

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9980 OF 2014

Ms. Reeba Cherian Petitioner

Vs.

Mr. George Jacob Vengal Respondents

Ms. Fatima Lakdawala-Kadri i/by Chambers of Rosita
Fernandes, Advocate for the Petitioner.
The Respondent is in person.

Coram : Smt. R.P. SondurBaldota, J.

Date : 8th May, 2015

P.C.

1 This petition is directed against the order dtd. 4th October, 2014 passed by the Family Court, Mumbai on the application at Exhibit 89 filed by the respondent-husband. The application was for modification of regular access and to seek overnight access during all vacations outside the Children Complex of the Family Court. The impugned order partly allows the application. It grants regular overnight access to the respondent from 10.00 am. on Saturday to 5.30 pm. on Sunday on the alternate weekends i.e. 1st and 3rd Saturdays

and Sundays of every month with a direction to the respondent to furnish address of the place where he would be taking the daughter during such access. As regards the access for vacations, the respondent is granted 50% access in all three vacations on the undertaking that his mother will be present throughout the access with them and that he will return the daughter to the mother after the end of the access period. In case of the vacation access, the respondent is further directed to furnish in advance to the petitioner schedule of the trip with the daughter and permit the daughter to talk to the mother atleast twice a day. The respondent is permitted to have telephonic conversation with the daughter, while she is with the mother atleast once a day at about 8.00 pm. The impugned order also takes notice of the health concern of the daughter by directing the respondent to telephonically consult the petitioner in case the daughter is uncomfortable for any reason.

2 In this bitterly contested petition, several allegations and counter-allegations have been made by the parties against each other. There are also various proceeding pending between the parties in various courts adding to the acrimony between them. It is unfortunate that their only child, who would be naturally entitled to love, affection and

support from both the parents is at the centre of some of the proceedings.

3 The petitioner alleges that the respondent is an alcoholic and has a tendency to become violent while under influence of alcohol. Therefore, according to her, grant of overnight access to the daughter would not be safe. The petitioner is also concerned about the health of the daughter and apprehends that the respondent will not take her proper care at the time of overnight access. The respondent is alleged to be insensitive towards the child. It is further alleged that the child is not willing to go to the father whether for day time access or overnight access. The child keeps on crying and refusing to go with the respondent. Needless to state, all the allegations are denied by the respondent.

4 As regards the allegation of alcoholism, the only material on record is the word of the petitioner and a single entry in the bank pass-book of the respondent indicating purchase of alcohol made by the respondent by using his credit card. This purchase was made by the respondent while he was out of India. According to him, the purchase was not for himself but for some one else. In the circumstances, I find no substance in the allegation of alcoholism.

5 As regards the concern of the petitioner for the health of the child and the alleged in-sensitiveness of the father, again there is no material on record to support the allegations. It is the petitioner's own case that in the past on an overnight access, when the child had complained of stomach pain, the respondent had immediately secured medical attention for her by taking her to a hospital. What is disliked by the petitioner is that the respondent had taken her to a hospital and not to a Family Physician. According to her the atmosphere of the hospital is intimidating to the daughter and had scared her. But at the same time, there is no dispute that the petitioner herself had also taken the child to the hospital once, when the Family Physician was not available. This would only mean that there is no real issue as regards the health of the child being taken care of. The issue is difference of opinion on the parenting of the child.

6 As regards the reluctance of the child to be with the father, another bench of this court in its order dtd. 20th January, 2015 has observed :

“Upon perusal of the Marriage Counsellor's report and other reports and after interviewing the child, this court is of prima facie opinion that the child has been thoroughly tutored to refuse to meet the respondent”.

In the same order, this court also noted as under:

“It appears that from the reports that the daughter was fairly comfortable in the company of her father for a while and in the eventuality that the child is given access during the course of the day, she would get acquainted with the father”.

In the circumstances, there can be no substance in the third objection also of the petitioner.

7 Unfortunately, it is obvious from the allegations and counter-allegations that the daughter is being used as a tool by both the sides to get at each other in their matrimonial disputes. There is no real concern for the wholesome development of the child, which is the child's birthright. The petition is therefore dismissed.

(Smt. R.P. SondurBaldota, J)