

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

WRIT PETITION NO.13079 OF 2016

Aneesha Ashu Dutt

..Petitioner

Versus

Ashu Khurana Dutt

..Respondent

**Mr. A. Y. Sakhare, Senior Advocate a/w Mr. Santosh Paul, Mr. Akash Rebello, Mr. Joel Carlos i/by Karan K. Vyas for the Petitioner.
Mr. Zaid Ansari i/by Mrs. Taubon F. Irani for the Respondent.**

CORAM : R. M. SAVANT, J.

DATE : 14th DECEMBER, 2016

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 21.10.2016 passed by the Learned Judge of the Family Court-7, Mumbai, by which order, the applications Exh.82 and 84 came to be rejected. The Petitioner herein and the Respondent are engaged in Custody Petition being No.D-87 of 2012. The couple have three children, out of which the son Ahren who is 9 years old is with the Petitioner. It seems that the Petitioner's father who is a resident of Thailand had to undergo surgery to the tongue on account of the fact that he is suffering from Cancer. The said surgery it seems took place in February 2016. The Petitioner was allowed to travel to Bangkok along with son Ahren pursuant to the orders passed by the Apex Court on 15.08.2015 on the terms and conditions mentioned in the said order. The Petitioner

thereafter has also travelled to Bangkok on three occasions and has returned. The Petitioner filed the instant application Exh.82 seeking permission to travel to Bangkok with her son Ahren during the period 20.10.2016 to 06.11.2016 i.e. during the Diwali vacations. The said application Exh.82 was replied to on behalf of the Respondent vide Exh.84. The Respondent however raised a preliminary issue as regards the maintainability of the said application Exh.82. The Trial Court i.e. the Learned Judge of the Family Court has rejected both the applications i.e. Exh.82 filed by the Petitioner and Exh.84 filed by the Respondent raising a preliminary issue. In so far as the application Exh.82 is concerned, the rejection is inter-alia on the ground that the Petitioner cannot be allowed to travel time and again for the same reason when the Petition for custody is pending. The second ground is that the Writ Petition No.7868 of 2016 filed by the Petitioner for the same relief is pending in this Court. In so far as the application Exh.84 is concerned, the same is rejected on the ground that such an application for raising a preliminary objection could not be filed.

2 Now coming to the two grounds on which the application Exh.82 is rejected, as indicated above, the pendency of Writ Petition No.7868 of 2016 is one ground and the second ground is that the Petitioner cannot be allowed to travel again and again for the same

reason. In so far as the said Writ Petition is concerned, the Trial Court has proceeded on a wrong premise that the said Writ Petition has been filed for the same relief when in fact the prayer clauses of the said Writ Petition disclose that the said Petition has been filed only for expediting the proceedings i.e. Custody Petition and the Divorce Petition in the Family Court. The said Writ Petition No.7868 of 2016 has been dismissed by this Court by an order passed today. In so far as the second ground is concerned, in my view, the observations made by the Trial Court were totally uncalled for. It was required to be borne in mind that the Petitioner's father is suffering from Cancer and has undergone surgery to the tongue, it would be natural for a daughter to go and see her father from time to time. The application should have been adjudicated from the said perspective, as also having regard to the past conduct of the Petitioner when she was granted permission, however, unfortunately that has not been done. The application filed by the Petitioner could only have been rejected for reasons which are germane, in the context of the proceedings in question but could not be rejected on the ground that such a relief cannot be granted again and again.

3 Since the period for which permission was sought vide Exh.82 is already over, in my view, no relief can be granted to the Petitioner in the instant Petition. However, it would be open for the

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Petitioner to file a fresh application for being permitted to travel with son Ahren, which application would undoubtedly have to be tried by the Trial Court i.e. the Learned Judge of the Family Court on its own merits and in accordance with law having regard to the observations made in the instant order. The same to be done expeditiously. With the aforesaid observations, the Writ Petition is disposed of.

[R.M.SAVANT, J]