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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.6 OF 2012
IN
FAMILY COURT APPEAL NO.12 OF 2008**

Yogesh Bhagwandas Mehta ... Applicant

Versus

Uday Harilal Joshi ... Respondent

Mrs. Manjula Rao, for the Applicant.

Mr. Atul G. Damle i/by Mr. Mandar Soman, for the Respondent.

**CORAM : A.S. OKA &
N.M. JAMDAR, JJ.**

DATE : 10th JULY, 2015

PC.

. This Civil Application is filed in a disposed of Family Court Appeal No.12 of 2008. The Family Court Appeal was disposed of by an order dated 11th November, 2009 by a Division Bench of this Court.

2. The dispute is concerning the custody of child Drishti. The Appellant in the Family Court Appeal is the maternal uncle of Drishti and the Respondent in the Family Court Appeal is her natural father. The learned Judge of the Family Court on an application made by the natural father who is the Applicant in the present application granted custody of the child to him. By the final Judgment and order dated 11th

November, 2009 in the Family Court Appeal, this Court proceeded to set aside the order of the Family Court and the custody of the child with the maternal uncle who is the Respondent herein was retained. A Petition for Special Leave Appeal (Civil) No.206 of 2010 was preferred by the present Applicant. The Special Leave Petition was disposed of by a Judgment and Order dated 12th April, 2010. The Apex Court did not disturb the Judgment and Order of this Court. However, the Apex Court dealt with the right of the Applicant to claim access and visitation rights. The Apex Court while disposing of the Special Leave Petition proceeded to observe thus :-

“ We, accordingly, leave it open to the petitioner to move the High Court for his access and visitation rights to the child. In case, such a petition is filed, the High Court, after hearing both sides, will pass an order determining the frequency and the periods of time during which the child may be left with the petitioner.

Mr. Lalit submitted that in the High Court order there were certain observations concerning the petitioner that are bound to have an adverse effect on his request for access and visitation rights to his daughter. We think that the apprehension is misconceived. The observations were made in the context of custody of the child. While considering the issue of visitation right the High Court will undoubtedly give due allowance and allow the petitioner the opportunity to build up and restore his relationship with the child as her father.

For the coming summer vacation in the school, we direct that the child shall spend half of the vacation period with the petitioner and his family at his home. During that period the petitioner may also take the child outside Bombay after due notice to the respondent.

If the second half of the vacation is mutually agreed for the child to stay with the petitioner, she should return to the respondent's home at least three days prior to the reopening of the school.

The Special Leave Petition is disposed of in the above terms.”

3. During the pendency of this application, there is an arrangement made between the parties as regards the access and visitation rights of the Applicant. This Court was regularly monitoring the said arrangement which is working smoothly. However, on earlier date, the Applicant insisted that this Civil application should be disposed of.

4. The prayer in this application is for grant of permanent custody to the Applicant. The prayer is based on the events subsequent to the order of the Apex Court dated 12th April, 2010. The Apex Court upheld the order of this Court under which the custody was allowed to be retained by the Respondent – maternal uncle. If the Applicant wants permanent custody on the basis of the alleged subsequent events, the remedy of the Applicant is to approach the Court of first instance by filing an appropriate proceedings. The Applicant will have to adduce evidence to prove the alleged subsequent events.

5. In terms of the order dated 12th April, 2010, a liberty was granted to the Applicant to move this Court for access and visitation rights. Accordingly, access is regularly provided under the arrangement arrived at by the parties during the pendency of this Application.

6. We are granting liberty to the Applicant to file appropriate proceedings before the Court of first instance. It will be open for the parties to apply to the said Court for seeking appropriate directions regarding access and visitation rights. It is obvious that the Court of first instance will be entitled to consider the said prayer in accordance with law. Till such application is made and appropriate order is passed by the Court of first instance, the present agreed arrangement between the parties as regards grant of access to the Applicant shall continue to operate.

7. We, accordingly pass the following order :-

ORDER

- (i) We grant liberty to the Applicant to file appropriate proceedings before the Court of first instance for the grant of prayer made in this application;
- (ii) If such application is filed within a period of one month from today, considering the peculiar facts of the case, the concerned Court shall give priority to the hearing of

the said application and shall conclude hearing as expeditiously as possible and preferably within a period of six months from the date on which application is made;

- (iii) The present arrangement between the parties as regards visitation rights and access will continue till the said arrangement is modified by the Court of first instance on the application made by the Applicant or the Respondent. If such application for modification of the present arrangement is made, the concerned Court will decide the same on its own merits;
- (iv) Considering the welfare of the minor child, both the parties shall co-operate with the concerned Court for disposal of the said application in terms of the directions of this Court;
- (v) Both the parties will be entitled to rely upon the documents on record of this Civil Application by producing certified copies thereof before the concerned Court. If any report is on record which is ordered to be kept in a sealed cover, on the request made by the concerned Court before which the application will be filed by the Applicant, the Registry shall forward the

report or reports in the sealed cover to the concerned Court;

- (vi) All contentions of the parties on merits are kept open;
- (vii) Application is accordingly disposed of on above terms.

(N.M. JAMDAR, J)

(A.S. OKA, J)