

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.378 of 2016**

Roxann Sharma, major,
r/o C/o Adv. Jos Peter D'Souza,
1/S2 Garden Centre II,
Near Police Station, Mapusa,
Goa .. Petitioner

V/s

Arun Sharma, major,
r/o No.80, Magnolia,
Bin Waddo, Betalbatim,
Salcete Goa .. Respondent

Ms. Maria Caroline Collasso, Advocate for the petitioner.

Mr. A. Viegas, Advocate for the respondent.

Coram:- C. V. BHADANG, J.

Reserved on : 18th April, 2016

Pronounced on : 22nd April, 2016

ORDER :

By this petition, the petitioner Roxann Sharma (nee Roxann Dalrymple), who is the original respondent, in Matrimonial Petition No.59/2013/II, is challenging the order dated 11/02/2016 passed by the learned Senior Civil Judge at Margao. By the said order, the application filed by the petitioner seeking permission to leave the State of Goa has been dismissed.

2. The brief facts necessary for the disposal of the petition may be stated thus :

The petitioner is an American National and holder of American passport and OCA Card. According to the petitioner, she is a tenured professor of English in California having completed her masters in English Literature from the University of California.

The petitioner was married to the respondent at Los Angeles, U.S.A. The petitioner and the respondent were blessed with a child by name Thalbir Sharma, who was born at Los Angeles, U.S.A. on 18/04/2012 and is thus, an American citizen by birth. The petitioner claims that the child was conceived through IVF (in vitro fertilization) and both the petitioner and the respondent always intended their child to obtain American Nationality and to be brought up in U.S.A..

For the limited purpose of deciding the issue in the present petition, it is not necessary to set out the facts and the allegations and the counter allegations made by the parties against each other, in detail. Suffice it to mention that the marriage ran into rough weather and the parties are presently litigating in several cases.

On 22/05/2013, the respondent filed Matrimonial Petition No.59/2013/II, against the petitioner seeking custody of the minor son Thalbir Sharma which is pending before the learned Senior Civil Judge at Margao. The petitioner has filed a counter

claim therein seeking custody and also an application for interim custody of the child pending disposal of the Matrimonial Petition. It is a matter of record that the application for interim custody filed by the petitioner herein was granted by the Trial Court on 31/01/2014 which was challenged before this Court. This Court by a judgment and order dated 02/08/2015, permitted the respondent to retain the custody of the child. This was challenged by the petitioner before the Supreme Court in Civil Appeal No.1966/2015 and Civil Appeal No.1967/2015. The Hon'ble Supreme Court, by a judgment and order dated 17/02/2015, granted temporary custody of Thalbir to the petitioner. It would be necessary to reproduce para 20 of the judgment of Hon'ble Supreme Court as under :

“20. We transfer the temporary custody of Thalbir to the Appellant/ Mother with the direction that both of them shall reside in the address given by her, viz, House No.80, Magnolia, Ground Floor, Bin Waddo, Betalbatim, Goa and will not leave that territorial jurisdiction of the Trial Court without prior leave. We further direct that the Respondent/ Father shall have visitation rights between 2.30 p.m. and 6.00 p.m. on every Tuesday and Thursday, and from 2.30 p.m. to 9.00 p.m. on Saturdays. These orders are purely temporary in nature. The Civil Judge should decide the Petition/ Application pending before him with expedition, as directed by the High Court, without

being influenced by any observations made by us hereinabove."

3. On 12/08/2015, the petitioner (respondent in the Matrimonial Petition) filed an application (Exh.107) in Marriage Petition No.59/2013 with the following prayer :

"(a) That necessary orders be passed to permit the Respondent Mother to leave India along with her son Thalbir Sharma to proceed to the USA.

(b) That necessary orders be passed directing that the passports of the respondent and her son Thalbir Sharma be released to her in order to permit her to travel to the USA.

(c) Any other order deemed fit in the facts and circumstances of the case."

4. That application was rejected by the Trial Court with the following order on 08/09/2015 :

"The Honourable Supreme Court has directed respondent to stay with the child in Goa. If this court passes an order allowing the respondent to leave India it would run contrary to the order of the Honourable Supreme Court. It would also make the visitation rights granted to the petitioner infructuous. Hence, the application is rejected."

This order was not challenged by the petitioner.

5. It appears that the petitioner again approached the Trial Court on 10.02.2016 by filing application (Exhibit D-140) for permission to leave the State of Goa as she was desirous of visiting Mumbai to conduct seminar/workshop as she has a temporary job as an education consultant. One of such workshop/seminar was scheduled from 11/02/2016 to 19/02/2016. It was contended that during the said period, the petitioner would be staying with her friend whose address was given in the application. The petitioner claimed that even in the past, she was permitted to leave Goa.

6. The respondent herein opposed the application and contended that in the past, the petitioner had left the jurisdiction of the Court, without seeking leave. It was also contended that the application is not supported by any documentary evidence, in support of the contention, that the petitioner was appointed as a Consultant at Mumbai.

7. The learned Trial Court, after noticing the order passed by the Hon'ble Supreme Court requiring the petitioner to stay in Goa until permitted by the competent Court, found that the petitioner had failed to furnish details about the Seminar which

she was supposed to attend. The learned Trial Court has found that the petitioner had filed two applications one on 08/02/2016 and other on 10/02/2016 with identical prayers. The Court also found that in one of the applications, the date of departure was given as 09/02/2016 and in the other, it was 11/02/2016 which cannot be reconciled. The Court also found that in the second application, the petitioner did not state whether she will be taking the child with her and it was only on a query by the Court that the said fact was incorporated in the application. Thus, the Trial Court found that there was no material placed on record to show bonafides of the petitioner and proceeded to dismiss the application. Feeling aggrieved, the petitioner is before this Court.

8. I have heard the learned Counsel for the petitioner and the learned Counsel appearing for the respondent. Although the learned Counsel for the parties argued the matter at great length, the issue involved in the present petition is essentially limited, namely whether the petitioner can be permitted to leave the State of Goa either for visiting U.S.A. or for staying at Mumbai as is now claimed. Thus, although the learned Counsel for the parties has referred to various allegations and counter allegations made against each other, I would confine the discussion to the issue involved.

9. It was submitted by the learned Counsel for the petitioner that the petitioner is out of job. She submitted that the petitioner has an offer of job at Mumbai. The learned Counsel submitted that the petitioner could not disclose the details before the Trial Court on the ground that the petitioner apprehends danger at the hands of the respondent. It is submitted that the petitioner was willing to show the document to the Court. However, the Trial Court has noticed in the order that no provision of law was shown permitting the petitioner to produce the documents "secretively without the knowledge of the other side and expecting the Court to look into the same and pass an order." She submitted that the Trial Court could not have brushed aside the apprehension expressed by the petitioner for disclosing her place of employment, her nature of work and the purpose of visit to Mumbai on the ground that in the earlier order, such apprehension was held to be unfounded and there was no police complaint filed. The learned Counsel would submit that the petitioner is willing to show the Court an offer letter without disclosing the same to the other side. It is thus, submitted that the petitioner may be permitted to leave the State of Goa and to stay at Mumbai for the purposes of her job.

10. It is next contended that the mother of the petitioner is

suffering from Cancer and the petitioner has to visit U.S.A. to see her parents. It is submitted that on account of their health conditions, it is not possible for the parents of the petitioner to visit Goa to see the petitioner and their grandson. The learned Counsel submitted that this Court may impose appropriate conditions which the petitioner is willing to abide by, while granting such permission. The learned Counsel fairly conceded that although, one of the reasons for visit to U.S.A. was to celebrate the birth day of child Thalbir on 18/04/2016, that is not now possible on account of paucity of time.

11. On the contrary, it is submitted by the learned Counsel for the respondent that the application is vague and without any material particulars and supporting documents. The learned Counsel would submit that the petitioner has to come up with a clear case showing genuine and bonafide need to visit Mumbai and/or U.S.A. and has also to satisfy that the same would not affect the visitation rights granted to the respondent by Hon'ble Supreme Court. The learned Counsel submitted that the petitioner has failed on either of the counts and the permission is rightly rejected. The learned Counsel would also submit that the petitioner is not complying with the order granting the visitation rights. He also made reference to a warrant being issued against

the petitioner in some criminal case at Goa wherein the petitioner is said to be not attending. As noticed earlier, it would not be necessary to go into the ancillary allegations having regard to the limited controversy involved in this petition. The learned Counsel for the respondent pointed out to an application dated 26/08/2015 filed by the petitioner in the Matrimonial Petition for change of the visitation dates in order to submit that the petitioner has admitted that she is doing a job in Goa and her working hours are from 10.00 a.m. to 5.30 p.m. from Monday to Friday. He, thus, submitted that the reason for visiting and/or staying at Mumbai for the purposes of any seminar/ job is not genuine.

12. I have given my anxious consideration to the rival circumstances and the submissions made.

13. At the outset, it is necessary to mention that as per the order of Hon'ble Supreme Court, the temporary custody of the minor child is granted to the petitioner with the direction that both of them shall reside at the address given by the petitioner (namely House No.80, Magnolia, Ground floor, Bin Waddo, Betalbatim, Goa) and will not leave the territorial jurisdiction of the Trial Court without prior leave. The order further stipulates that the respondent/ father shall have visitation rights between 2.30 p.m.

and 6.00 p.m. on every Tuesdays and Thursdays and 2.30 p.m. to 9 p.m. on Saturdays.

14. It was in pursuance of this order that the petitioner sought prior permission of the Trial Court to leave the State of Goa. It is necessary to mention at this stage that in the initial application filed on 12/08/2015, the petitioner had sought permission to travel to U.S.A. which was rejected on 08/09/2015. It is not shown that the said order was challenged by the petitioner. Be that as it may, in the second application, (on which the impugned order is passed), the petitioner only seeks permission to visit Mumbai for a seminar which was scheduled to be held between 11.02.2016 to 19.02.2016, which reason would not survive as of today. The learned Counsel for the petitioner in all fairness agreed that the reason of visiting U.S.A. to celebrate birthday of Thalbir on 18.04.2016 would not survive on account of short time left. The ground now made out is that the petitioner has an offer of job at Mumbai where she proposes to stay and has to visit U.S.A. to see her ailing mother. In so far as the ground of offer of job at Mumbai is concerned, the petitioner could not show any document/ letter before the Trial Court on the specious ground that if her work place is disclosed to the respondent, she apprehends danger, which was held to be unfounded by the Trial

Court. With a view to test the said ground, this Court asked the learned Counsel for the petitioner to produce the document for the perusal of the Court, whereupon a copy of the email enclosing an offer letter dated 14/10/2015 is produced. Without going into the aspect as to whether the apprehension expressed by the petitioner is well founded, this Court in order to alleviate the fear or apprehension of the petitioner and the at the same time also to examine the claim of the petitioner of having a job offer at Mumbai, has perused the documents produced by the learned Counsel for the petitioner, which are kept in a sealed cover/ marked 'X' for identification. On perusal of the said letter and without disclosing the details, it is not possible to accept that the petitioner has a subsisting offer of job at Mumbai. Thus, the said ground, in my considered view, cannot be accepted.

15. In so far as the permission to temporarily visit U.S.A. is concerned, again, I am not inclined to grant the same for the reason that this will affect the visitation rights granted by the Hon'ble Supreme Court to the respondent for a substantial period of time. It hardly needs to be stated that this Court cannot pass an order which would affect the implementation of the order of the Hon'ble Supreme Court, in so far as the visitation rights granted to the respondent, are concerned.

16. I see no infirmity or jurisdictional error in the order passed by the learned Trial Court, so as to warrant interference.

17. Before parting with the final order, it is necessary to mention that the Matrimonial Petition has to be disposed of expeditiously and in a time bound manner. Here again, the parties are making allegations and counter allegations attributing the reason to the adversary of prolonging the petition. It may not be out of place to mention that this Court in Writ Petition No.79/2014 has directed the Matrimonial Petition to be decided expeditiously. The Hon'ble Apex Court has also directed that the petition shall be disposed of with expedition. As the learned Counsel for the petitioner points out, the period for deciding the matrimonial petition has been last extended by six months from 15.02.2016. It is necessary for the parties to co-operate and assist the Court for the time bound disposal of the petition. With this, the writ Petition is dismissed.

C. V. BHADANG, J.

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