

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 2680 OF 2015
IN
WRIT PETITION NO. 9294 OF 2015

Bhalchandra D. Korgaonkar .. Applicant

In the matter between
Bhalchandra D. Korgaonkar .. Petitioner

vs.

Ms Chitra V. Shirsat .. Respondent

Mr. U.P. Warunjikar for the Applicant/Petitioner.

Mr. Sahil Mahajan for the Respondent.

CORAM : M. S. SONAK, J.

DATE : 21 SEPTEMBER 2015.

P.C. :-

1] The notice of hearing of this Civil Application has been served upon the Respondent - Ms Chitra, as the matter was scheduled for 16 September 2015. Thereafter, once again the matter was moved to be taken up during Ganesh Vacation on 18 September 2015 and the notice of the said hearing was also served upon Ms Chitra. On both occasions, however, the hearing was deferred, as Ms Chitra chose not to attend and this Court was of the opinion that in a matter of this nature no *ex-parte* order be made.

2] Today, Ms Chitra has appeared in person as also through her advocate Mr. Sahil Mahajan.

3] Accordingly, heard both the parties as well as the learned counsel appearing for the parties

4] This Civil Application basically seeks overnight access to Master Balkrisna, as the Applicant Mr. Bhalchandra (father) seeks to take Master Balkrisna to his native place Shivday, Tal. Kankavli to take part in Ganesh Festival which is to conclude on 23 September 2015.

5] The Respondent Ms Chitra as well as learned counsel appearing for the Respondent have opposed grant of any interim relief. They have submitted that Master Balkrisna's school has commenced from today, Balkrisna is unwell, having fractured his wrist and in the past, Respondent Mr. Bhalchandra has misused the access orders. They pointed out that in May 2013, Mr. Bhalchandra made himself scarce for almost fifteen to twenty days and denied minimum contact to the Respondent. Ultimately, the Crime Branch had to be roped in to trace whereabouts of the Applicant and Master Balkrisna. For all these reasons, they submitted that overnight access even for a limited purpose be denied to the Applicant Mr. Bhalchandra.

6] Insofar as notice for hearing on 16 September 2015 is concerned, the learned counsel for the Respondent states that same was received only on 16 September 2015 in the afternoon, when the matter was fixed at 4.30 p.m. on the said date. Similarly, insofar as notice of 18 September 2015 is concerned, there was no indication that the matter was to be heard by the Vacation Judge. It is for these reasons, the learned counsel submitted that the Respondent did not attend the proceedings.

7] Having heard the learned counsel for the parties as well as the parties themselves, it is to be noted that after the incident of May 2013, which was no doubt, an extremely serious incident, the parties had themselves filed Consent Terms in May 2014 and in pursuance of which, the Applicant Mr. Bhalchandra had been granted access (overnight access) for about 24 days. The circumstance that the school has commenced and that there is a fracture in the wrist, are no doubt relevant circumstances. However, it is to be noted that the notice of hearing of this Civil Application had been served upon the Respondent Ms Chitra, at least on two occasions, i.e., in respect of hearing of scheduled for 16 as well as 18 of this month. At that stage, the vacations were very much on. Even for now, if access is

granted, the same would imply missing schools for maximum two days. Master Balkrisna is in the IV standard. The Ganesh Festival is only upto 23 September 201 and even 24 September 2015 is stated to be a holiday.

8] Even presently, there are orders which permit the Applicant Mr. Bhalchandra access on every alternate weekends. True, such access is not overnight. However, in the past, the overnight access has been granted to the Applicant Mr. Bhalchandra. In the month of May 2014, such access extended upto almost 24 days. In these circumstances, the interest of child will not be harmed, if limited access is granted in view of Ganpati Festival.

9] The Applicant will no doubt take adequate care of Master Balkrisna and travel to the native place by Car, so that there is no harm to the wrist of Master Balkrisna. That apart, the Applicant is directed to ensure that at least twice a day, arrangements are made for Master Balkrisna to speak with his mother Ms Chitra on phone. The duration of such calls should be of minimum ten minutes. The Applicant is restrained from taking the child anywhere, other than his native place at Shivday, Tal. Kankavli and thereafter, the

Applicant should ensure that the child is reached to his mother, i.e., Respondent - Ms Chitra, positively on 24 September 2015, latest by 5.00 p.m. The Applicant to stay with the child at Shivdav, where actual Ganesh Festival is being celebrated.

10] The Applicant is also directed to file a statement with the local Police Station at Kankavli that the child Master Balkrisna is with him between 22 and 24 September 2015. Necessary endorsement to be obtained upon this statement from the Incharge of said Police Station (Shivdav, Tal. Kankavli, Dist. Sindhudurg). If there is no Police Station at Shivdav, then from Police Station at Kankavli.

11] The aforesaid order is made in the peculiar facts and circumstances of the present case. The child is in IV standard. The Ganesh Festival, in Konkan is a festival where the entire family, not just the nuclear family usually unite under one roof. This would be an occasion for the child not only to take part in celebration, but also to meet his cousins and other relatives, which by itself will be a source for emotional security, which the child presently needs most. Considering this aspect of the matter, as also the circumstance that even in the past overnight custody/access has been granted to the

Applicant, the aforesaid order is made.

12] There shall be an order in the aforesaid terms. The Respondent Ms Chitra to ensure that the custody of child Master Balkrisna is handed over to the Applicant Mr. Bhalchandra after the conclusion of school for today, i.e., by 7.00 p.m.. The Applicant and the Respondent to exchange telephone numbers, where they can contact each other and on which cells phones, it is possible for the Respondent to speak with child.

13] The learned counsel for the Respondent seeks a stay in the implementation of this order. Since this order is to operate only between today and 24 September 2015, no purpose would be served if the plea for stay is entertained. Besides, this is not a case where access is being granted for some extended period. Accordingly, it is not possible to entertain the plea for stay.

14] It is made clear that this is only an interim order and therefore, the Family Court need not be influenced by any observations made in this order, at the stage of deciding the proceedings before it finally as well as whilst considering any other

interim applications. In fact, it is clarified that all such interim applications or final orders may be decided by the Family Court on its own merits and in accordance with law.

15] Accordingly, Civil Application is disposed of.

16] Parties to act on the basis of authenticated copy of this order duly authenticated by Sheristedar of this Court.

(M. S. SONAK, J.)

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CERTIFICATE

**“Certified to be true and correct copy of
original signed Judgment/Order.”**