

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 2106 OF 2016  
IN  
FIRST APPEAL NO. 1118 OF 2014**

Mrs. Usha Dhananjayan

... Applicant  
(Ori.Respondent)

**In the matter of**

Mrs. Firoza Popere

... Appellant

**vs.**

Mrs. Usha Dhananjayan

... Respondent

Ms. Devyani Kulkarni, Advocate for the applicant.

Mr. M. J. Bandgar, Advocate for the respondent.

**Coram :** Smt. R. P. SondurBaldota, J.

**Date :** 6<sup>th</sup> May, 2016

**P.C. :**

1. This civil application is taken out in First Appeal No.1118 of 2014 which reflects dispute between the paternal grandmother and maternal grandmother over custody of a seven years old child. The mother of the child is no-more and the father of the child has been convicted for the offence of murder of his wife and is presently undergoing sentence in the prison at Dubai. The application is by the original respondent. The parties shall hereinafter be referred by their original nomenclature.

2. By the order dated 16<sup>th</sup> June, 2015 passed on the Civil Application No.3730 of 2015 filed by the respondent directions for 50% access during vacation to the respondent are given during the pendency of the appeal. The respondent claims that she was expecting the custody of the child for the summer vacation on 1<sup>st</sup> May, 2016. According to her, her advocate informed the advocate for the appellant that the respondent would be visiting the residence of the appellant on that day for receiving custody of the child. The application does not disclose the date and manner of sending the communication. The appellant denies receipt of any communication. Apparently on the same day, the respondent rushed to Goregaon Police Station for assistance to secure custody of the child. The ostensible reason given in the application for seeking police assistance is the alleged past behaviour of the appellant. As per the application, on that day at around 12 noon the respondent went to the residence of the appellant accompanied by two policemen to receive the child, but the appellant refused to hand over the child. It is also alleged that the appellant quarreled with the respondent at that time. The application claims that the vacation of child commenced “in the first week of April 2016” and would end around 20<sup>th</sup> June, 2016. Mr. Bandgar, the learned advocate for the appellant states that the vacation of the child in

fact commenced on 2<sup>nd</sup> May, 2016 and is to continue till 15<sup>th</sup> June, 2016. The child has an open-house on 12<sup>th</sup> May, 2016. He makes a statement that the appellant would hand over the custody of the child for the purpose of 50% of the vacation on 13<sup>th</sup> May, 2016 and the child will be with respondent till 3<sup>rd</sup> June, 2016.

3. It is obvious that this was a patently unwarranted application by the respondent. It was perfectly possible for the respondent to enquire about the vacation dates of the child through medium of the advocates on record. Instead on the incomplete information the respondent not only rushed to the residence of the appellant for the custody of the child but also took police with her. It is unfortunate that the impact of the police protection even on the child was not considered much less the appellant. In the circumstances and in view of the statement made on behalf of the appellant the civil application is dismissed.

**[Smt. R. P. SondurBaldota, J.]**