

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.621 of 2016

Mrs. Roxann Sharma, Major,
American National,
Presently c/o 1/S2 Garden
Centre, II, Near Police
Station, Mapusa, Goa. .. Petitioner

V/s

Arun Sharma, Major,
R/o No 80 Magnolia,
Bim Vaddo, Betalbatim,
Salcette, Goa. .. Respondent

Mr. S. Saudagar, Advocate for the petitioner.

Mr. A. Viegas, Advocate for the respondent.

Coram:- C. V. BHADANG, J.

Date:- 8th July, 2016

ORAL ORDER :

By this petition, the petitioner is challenging two orders dated 24/07/2015 below application Exh.72 and application Exh.93 as also the order dated 16/06/2016 and order dated 27/06/2016.

2. The brief facts are that the respondent has filed Matrimonial Petition against the petitioner herein for dissolution of marriage. The matter about grant of

visitation rights and custody of minor son Thalbir had gone to the Supreme Court, in which the Hon'ble Apex Court, by an order dated 17/02/2015, had directed that the temporary custody of the minor son shall be with the petitioner mother and the respondent shall be entitled to visitation rights at House No.80, Magnolia, Ground Floor, Bin Vaddo, Betalbatim, Goa. The petitioner was also directed not to leave territorial jurisdiction of the Trial Court without prior leave. By another order of the same date, the Hon'ble Apex Court had noticed that as the said house has been sold by the respondent, the petitioner shall stay in Goa "as already indicated" until explicitly permitted by the competent Court.

3. The dispute, which presently arises is that according to the respondent, the petitioner is not staying in the aforesaid flat, but she is staying in Mapusa and it is also claimed that the visitation rights are not being given as directed. It appears that the respondent had filed an application being I.A. No.1/2015 in Civil Appeal No.1966/2015 before the Supreme Court wherein the following order was passed on 03/07/2015 :

"After hearing learned Senior Counsel for the applicant we are of the view that the prayers made in the application should be addressed before the Competent Guardian Court i.e. the Civil Judge (Senior Division) at Margao, Goa who is in seisin of the dispute between the parties. Needless to clarify, the said Court should decide the application without being influenced by any observations made by this Court in the judgment dated 17/02/2015."

4. In pursuance of the said order, the Trial Court has decided the application Exh.72 filed by the respondent on which the following order is passed on 24/07/2015 :

"The Honourable Supreme Court had directed the respondent to stay in a specified flat within the jurisdiction of this court. She is not doing so. She is staying in Mapusa. She says she is afraid to stay in the flat. I find no material to justify the fear. There are affidavits on record to show that there is no impediment to her stay in the flat.

The respondent should obey the orders of the Honourable Supreme Court and stay in the flat. The petitioner is directed to keep the flat in a good and habitable condition, with

all amenities. The respondent has handed over the keys of the flat to this court. The respondent may collect the same. Visitation rights should be given as per direction of the Honourable Supreme Court."

It further appears that the petitioner filed an application Exh.93 suggesting some alternate venues for execution of the visitation rights and some other reliefs, on which the Trial Court has passed the following order on 24/07/2015 :

"The Honourable Supreme Court had directed the respondent to stay in a specified flat within the jurisdiction of this court. She is not doing so. She is staying in Mapusa. She says she is afraid to stay in the flat. I find no material to justify the fear. There are affidavits on record to show that there is no impediment to her stay in the flat. The respondent has stayed abroad. During course of arguments it is revealed that she flies often from Mumbai to Goa and vice versa. She is a woman who knows the world.

The respondent should obey the orders of the Honourable Supreme Court and stay in the flat. She cannot claim the travelling allowance mentioned in the application. The

petitioner is directed to keep the flat in a good and habitable condition, with all amenities. The respondent has handed over the keys of the flat to this Court. The respondent may collect the same. Visitation rights should be given as per direction of the Honourable Supreme Court. "The application is rejected."

Indisputably, these orders were not challenged immediately after the same were passed and are sought to be challenged now.

5. The petitioner also sought review of these two orders, which prayer is rejected on 27/06/2016. By the order dated 16/06/2016, the Trial Court has rejected the preliminary objection raised by the petitioner (respondent before the Trial Court) to the application for initiating action for contempt of Court filed by the respondent.

6. I have heard the learned Counsel for the petitioner as also the learned Counsel for the respondent.

7. The learned Counsel for the petitioner submits that the impugned orders dated 24/07/2015 are beyond the prayer as made by the respondent and are against the direction given by the Supreme Court. It is submitted that they are nullity and no direction could have been issued by the Trial Court to the petitioner to stay in a particular flat.

8. The learned Counsel for the petitioner has taken me through various orders passed and he submits that the petitioner has reasonable apprehension of danger to her life and limb in staying at the flat at Betalbatim and this has not been properly considered by the Trial Court and the said apprehension has been brushed aside, saying that it is unfounded, which is not correct. The learned Counsel points out that there is material before the Trial Court to support the apprehension expressed by the petitioner. He also submits that the visitation rights are being given to the respondent at other places, including the office of the Advocate for the petitioner, which the petitioner finds to be a safer place. He submits that the Trial Court should have properly considered and decided the

venue of the visitation rights. The learned Counsel was at pains to point out that the Supreme Court, in its order, has clarified that, this the Trial Court shall do without being influenced by any of the observations and thus, the Trial Court should have independently decided the said issue. Lastly, it is submitted that the petitioner has only raised preliminary objection to the application for contempt and a detailed reply is not filed.

9. The learned Counsel for the respondent has countered the last contention raised on behalf of the petitioner, saying that the petitioner has filed a comprehensive reply, including raising preliminary objection, which is decided. He supports the impugned orders. He has pointed out that although the Supreme Court has clarified its earlier order by saying that the petitioner can stay anywhere in Goa, he submits that this is subject to the condition that she does not leave the local jurisdiction of the Trial Court. He submits that the visitation rights are not being given.

10. I have carefully considered the rival

circumstances and the submissions made and I do not find that any case for interference is made out.

11. The Supreme Court in para 20 of the judgment and order dated 17/02/2015 has held thus :

"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."

12. By another order of the same date, the Supreme Court has directed that the petitioner shall stay in Goa "as already indicated" until explicitly permitted by the competent Court. Prima facie, at this stage, it appears

that this would be subject to the earlier condition that the petitioner shall not leave the local jurisdiction of the Trial Court.

13. It is apparent that by the order dated 03/07/2015 in I.A. No.1/2015 in Civil Appeal No.1966/2015, the Supreme Court has observed that the prayers made in the application should be addressed before the competent guardian Court i.e. Civil Judge, Senior Division at Margao, who is in seisin of the dispute between the parties and this exercise, the Trial Court shall do without being influenced by any of the observations in the judgment dated 17/02/2015. In pursuance of this order, the Trial Court has decided the application Exh.72 on 24/07/2015, which order is now sought to be challenged after a period of close to an year. The submission that the relief granted is beyond prayer also cannot be accepted as in the said application, the respondent had prayed for a direction against the petitioner to allow him to exercise his visitation rights. The Trial Court, by the order dated 24/07/2015, has stated that the visitation rights should be given as per the direction of the Hon'ble Supreme

Court. In other words, there was a prayer for grant of visitation rights, which has been granted. The submission that the said order is nullity and, therefore, it was not challenged, also to my mind, cannot be accepted. The parties are coming with rival claims about the visitation rights being given to the respondent. Thus, while the petitioner claims that the visitation rights are being given, the same is denied by the respondent. This issue, which involves disputed questions of fact, cannot be gone into in a writ petition and it is for the Trial Court to decide the same. In so far as the apprehension expressed on behalf of the petitioner about danger to her life if she stays at flat No.80, Magnolia, Bin Waddo, Betalbatim is concerned, although the learned Counsel for the petitioner states that there is material, the same is not produced in this petition nor pointed out during the course of the arguments at bar. Thus, I do not find that any case for interference is made out. However, the petitioner would be at liberty to file an additional reply, if so advised, to the application for contempt, for which the respondent has no objection. This shall be done within two weeks from today, or within such further

time as may be granted by the learned Trial Court.

14. In the circumstances, the petition is without any merit, which is, accordingly, dismissed.

15. Needless to mention that this Court has not expressed any opinion on the issue of contempt and the alleged non-compliance with the order granting visitation rights shall be independently decided by the Trial Court.

C. V. BHADANG, J.

SMA