

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9310 OF 2013

Ashish Chandrakant Sawant

... Petitioner

Vs.

Prachi Arvind Athavale

... Respondent

Mr.Uday Warunjikar for the Petitioner

Mr.P.S. Chavan a/w Ms.Priyanka Davda i/b kay Legal & Asso. for
Respondent

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: JUNE 11, 2015

P.C.:

1. Rule. By consent of the parties, Rule made returnable forthwith and heard finally.
2. The Writ Petition is filed by the petitioner–husband challenging the legality of the order dated 18.7.2013 passed below exhibit 6 and exhibit 62 in case No.D-86 of 2011 by the learned Judge of the Family Court No.2, Mumbai. The application was made for producing additional evidence of CDs and DVD and the other application was made under section 12 of the Guardians and Wards Act for interim custody of a minor child, namely, Arnav, aged 7 years.
3. Mr.Warunjikar, the learned Counsel for the petitioner, submitted that the petitioner is aggrieved by the order passed by the learned Judge of the

Family Court because the order is illegal and perverse as the learned Judge of the Family Court ought to have considered that the respondent-wife has no time to look after the child and as she is out due to her job from morning to night. He further submitted that the view taken by the learned Judge of the Family Court that evidence of CD and DVD cannot be looked into at an interim stage is also illegal. He submitted that the petitioner was earlier working in merchant Navy and has resigned the job and has now taken the job of a lecturer and, therefore, can devote more time to his son and so his custody be given to him. He further submitted that the father and the mother are living separately, however, in the same locality at Mahim. So there won't be any change in the school of the child.

4. The learned Counsel for the Respondent-wife pointed out that time to time, interim orders were passed by consent. The husband is given access for 15 days in summer vacation and also winter vacation. He pointed out the consent terms that even during the Ganapati festival days, the custody of the child was handed over to the father. He further highlighted that the father is having access to the child on three days in a week from 2.45pm to 8 pm and also on every Saturday from 7.30 evening till 3 pm on Sunday. Under such circumstances, there is no reason to transfer the custody of the child from mother to father. He submitted that though the mother is out, her parents are staying at home and her father and mother are taking care of the child. He fairly stated that there are

parents of the father also. However, the child is now used to his routine with the mother.

5. I went through the orders of the Family Court and the consent terms disclosing the parties have fairly and wisely agreed to share the custody of the child by giving liberal access to the father. It appears from the record that though the mother is a custodian guardian, the child spends quite a considerable time with the father and the mother has no objection if father drops the child to the school and picks up the child from the school. Thus, it shows that the mother has not poisoned the mind of the child and the father is taking good care of the child and in fact it is a very good example of shared parenting. Hence, I do not think the long working hours of the mother is a ground to disturb the set up of the child. Hence, the interim order is confirmed. Now, I am informed that the matter before the Family Court is at the stage of evidence and DVD or CD is taken as evidence on record. It is made clear that even at an interim or ad-interim stage, there is no bar in look into such recorded evidence, if the Court finds it necessary.

6. In view of the above, the Writ Petition is disposed of.

(MRS.MRIDULA BHATKAR, J.)