

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

CIVIL APPLICATION NO.3 OF 2016
IN
CONTEMPT APPEAL NO.3 OF 2016
ARISING OUT OF
CONTEMPT PETITION NO. 509 OF 2013

Tabassum Shafeeq (Tabassum D/o.
Ajmal Vinchu)

..Applicant
(Org.Petitioner in CP. No. 509/2013)

versus

Shafeeq Abdul Rahim

..Respondent
(Contemnor in CP No.509/2013)

Mr. Rizwan Merchant i/b.Farhana Shah for the Applicant.
Mr.S.V.Sadavarte for the Respondent.

**CORAM : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI,JJ.
DATED : OCTOBER 27, 2016.**

P.C.

1. Heard Mr. Merchant for the applicant, and Mr. Sadavarte for the respondent. The applicant mother has approached this court seeking direction to the respondent father to strictly abide by the order dated 4.5.2016 passed by the learned Single Judge of this Court under which overnight access of the minor daughter Reeba was given to the applicant.

2. The applicant had filed Contempt Petition No. 509 of 2013 against the respondent for not complying with the earlier order granting access of the minor daughter Reeba to her. This contempt petition was disposed of by the learned Single Judge by order dated 12.7.2016 in following terms:

“(i) The notice issued for contempt in Contempt Petition No. 509 of 2013 is made absolute. The respondent to that petition, Shafeeq Abdul Rahim is sentenced to civil imprisonment for a period of three months. The sentence shall start running on expiry of period of four weeks from today.

(ii) Mr. Shafeeq Abdul Rahim shall pay costs of the petition quantified at Rs.5,00,000/- (Rupees Five lakhs only) to the petitioner Smt. Tabassum Shafeeq Rahim. The costs shall be paid within four weeks from today. If the costs are not paid within the time granted, the petitioner Smt. Tabassum Shafeeq Rahim will be at liberty to recover the same as arrears of land revenue. The petitioner, Tabassum shall thereafter deposit the subsistence allowance for Shafeeq.

(iii) Shafiq Abdul Rahim shall hand over custody of the daughter Reeba to the mother within one week from today. In the event he fails to hand over custody of the daughter, the petitioner mother may take assistance of Bandra Police Station for the purpose.”

3. By order dated 18.7.2016 the Division Bench of this Court stayed the execution of the sentence as well as execution of clause (iii) of paragraph 32 of the order of the learned single Judge dated 12.7.2016, subject to deposit of sum of Rs.1,50,000/-. The grievance of Mr. Merchant, learned Senior Counsel for the applicant is that under the guise of the order dated 18.7.2016 passed by the Division Bench of this court in contempt appeal, the respondent is refusing to give access of the minor daughter Reeba to the applicant. Mr. Merchant, learned Counsel for the applicant states that the applicant has not been given access of the minor daughter from June 2016. The learned Counsel Mr. Merchant, upon taking instructions from the applicant has further submitted that during the period of access the applicant shall stay in the house of her grandmother and would ensure that her brother would not visit the house of her grandmother during this period.

4. It is to be noted that under clause (iii) of order dated 12.7.2016, the respondent was directed to hand over the custody of the minor daughter Reeba to the applicant. Though the Division Bench of this Court stayed the operation of clause (iii) the Division Bench had not stayed the earlier

orders of access of minor daughter Reeba in favour of the applicant. The last of such order is order dated 4.5.2016 passed by the learned Single Judge of this court in Civil Application No.108 of 2015. This order, as of today is in operation. Under this order, overnight access of the minor daughter Reeba was directed to be given to the applicant on every Saturday and Sunday and during 50% of the vacation. Mr. Sadavarte, learned Counsel for the respondent, having taken instructions, submits that the child is presently in the custody of the Respondent's mother who is present in the court today. He does not dispute that the applicant has not been given access to the child since June 2016. Since the order of access, dated 4.5.2016 is still in operation, the applicant is entitled for overnight the access of the child during Diwali vacation. Continuation of such access is in the interest of the child who has been kept present before the court, in view of the directions given on the last date of hearing.

5. In the above circumstances, we pass the following order:

- i) The respondent/his mother shall forthwith give access of the minor child Reeba to the applicant mother from 27.10.2016 to 7th November, 2016. During this period, the applicant shall stay in the house of her grandmother i.e. away from her brother. The applicant's brother shall not

visit the said place during the period of access.

ii) The applicant shall produce the child before the Registrar, Family Court at Bandra, at 4.00 p.m. on 7.11.2016, Thereafter the respondent/ his mother shall take over the custody of the child from the Registrar, Family Court at Bandra.

Iii) The respondent/ his mother shall thereafter continue to give overnight access of Reeba to the applicant as per the order dated 4.5.2016 passed in CA 108 of 2015.

. Civil application is disposed of in above terms.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)