

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.1180 OF 2015
IN
WRIT PETITIO NO.5195 OF 2014

Aneesha Dutt

... Applicant

Vs.

Ashu Dutt

... Respondent

Mr.S.G. Aney, Sr.Advocate i/b Pinaz Contractor for the Applicant
Mr.Ashu Dutt, Respondent-in-person – present

CORAM: **MRS.MRIDULA BHATKAR, J.**

ORDER RESERVED ON : **JUNE 11, 2015**
ORDER DELIVERED ON: **JUNE 15, 2015**

P.C.:

1. The writ petition is filed challenging the orders passed in custody proceedings. By this Civil Application, the petitioner-wife seeks interim order permitting her to visit her father at Bangkok, Thailand alongwith her son Ahren for a period of two weeks. Earlier, an application was filed and this Court by its order dated 18.7.2014 has permitted her to travel out of the country alongwith the minor son Ahren and had directed the Registry to return the passports on certain terms and conditions. The said order of this Court was turned down by the hon'ble Supreme Court by its order dated 22.7.2014 in Civil Appeal No.6684 of 2014 in Special Leave Petition (Civil) No.19062 of 2014 and cancelled the permission to take the child Ahren with her to meet his grandfather. On this background, the present application is tested.

2. The learned Senior Counsel for the petitioner-wife has submitted that there is a change of circumstance within one year as the previous application was filed in 2014. The learned Senior Counsel has submitted that the hon'ble Supreme Court has rejected the application mainly on three grounds i.e., the mother of the petitioner-wife is residing in India instead of attending her husband in Thailand; secondly, the hon'ble Apex Court has not considered the undertaking given by the petitioner and had only made a reference of return ticket produced by the petitioner and thirdly, there is no material to show on record any close connection between the child Ahren and his ailing grandfather. The learned Senior Counsel submitted that the hon'ble Supreme Court has made factually incorrect observations. He argued that the mother of the petitioner stays in Thailand. The petitioner and her parents are Thai nationals and the mother is intermittently visiting India to give support to her daughter. He submitted that the petitioner is facing nearly 15 litigations pending in various courts and it is not possible for a lady to look after the child and to attend these Court matters and, therefore, the mother visits India to support her daughter and also attends her ailing husband who is suffering from Vertigo and Parkinson's and he is not able to travel and so unable to meet his grandson. The learned Counsel further submitted that the High Court while granting permission has taken into account the undertaking given by this petitioner. However, it was suppressed from the Supreme

Court and, therefore, there is no reference to the undertaking in the order passed by the hon'ble Supreme Court. The Supreme Court has observed that there is no material on record to show close connection between the child and the grandfather. However, it is not possible to bring proof of the close connections between a 7 year old child and the grandfather. But it is a right of the child to meet the grandfather and he is closely connected. He relied on the visits of the grandfather to India to meet his grandson before he became disabled.

3. The respondent husband appears in person and has opposed the application vehemently. He submitted that he relied on the order passed by the Family Court which is reasoned and detailed while rejecting the prayer for taking Ahren to Thailand by the petitioner. He submitted that the petitioner and the respondent stay in one building. However, the petitioner is not allowing their son to meet him and his two siblings i.e., one daughter and one son whose custody is given to the father. He relied on the visit and stay record of the petitioner in the last one year and submitted that she has stayed for nearly 353 days in the last 2 years in India. He further pointed out that the Supreme Court has observed that the petitioner is at liberty to travel on her own. He apprehends that the child will be taken away and would not be brought back to India as the child is a Thai and US citizen.

4. This issue was already dealt with by the hon'ble Supreme Court which has set aside the permission granted by this Court allowing the petitioner to take her child to Thailand to meet his grandfather. The submissions made by the learned Senior Counsel on the point of change of circumstance are not convincing especially when the Supreme Court has made specific observations. If at all, the petitioner thinks that the Supreme Court has factually gone wrong, then, it is necessary for the petitioner to approach the hon'ble Supreme Court and take necessary steps. The learned Judge of the Family Court has made certain observations regarding the relationship of Ahren and his siblings and his father. Under such circumstances, I do not find that there is a judicial propriety in passing some other order. Hence, no other view can be taken than the view taken by the hon'ble Supreme Court.

5. Hence, the application is rejected.

(MRS.MRIDULA BHATKAR, J.)