

FARAD CONTINUATION SHEET  
IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7540 OF 2015

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| Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders | Court's or Judge's orders |
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Mr.Ranveer Shekhawat i/b M/s.Raj Legal for the petitioner

**CORAM : K. K. TATED, J.**  
**DATE : AUGUST 24, 2016**

**P.C.:**

- 1 Heard the learned counsel for the petitioner.
- 2 Advocate for the petitioner submits that they served the respondents by private notice. To that effect, they filed affidavit of service dated 13.7.2016. In spite of service, no one appeared on behalf of respondent when the matter was called out.
- 3 By this petition under Article 227 of the Constitution of India the Petitioner husband challenges the order dated 13.4.2015 passed by 4<sup>th</sup> Family Court at Bandra, Mumbai in Petition No.D-56 of 2014 rejecting petitioner's application for sending the daughter Anushka to Psychologist Dr.Shetty for his opinion.
- 4 The learned counsel for the petitioner

submits that the petitioner filed petition No.D-56 of 2014 in the Family Court at Bandra, Mumbai u/s 25 of the Guardian and Wards Act, 1890 and also under section 7(g) of the Family Courts Act, 1984. In that petition, petitioner prayed prayer clauses (c) and (d) which reads thus:

*“c) Pending the hearing and final disposal of the present Petition the Respondent be directed to ensure that the minor child will visit Dr.Shetty till such time Dr.Shetty is fully satisfied and able to opine to this Hon'ble Court.”*

*“d) Pending the hearing and final disposal of this Petition, the Respondent be sent for psychiatric/psychological evaluation in order to ensure that custody is given to the emotionally and mentally fit parent, thus ensuring the welfare of the child.”*

5 The learned counsel for the petitioner submits that in the meanwhile, petitioner preferred application below Exhibit-6 for ad-interim relief. He submits that Family Court dismissed his application below Exhibit-6 only on the ground that, at that time, Anushka was attending classes for 10<sup>th</sup> standard. She was busy in studying for SSC exam. He submits that Trial Court in paragraph 4 of the impugned order specifically recorded that at appropriate time the court will interview the child and take appropriate decision for further course of action. Paragraph 4 of the said

order reads thus:

*“4. At an appropriate time, I keep open the option of interviewing the child in dispute so as to decide further course of action, if any, if required.”*

6 The learned counsel for the petitioner submits that though respondent is duly served she failed and neglected to represent before this court. He submits that at present child is of 16 years old. He submits that respondent intentionally want to delay the hearing of petitioner's application so that once the child attains the age of majority i.e. 18 years then nothing will survive in the petitioner's application. Therefore, this Hon'ble Court be pleased to allowe the present petition in terms of prayer clause (a) and (b) which reads thus:

*“(a) This Hon'ble Court be pleased to issue a Writ of Mandamus and/or any other appropriate Writ in the nature thereof and after verifying legality, validity and propriety of impugned order dated 13.04.2015 passed by Ld.04<sup>th</sup> Family Court at Mumbai in Interim Application No.3572 of 2014 be quashed and set aside”*

*(b) Pending the hearing and final disposal of present Writ Petition, the Respondent be directed to take minor daughter Miss Anushka to Dr.*

*Haresh Shetty and / or any other renowned child counsellor in the presence of Petitioner.”*

7 Heard the learned counsel for the petitioner at length. I have perused the application filed by petitioner under section 25 of the Guardian and Wards Act, 1890 and also application below Exhibit-6. It is to be noted that in 2015 Anushka was busy with her 10<sup>th</sup> standard preparation and therefore, Trial Court rejected petitioner's application. It is to be noted that Trial Court in paragraph 4 of the impugned order specifically recorded that at appropriate time court will take interview of the child and take decision about sending the child to Psychologist Dr.Shetty.

8 Considering these facts, that the Family Court has not rejected the petitioner's application, I am of the opinion that petitioner may be granted liberty to file fresh application before the same court so that court can decide the same on its own merits. Hence , following order is passed:

- a) Petitioner granted liberty if they so desire to file application before Trial Court for prayer clause (c) and (d) of the petition D-56 of 2014 within two weeks from today.
- b) Trial Court is directed to decide the same after giving opportunity to both the sides as early as possible but in any case within six months from

the date of service of the said application on respondent wife.

c) With this direction, Writ Petition stands disposed of accordingly.

d) No order as to costs.

JUDGE