

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1288 OF 2016**

Meera M Mathew

..Petitioner

Vs.

Vivek K John

..Respondent

Mr. Sachin Daga for the Petitioner

Ms Usha Tanna a/w Ms Parul Vedak for the Respondent

CORAM : R. M. SAVANT, J.

DATE : 9th MARCH, 2016

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 23-12-2015 passed by the Learned Judge of the Family Court No.5, Mumbai, by which order, the application for interim access being Interim Application No.208 of 2015, came to be allowed and the interim access came to be granted to the Respondent in terms of the directions which are contained in the operative part of the impugned order.

2 The Interim Application was filed by the Respondent-husband as it was his case that he has been deprived of showering love and affection upon his son Neil who is 10 years old. The Respondent-husband has in the application inter alia stated the various steps which he has taken in the interest and the well being of the child some of which are that he has joined the “Mom's group” of his child's class on “Whatsapp” and actively participated in

the group. He has enrolled Neil for the Mathematics Olympiad and also enrolled him for after class activities like football and chess. He has also arranged for home tutor to help the child with the Hindi subject which he was finding difficult. It is his case that if he is not allowed to meet his son Neil, his son may not have attachment for him and will not have love and affection for him i.e. the father. It is on the said basis it is clarified that he is a fit and proper person to look after the child.

3 The said application has been replied to on behalf of the Petitioner herein. It has been stated in the reply that the Respondent is not capable of looking after the child for the reason that the Respondent has been advised to visit a Psychiatrist for his violent behaviour. It is also stated that the Respondent during the vacation access of the child forcibly tried to take the child with him on account of which the police were required to call to control the situation. However, the police officer after hearing the matter refused to get involved as the matter is pending in the Court. It is further stated that the Respondent is not present for the PTA meetings or other school activities of the child. The Respondent has never taken a single leave to look after the child when he has taken to the hospital for a check up. It is stated that the Respondent is an abusive father and the minor child cannot be left alone with him.

4 It appears that the Respondent to buttress his case had produced photographs which were part of the list of documents Exhibit 20. Based on the said photographs, the Learned Judge has observed that the child appears to be happy in the company of the father, but the photographs produced by the Petitioner-wife give a different picture and therefore the Learned Judge has concluded that it is on account of the possible tutoring that the child is shown looking away from the father in the photographs produced by the Petitioner-wife. The Learned Judge has also referred to the consent terms in respect of the vacation access, the said consent terms were modified with the consent of the parties which the Learned Judge of the Family Court has observed, were not abided by both the parties. The Learned Judge of the Family Court observed that the Petitioner has not given any cogent reason as to why the child Neil is not willing to go to the father. In so far as the allegations of the alleged cruelty to the child by the father is concerned, the Learned Judge of the Family Court observed that it would not be proper to accept the allegations of cruelty as the same were required to be proved by leading evidence. The Learned Judge of the Family Court has also observed about the conduct of the Petitioner in not disclosing the purchase of tickets for going to the native place for family function though she has filed her reply on 21-7-2015. On the basis of the material on record the Learned Judge of the Family Court has reached a prima facie conclusion that the minor son Neil is tutored by the Petitioner. The Petitioner is trying to keep away the son Neil from the Respondent-father and

has issued the directions which are contained in the operative part of the impugned order dated 23-12-2015.

5 Before this Court the Learned Counsel appearing for the Petitioner sought to place reliance on a report of Psychiatrist dated 1-2-2016 and seeks to highlight certain portions of the said report where it is observed that the father figure is absent in the stories and means that he does not either acknowledge his presence or is avoiding it because of earlier unpleasant experiences. It is the submission of the Learned Counsel that presently at least the access which is granted by the impugned order cannot be permitted having regard to the condition of the child.

6 Per contra the Learned Counsel appearing for the Respondent-husband draws this courts attention to the material which is on record including the photographs as also the sheets wherein the Respondent has got homework done from the child.

7 In my view, the Trial Court i.e. the Learned Judge of the Family Court having regard to the material on record has passed the impugned order directing the interim access to be provided to the Respondent-husband in terms of the directions which are issued in the operative part of the impugned order. Having regard to the photographs of the child Neil with the Respondent-father

which are part of the compilation of the above Writ Petition as also the fact that whilst the child was with the father during the access provided in the Diwali Vacation, he has taken the homework, in my view the prima facie conclusion drawn by the Learned Judge of the Family Court and the impugned order cannot be found fault with. No case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]