

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12386 OF 2015

Shripad Dilip Kerkar

...Petitioner

Versus

Seema Dinesh Prabhu

...Respondent

Mr. Sanjay Jain, with Bhavin Gada with Jainish Jain, i/b L.J. Law, for the Petitioner.

Mr. J.S. Kini, i/b Suresh Dubey, for Respondent.

CORAM : K.K. TATED, J.
DATE : 18th October 2016

P.C. :

- 1 . Heard the learned Counsel for the parties.
- 2 . By this Petition under Article 227 of the Constitution of India the Petitioner challenges the order dated 29th September 2015 passed by the learned Judge, Family Court No. 6, Mumbai below Exh.15 in Interim Application No. 69 of 2015 in Petition No. D-41 of 2014 rejecting the Petitioner's Application for access to the minor child Ayush.

3. Respondent filed the M.J. Petition No. A 2497 of 2010. In that Petition, both the parties filed the Consent Terms dated 11th March 2011. In that Consent Terms, it was stated that the custody of the minor child will remained with the Respondent-wife and she will not claim any maintenance from the Petitioner. The relevant clauses of the Consent Terms are as under :-

“(4) Respondent father shall not avail access of minor son Aayush now and in future. Hence, Petitioner-wife shall not claim any maintenance for the son Aayush now and in future.

(5) Petitioner-wife waives her right of maintenance from the Respondent-husband for the past, present and in future.

(8) Both the parties shall not interfere in each others personal life now and in future and they shall not file any civil or criminal cases against each other on the basis of past matrimonial events.”

4. At the time of filing of the Consent Terms, the age of minor was two and half years. Since then, the Respondent-wife is

maintaining the minor child.

5. The Petitioner filed Petition No. D-41 of 2014 on 19th March 2014 for grant of custody of master Aayush with following prayers :-

(a) this Hon'ble Court be pleased to grant custody of Master Aayush to the Petitioner;

(b) In the alternative the Petitioner be granted permanent access to Master Aayush;

(c) that pending the hearing and final disposal of this Petition, this Hon'ble Court be pleased to grant to the Petitioner the visitation right and access to Master Aayush;

(d) that pending the hearing and final disposal of this Petition, the Petitioner be allowed to meet him every weekend and / or on the holidays as also the Petitioner be allowed the custody of the minor during school vacations;

(e) that pending the hearing and final disposal of the above Petition, the Petitioner be allowed to visit the School of Master Aayush for attending Parent – Teacher meetings and annual day gatherings and/or otherwise any kind of meetings and gatherings where the parents of the children studying in the school are invited or expected to attend;

(f) that pending the hearing and final disposal of the above Petition, the Respondent be directed to inform the Petitioner about the progress of the Master Aayush in school whether educational, extra-curricular or otherwise;

(g) for ad-interim relief's and interim relief's in terms of prayer clause (c) to (f) above;

- (h) for costs;
- (i) Such other and further reliefs as the nature and circumstances of the case may require.

6 . Petitioner preferred an Interim Application No.69 of 2015 for custody of child, which was rejected by the Family Court.

7 . The learned Counsel for the Respondent-wife submitted that the evidence of the Petitioner-husband in pending Petition before Family Court is over and the Respondent-wife is in the witness box for cross-examination.

8 . Considering facts that the trial is at the fag end, I do not find any reason to interfere with the impugned order passed by the Trial Court. Hence, the Petition stands rejected, without going into the merits of the matter.

[K.K. TATED, J.]