

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****MISC.CIVIL APPLICATION NO. 61 OF 2016****Mrs.Parul Yog Bhoot alias
Smt.Parul Ashok Agarwal****..... Applicant****VERSUS****Yog Navalkumar Bhoot****..... Respondent**

Mr.Manoj Bhatt for the Applicant.

Mr.Rupesh Bobade, i/b. SSP Legal for the Respondent.

CORAM : R.D. DHANUKA, J.**DATE : 22nd NOVEMBER, 2016****P.C.**

By this miscellaneous civil application filed under section 24 of the Code of Civil Procedure, 1908, the applicant seeks transfer of the execution proceedings R.D. No. 145 of 2014 filed by the opponent before the learned Principal Judge, Family Court, Nagpur to the file of the learned Civil Judge, Senior Division, Kalyan.

2. The marriage between the parties was solemnized on 13th February, 2005 at Amravati. The parties had filed a joint petition under section 13-B of the Hindu Marriage Act, 1955 before the learned Principal Judge, Family Court, Nagpur inter alia praying for divorce. The Family Court passed an judgment and decree on 16th November, 2013 thereby dissolving the marriage between the applicant and the respondent on the terms and conditions mentioned in the said decree.

3. It is the case of the applicant that the applicant has shifted to Dombivali and

has been staying with her child who is studying. The applicant has got an employment with Lodha World School in the month of March 2015 at Dombivli and has been working in the said school since then.

4. The respondent had applied for the custody of the child before the Family Court, Nagpur by filing RD No.145/14. By an order dated 31st December,2014, the learned Principal Judge, Family Court rejected the said application filed by the respondent for custody. The learned Principal District Judge, Family Court observed that the child was not ready and willing to meet her father at that stage. If the custody of the daughter is given to the father against her wish, certainly the child would be shocked and her health will be deteriorated. The learned Principal District Judge Family Court Pune held that it would not be proper to grant custody of the daughter to her father at that juncture for taking her for outing. The respondent had admittedly not challenged the said order dated 31st December, 2014.

5. The respondent filed an application in RD No. 145/14 inter alia praying for custody of the daughter. The applicant could not remain present in the said proceedings. By an order dated 6th November, 2015 passed by the learned Principal District Judge has made various observations against the applicant. It is held that the respondent herein was at liberty to stop payment of agreed amount of the maintenance to the applicant till further orders.

6. Learned counsel for the applicant submits that there is no order for custody of the child. He submits that the respondent has been already remarried after taking divorce from the applicant. The applicant was required to shift to Dombivli for the purpose of survival alongwith her daughter. He submits that the respondent has stopped paying maintenance in view of the order passed by the court. He

submits that the applicant has never refused to provide access to the respondent. Since the respondent has failed to comply with the order passed by the family court which directed the payment for maintenance as a condition precedent for granting access of the child of the respondent, the applicant did not provide access of the child to the respondent.

7. It is submitted by the learned counsel that she is working at Dombivali and the child is studying in Dombivli, it is not possible for the applicant to attend the proceedings filed by the respondent at Nagpur.

8. Learned counsel for the respondent on the other hand submits that since the applicant has refused to provide access of the child to the respondent, the applicant has stopped payment of maintenance to the applicant. In support of this submission, learned counsel invited my attention to the order dated 6th November, 2015 passed by the learned Principal Judge, Family Court, Nagpur making certain observations against the applicant and granting liberty to the respondent to stop payment of amount of the maintenance to the applicant until further orders.

9. It is submitted that the respondent seeks custody of the child and not only access. He also drew my attention to the order dated 29th January, 2016 passed by the learned Principal Judge, Family Court, Nagpur making various observations against the applicant in view of her absence before the executing court.

10. Learned counsel also invited my attention to various ad-interim orders passed by the this court in this proceedings and would submit that pursuant to the ad-interim order passed by N.M.Jamdar, J. the applicant has already paid an

amount of Rs.1 lakh towards the education of the child and has taken access of the daughter.

11. Learned counsel for the respondent invited my attention to some of the provisions from 'Child Access and Custody Guidelines' approved by this court and would submit that the applicant did not give any prior intimation to the respondent for shifting the child from Nagpur to Dombivli and has committed breaches of the the said guidelines.

12. It is not in dispute that there is no order for providing custody of the daughter to the respondent by the applicant. There is also no dispute that the respondent is already remarried after obtaining divorce from the applicant. The applicant was required to shift Dombivli in view of her employment with the school situated at Dombivli. The respondent has not been paid maintenance to the applicant. Learned counsel appearing for the applicant submits that the applicant has never refused to grant access of the daughter to the respondent.

13. I am inclined to accept the submission made by the learned counsel for the applicant that if the applicant is required to attend the execution proceedings at Nagpur, it would be inconvenient to her. Her daughter is studying at Dombivli. She is working as a teacher in the school at Dombivli.

14. Insofar as the submissions made by the parties alleging breaches of the orders of the Family Court against each other, I am not required to go into those allegations at this stage in this proceeding.

15. Supreme Court as well as this court in catena of decisions has consistently

taken a view that while considering an application filed under section 24 of the Code of Civil Procedure, 1908, convenience of the wife is required to be considered.

16. Though during the arguments this court suggested both the parties to settle the disputes amicably and find out solution insofar as grievance of the respondent for access/custody of the child is concerned, it appears that at this stage the parties are not agreeable to find out any solution. In this proceeding, I do not propose to consider the issue whether applicant has committed any breach of the guidelines framed by this court for access and custody of a child.

17. I, therefore, pass the following order :-

- (a) Miscellaneous Civil Application No.61 of 2016 is made absolute in terms of prayer clause (a).
- (b) The learned Principal Judge, Family Court, Nagpur is directed to transmit the papers and proceedings of R.D. No. 145 of 2014 to the Court of the learned Civil Judge, Senior Division, Kalyan expeditiously.
- (c) The parties as well as the two courts described in prayer clause (a) of the miscellaneous civil application to act on the authenticated copy of this order.
- (d) Both the parties are directed to appear before the learned Civil Judge, Senior Division, Kalyan on 9th January, 2017.
- (e) The hearing of the R.D.No.145 of 2014 is expedited.
- (f) No order as to costs.

(R.D.DHANUKA, J.)