5. It is true that the order granting ad-interim injunction in a proceedings pending under the Domestic Violence Act was granted by the learned JMFC, Nashik should have been challenged before the Sessions Court or the respondent/husband should have asked for vacating the same before the same learned JMFC. The submissions of learned

counsel for the petitioner to that extent are valid. However, the learned Judge of the Family Court has referred and reproduced the said order of the learned JMFC in her order. The Learned Judge of the Family Court, after referring the said order, has taken a view that the said order cannot restrain the respondent/husband to have access to their son. The learned counsel for the petitioner/wife has also pointed out that the respondent/husband did not make any reference in his application before the learned Judge of the Family Court, rather he has suppressed this order from the learned Family Court Judge. This ought not have been done by the respondent/husband. Be that as it may, the order of ad-interim injunction is passed on 16th November, 2011. It shows that the respondent/husband was enjoined from meeting his child and keeping any communication from 16th November, 2011. The said matter was fixed for arguments on 22th November, 2011 and I am informed on query that the said matter is still pending before the JMFC, Nashik at the same stage and there is no progress in the matter. Considering the stage of said proceedings and as the application for access is filed before the Family Court, for such a long time a child shall not be denied access to his father, therefore, in the interest of child, the order passed by the learned Judge of the Family Court of giving access on 1st and 3rd Saturday in the Court premises from 3 p.m. to 6 p.m. is judicious and right. Hence, this Court is not inclined to set aside the said order.

6. With this, the Writ Petition is disposed of.
7. The learned JMFC, Nashik is directed to dispose of the Application of the petitioner within one month, i.e., on or before 31st July, 2015.

(MRS.MRIDULA BHATKAR, J.)