

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.472 of 2016**

Agnelo John Bosco Savio
Fernandes,
(son of late Joao Fernandes),
British National, 57 years of
age, married, Temporarily
residing at C/o Late Annunceicao
Vaz, Opposite Hotel Mahalaxmi,
Near Pedro Vicente Vaz
Residence, Khorlim, Mapusa,
Bardez, Goa. .. Petitioner

Versus

Maria Beatriz de Souza,
daughter of late Arnaldo
de Souza, married, Indian
National, aged 40 years,
residing at House No.9,
Behind St. Francis Sports
Club, Portais, Panaji, Goa. .. Respondent

Mr. A. F. Diniz and Mr. R. Menezes, Advocates for the
petitioner.

Mr. J. A. Lobo, Advocate for the respondent.

CORAM :- C. V. BHADANG, J.

DATE :- 6th MAY, 2016.

ORAL JUDGMENT :

Rule. Rule, made returnable forthwith. The
learned Counsel for the respondent waives service.
Heard finally with the consent of the parties.

2. By this petition, the petitioner, who is a non-

custodial parent of the minor, is seeking enlargement of the time, for which the visitation rights are granted to the petitioner.

3. By the impugned order dated 19/04/2016, passed by the learned Ad hoc Senior Civil Judge at Panaji in C.M.A.No.80/2009/A, the application Exh.97/D, filed by the petitioner, was rejected, however, with certain conditions, which are as under :

"The visitation right shall be exercised as per Order passed in 24/6/2014 in Writ Petition 383/2012. The applicant shall be entitled to visit the child on every Wednesdays, Fridays and Sunday for two hours between 5.30 to 7.30 p.m. till the time he is in Goa. The visitation rights shall be exercised in Hotel Vivanta at Panaji in the presence of the mother. The cost of visitation shall be borne by the respondent. The cost of visitation such as food and leisure activity shall be borne by the respondent. When the respondent migrates from Goa, he shall be entitled to telephonic and video contact with the child for reasonable time twice every week."

4. The learned Counsel for the petitioner places reliance on the decision of the Hon'ble Apex Court in the case of **Ruchi Majoo Vs. Sanjeev Majoo**, reported in

2011 AIR (SC) 1952, in order to submit that during vacation, a non-custodial parent can be allowed to take the minor child for a night stay. He submits that considering the fact that the minor child is having her vacation, this Court may consider enlarging the visitation rights granted by the Trial Court. The learned Counsel also submits that the presence of the respondent/ mother at the time of the visitation rights has also the effect of the minor child being not free as she is under the watch of the respondent. The learned Counsel, therefore, submits that part of the impugned order which grants the visitation rights "in the presence of mother" may be modified and instead, any representative from any NGO can be asked to remain present. The learned Counsel has also prayed for change of the venue from Hotel Vivanta to Hotel Cidade de Goa, on the ground that Hotel Cidade de Goa has larger space and better facilities, where the visitation rights can be granted. The learned Counsel for the petitioner also states that he has an Aunt, who is 98 years and who is unable to move and, therefore, the minor child may also be permitted to be taken to the house of the petitioner to see his Aunt.

5. The learned Counsel for the respondent, on

instructions, states that this Court can consider grant of visitation rights on every Sundays for a period of 5 hours, instead of two hours during vacation. He, however, has reservations for further enlargement of the visitation rights.

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

7. The record shows that by an order dated 02/04/2014 passed in M.C.A. No.246/2014 in W.P.No.383/2012, this Court had granted visitation rights to the petitioner in the following terms :

"(i) The applicant shall be entitled to visitation rights to the child from 03.04.2014 to 05.04.2014 for two hours between 5:30 p.m. to 7:30 p.m.

(ii) The applicant shall be entitled to visitation rights to the child on 06.04.2014 from 11:00 a.m. to 5:00 p.m.

(iii) The applicant shall have visitation rights to the child from 07.04.2014 to 11.04.2014 from 5:30 p.m. to 7:30 p.m.

(iv) All the above meetings shall be at Hotel Vivanta, Panaji, Goa and in the presence of the respondent herein.

(v) There is a swimming pool at Hotel Vivanta and in case the child, Graca wishes

to be in the swimming pool and if there is a children's swimming pool at the hotel then she may be allowed to be in the swimming pool for such time as per the child's wish.

(vi) The applicant assures to provide quality eatables and lunch to the child during the said period of visitation."

Thus, it can be seen that on earlier occasion, this Court on the eve of vacation i.e. in April, 2014, had granted visitation rights to the child for a specific period from 03/04/2014 to 05/04/2014, for two hours between 5.30 p.m. to 7.30 p.m., on 06/04/2014 from 11.00 a.m. to 5.00 p.m. and on 07/04/2014, the visitation rights were granted from 5.30 p.m. to 7.30 p.m. On all these days, the visitation rights were granted at Hotel Vivanta.

8. A perusal of the impugned order shows that the learned Senior Civil Judge, after considering the decisions of the Hon'ble Apex Court in the case of **Mausami Moitra Ganguli Vs. Jayant Ganguli**, reported in AIR(SC)-20080-2262, **Rosy Jacob Vs. Jacob A. Chakramakkal**, reported in SCC-1973-1-840, **Roxanne Sharma Vs. Arun Sharma**, reported in 2015(2) SCALE 488, and the judgment in the case of **Ruchi Majoo** (supra),

has found that in the instant case, the child is a female child aged 7 years and during the course of interview, had shown her unwillingness to concede to the request of the father. The learned Senior Civil Judge has, therefore, found that in the best interest of the child, the visitation rights as prayed vide application Exh.97-D, could not be granted. However, at the same time, the Court has found that limited visitation rights can be granted as per the order passed by this Court in W.P.No.383/2012. Visitation rights have been granted on Wednesdays, Fridays and Sundays between 5.30 p.m. to 7.30 p.m. till the time the petitioner is in Goa.

9. I find that the ground based on the necessity of the child to be taken to see the Aunt of the petitioner as also about the change of venue from Hotel Vivanta to Hotel Cidade de Goa was not raised before the learned Senior Civil Judge and thus, it would be difficult to entertain the same at this stage in a writ petition. However, considering the fact that presently, the child has her vacation, some enlargement of the time of the visitation rights on every Sundays, during vacation, can be granted. Further having regard to the fact that the child is a girl child aged 7 years, whose

custody is with the mother right from the parties separated in the year 2009, I do not find that the request for grant of overnight stay can be favourably considered. In cases of the present nature, the Court has to make a balancing act between the interest of the minor and at the same time, granting a reasonable opportunity to the non-custodial parent, to be with the child to interact with the child as also to spend some quality time with him/ her. Obviously, in such circumstances, there cannot be any mathematical or strait-jacket formula, which can be evolved or applied. Considering the overall circumstances as also, the concession on behalf of the respondent, the following order is passed :

- (i) The petition is partly allowed.
- (ii) The impugned order is modified to the extent that the visitation rights are granted to the petitioner on every Sunday from 11.00 a.m to 5.00 p.m. during the period the petitioner is in Goa or till the end of the vacation of the minor girl, whichever is earlier.
- (iii) Rest of the order stands confirmed.
- (iv) It is needless to mention that whenever the petitioner is outside Goa, the petitioner will be permitted to have telephonic / video

contact with the child for a reasonable period twice a week.

(v) The parties shall co-operate for ensuring compliance of the said order.

(vi) The petition is disposed of in the aforesaid terms.

Authenticated copy of the order be furnished to the parties.

C. V. BHADANG, J.

SMA