

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION (ST) NO. 28053 OF 2015  
IN  
FAMILY COURT APPEAL NO.132 OF 2008**

Mrs. Sondur Rajini ..... Applicant.

**In the matter between**

Mr Sondur Gopal ..... Appellant.

V/s

Mrs Sondur Rajini ..... Respondent.

Mr. Mihir Desai, Senior Counsel along with Sharique Nachan  
i/b Shalini Prasad for the Applicant/wife.  
Mrs. Manjula Rao for the Appellant/husband.

**ALONGWITH  
CONTEMPT PETITION NO.481 OF 2015**

Mr. Gopal Sondur .... Petitioner.

V/s

Mrs. Rajini Sondur ..... Respondent.

Mrs. Manjula Rao for the Petitioner/husband.  
Mr. Mihir Desai, Senior Counsel alongwith Sharique Nachan  
i/b Shalini Prasad for the Respondent/wife.

**CORAM: V. M. KANADE &  
DR. SHALINI PHANSALKAR-JOSHI, JJ.**

**DATE: 12<sup>th</sup> October, 2015.**

**P.C.:- (Per V.M. Kanade, J.)**

1. This Civil Application is tendered directly in Court on account of liberty given by us to the Applicant/wife on Friday the 9<sup>th</sup> October, 2015 since the Office was closed on Saturday, the 10<sup>th</sup> October, 2015. Office is directed to number this Civil Application which is already taken on record by this Court.

2. This Civil Application is filed by the Applicant/wife seeking clarification/modification of the order passed by us on 29<sup>th</sup> September, 2015. Mr. Mihir Desai, the learned Senior Counsel appearing on behalf of the Applicant/wife has submitted that the girl Natasha, though she is an adult, is suffering from down syndrome and that she was residing with the Applicant/wife since 2004 and only for a period of 23 months, she was residing with the Appellant/husband. It is submitted that Natasha is admitted to special school and also is being treated by doctors for her down syndrome. It is submitted that sister of the Applicant/wife and the Applicant have been appointed as guardian under section 14 of the National Trust Act, 1999. He has invited our attention to the

said Certificate at Exhibit-D to the application. He has also invited our attention to the Certificate which has been given by Sharmin Bhesania (Patel), the Audiologist & Speech-Language Pathologist and Dr (Mrs) Anita Sukhwani, Consulting Psychiatrist as also to the Occupational Therapy Progress Report given by Dr. Reema Valia, which are annexed at Exhibit-F collectively to this application. He submitted that the statement which was given by Natasha before us was under the influence of her father and the said statement was given on account of tutoring made by him when she was in his custody for ten days. He submitted that he is not seeking any modification in respect of the order passed in the case of Smyank.

3. Mr. Mihir Desai, the learned Senior Counsel appearing on behalf of the Applicant/wife expressed his concern about the care and protection which could be given to Natasha by the husband. He invited our attention to the Certificate given by the Medical Superintendent of J.J. Group of Hospitals. He then submitted that there is every possibility that the father may not return to India and it will be difficult to secure the presence of children since the father and Natasha both are Swedish citizens. He submitted that there is no extradition treaty between India and Sweden. He submitted that there is an apprehension in the mind of the Applicant that the father would never bring the children back. He submitted

that in the event the Natasha is permitted to go to Sweden, the order giving direction to Appellant/husband to give financial security may be passed. He then submitted that at ad-interim stage, the arrangement which was continued for 11 years may not be changed.

4. On the other hand, Mrs. Manjula Rao, the learned Counsel appearing on behalf of the Appellant/husband, submitted that under the Swedish Law, physically and mentally disabled children are entitled to get special allowance and the State on its own expenditure provides full time Nurse for such children which would ensure that the child was taken to School and brought back. She submitted that better medical facilities are also available in Sweden for such children. She submitted that, in fact, the Applicant is a house wife and there was an incident of molestation of the child in India, which showed that despite child having physical and mental disability, the mother was negligent in looking after her. She further submitted that both the children were brought to India illegally and the Applicant failed to obtain even PIO status for both the children. She submitted that even visa was not extended from time to time. She submitted that undertaking was already given by the husband to bring back both the children as per the directions given by this Court. She further submitted that on a day and time fixed by this Court, the Appellant/husband

alongwith both the children will remain present before this Court and also tender the reports of the Swedish Hospital in respect of Natasha to this Court.

5. It must be noted that against our order dated 29<sup>th</sup> September, 2015, the Applicant/wife had approached the Apex Court and had filed SLP. SLP was not entertained. However, liberty was granted by the Apex Court to the Applicant/wife for modification/clarification or for review of the said order dated 29<sup>th</sup> September, 2015 passed by this Court. It is true that the Apex Court has granted liberty to the Applicant/wife but that cannot be treated as a mandate to entertain the review application after the SLP was dismissed by the Apex Court. However, since the issue concerns with welfare and interest of the child, we have again heard both the parties at length.

6. We are aware of the concern expressed by the Applicant/mother but unfortunately after 29<sup>th</sup> September, 2015, Applicant has not remained present in the Court, though today she is present. It is not disputed that the Applicant did not obtain requisite permission from the Swedish Embassy for bringing the children to India in 2004 and now she is reluctant to accompany her husband to Sweden. The learned Counsel for the Appellant/husband submitted that the Appellant/husband is willing to give an

undertaking that if the wife accompanies the children to Sweden, he will ensure that she is not arrested and no action is taken against her. Despite the offer being given by the Appellant/husband, Applicant/wife is not willing to travel with the children to Sweden.

7. After the custody of Natasha was handed over by Applicant/wife on Friday the 9<sup>th</sup> October, 2015 to Appellant/husband, we have noticed that she was very happy and comfortable with the Appellant/husband.

8. In our view, therefore, no case is made out by the Applicant/wife for modification of the order at this stage. Appellant/husband has already given an undertaking to this Court that he has roots in India and his brother and other family members are residing at Bangalore. In view of this, it is not necessary to obtain any other security. However, the undertaking given by the Appellant/husband that he will bring back the children on a day fixed by this Court is accepted. We, therefore, reject the application for modification of the order. However, we make it clear that this is a temporary arrangement and the Appellant/husband shall bring both the children to India on 23/12/2015 at 3.00 P.M. in this Court and file an affidavit, stating therein the facilities which are provided to Natasha alongwith medical certificate of the Hospital from Sweden where she was

examined and produce other relevant material. Necessary formalities therefore be completed by FRRO, so that both the children can be taken to Sweden. Applicant/wife if she is still willing to travel to Sweden alongwith children, necessary arrangement would be made by the Appellant/husband as per undertaking given by him.

9. We are informed that, today, the Applicant/wife is not in a state of mind to travel to Sweden alongwith the children. However, in future, if she wants to travel to Sweden, undertaking given by the Appellant/husband may be made applicable to her subsequent date on which she intends to travel to Sweden. Mrs. Manjula Rao, the learned Counsel for the Appellant/husband has submitted that undertaking to provide for her residence and for her air-tickets to travel to Sweden also would be made applicable to her traveling to Sweden on subsequent date. She submitted that whenever the Applicant/wife wishes to travel to Sweden, applicant may give an intimation to her in advance so that proper arrangement can be made. Applicant/wife is directed go with the Counsel for Appellant/husband for signing the necessary relevant documents by tomorrow before the Swedish Council.

10. Stand over to 23/12/2015 at 3.00 P.M.

11. So far as the Contempt Petition which is filed by the Petitioner/husband for non-compliance of the order dated 29<sup>th</sup> September, 2015 is concerned, we are not inclined to initiate contempt proceedings against the Respondent/wife since the custody of the children was handed over to father on Friday the 9<sup>th</sup> October, 2015. Contempt Petition is therefore disposed of.

**(DR. SHALINI PHANSALKAR-JOSHI, J.)**

**(V.M. KANADE, J.)**