

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

**CIVIL APPLICATION NO.108 OF 2015
IN
MISCELLANEOUS CIVIL APPLICATION NO.17 OF 2013**

Ms.Smita @ Sampada Parag Kulkarni .. Applicant

Vs.

Mr.Parag @ Shreenivas Narayan Kulkarni .. Respondent

Ms.Chaitrali Deshmukh for the applicant

Mr.S.A. Ghaisas for the respondent

**CORAM : K.K.TATED, J.
DATED : 28/08/2015**

PC:

1 Heard the learned counsel for the parties.

2 This application is filed by wife for recalling and or setting aside paragraph 5 of the order dated 26.4.2013 passed by this court (Coram: B.R.Gavai). Paragraph 5 of the said order reads thus:

“5. It is made clear that until further orders are passed by the Family court, Pune, the respondent-husband is granted access to the child on 1st, 3rd and 5th Saturdays between 3.00 p.m. To 7.00 p.m. Since the access of the child is granted to

the respondent-husband on 1st, 3rd and 5th Saturdays. Learned Family Court is directed to keep the dates of the proceedings on these days so that the respondent-husband is not unnecessarily inconvenienced.”

3 The learned counsel for the applicant submits that when the present Miscellaneous Civil Application No.17 of 2013 was disposed of by this court (Coram: B.R.Gavai, J.) by order dated 26.4.2013, the respondent filed application before the trial court for temporary custody of child Master Sharmad under under Exhibit 59 in P.A.No.924 of 2013 with following prayers:

- a) Temporary custody of minor son Sharmad on each weekend i.e. on Saturday morning at 10 a.m. till following Sunday at 6 p.m.
- b) Temporary custody of minor son Sharmad during 1st half of each vacation in a year namely, Summer, Diwali and Christmas.

4 The learned counsel for the applicant submits that the applicant wife filed her reply to the respondent's application for custody by Ex.64 and opposed that application. She submits that the learned Family Court No.2, Pune after interviewing Master Sharmad passed order dated 5.4.2014 and rejected the respondent's application under Ex.59 for temporary custody.

5 The learned counsel for the applicant wife submits that as soon as the order was passed by the Family Court No.2 on 5.4.2014, the

respondent became violent in the court premises and started abusing the applicant. She submits that the respondent became so violent and aggressive that he threatened the wife that he will cut her into pieces and the minor child Sharmad and started abusing the applicant. The learned counsel for the applicant submits that wife filed complaint with the Police Station at Pune under section 504 and 506 of the Indian Penal Code for taking action against respondent husband.

6 On the basis of these facts, the learned counsel for the applicant wife submits that the order passed by this court on 26.4.2013 granting custody of the child for some period to the respondent husband to be set aside.

7 On the other hand, the learned counsel for the respondent husband opposed the present Civil Application. He denies the allegation made by applicant in her application. He further submits that till today, the respondent husband is taking custody as per order passed by this court on 26.4.2013. There is no grievance from the applicant at any time that the respondent has harmed the child. He further submits that the family court in order dated 5.4.2014 passed below Exh.59 in PA.NO.924 of 2013 specifically observed in paragraph 6 that presently, the access of the child is going smoothly. Therefore, there is no substance in the present Civil Application and same be dismissed with cost.

8 I have heard both the sides at length. It is to be noted that even the Family Court, Pune in order dated 5.4.2014 below Exh.59 specifically recorded that presently, the access of the child is going on

smoothly. Applicant has not brought on record any evidence to prove her apprehension that the respondent husband may cause harm to the child. Therefore, I do not find any substance in the present Civil Application. Same stands rejected.

(K.K.TATED, J.)