

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISC.CIVIL APPLICATION NO.7 OF 2016

Mrs Manisha Pramod Mulik. .. Applicant
vs
Pramod Prakash Mulik .. Respondent

Mr. Prabharanjan Gujar for Applicant
Mr. Deepak Natu i/b M/s Deepak Natu & Co
for Respondent

Coram: G.S.KULKARNI, J.
Date : 22nd APRIL, 2016.

P. C.

1. This is an application by the applicant-wife under section 24 of the Code of Civil Procedure, 1908 whereby a prayer is made that the record and proceedings of Custody Petition No.D-91 of 2015 filed before the Family Court, Bandra Mumbai be heard along with Civil Misc.Application No.291 of 2015 by the District Court, at Sangli.

2. The Custody Petition before Family Court, Bandra, Mumbai has been filed by the respondent-husband which admittedly has been filed prior in point of time. Subsequent to this, the applicant has filed a Custody petition before the District Court, at Sangli. Both Petitions seek custody of the minor son 'Pravesh' who is

of two years of age.

3. Admittedly, as on date and during the pendency of the said proceedings, the minor child is in the custody of the respondent-husband. The respective Petitions are for the same reliefs, however, in two different Courts.

4. This Court on 7th March 2016 had passed an order whereby the Court had made the following observations:

“2.In the interest of the child and for disposal of the proceeding at an early date, it will be appropriate that hearing of this application is deferred beyond 16 June 2016 which is the next date in the Court at Bandra, Mumbai. The learned Court will no doubt apply its mind as regards the custody of the child looking at the age of the child. “

3. As regards apprehension expressed by the applicant that the applicant being a lady and not financially sound, the applicant may not be able to attend the next date at Bandra, Mumbai. The respondent will pay the costs of travel and other pocket expenses of the applicant and one person who would accompany her to attend the next date. The expenses is quantified at Rs.3000/-. The respondent will pay the said amount to the applicant within a period of 4 weeks from today.

4. Stand over to 21 April 2016. It will be open to the applicant to apply to the court at Bandra for taking up of the application earlier. The arrangement is without prejudice to the rights and contentions of the parties in the

application.”

5. Heard learned counsel for the parties. Having considered the facts and the circumstances of the case as appearing on record and the submissions as made on behalf of the learned counsel for the parties, it would be in the interest of justice that both Petitions namely Petition No.D-91 of 2015 filed at Family Court, Bandra Mumbai and Civil Misc.Application No.291 of 2015 filed before the District Court, Sangli are clubbed together and heard by the Family Court at Mumbai.

6. I am of the opinion that the balance of convenience is in favour of the respondent-husband in as much as the minor son 'Pravesh' is in custody of the respondent-husband and that he is required to take care and look after the minor son at Mumbai. On the other hand, the applicant-wife is stated to be residing with her parents and from a perusal of the application, it does not appear that a serious prejudice would be caused to her if she is required to come to Mumbai to attend the proceedings.

7. It also cannot be overlooked that age of the minor son is 2 years and it would be in the interest of justice that both these Petitions are heard together by the Family Court at Bandra, Mumbai at an early date. This would also be appropriate and more particularly in view of the fact that the respondent-husband is willing to compensate the applicant-wife for the travelling and other expenses by making the payment of Rs.3000/- as recorded in the earlier order on 7th March 2016 passed by this Court. At today's hearing, learned counsel for the respondent-husband has fairly stated that only as a concession and without prejudice to any of his legal rights he would enhance the said amount to Rs.7500/- to be paid to the applicant for each date of hearing at Family Court, Mumbai. It is made clear that payment of the said amount as traveling expenses and receipt thereof by the applicant wife would in no manner be determinative of anything on the merits of the matter or any claim for any maintenance or otherwise which may arise between the parties. All rights and contentions of the parties in that regard are expressly kept open.

8. In view of these observations following order is passed:

ORDER

(i) Petition No.D-91 of 2015 pending before the District Court, Sangli be transferred to the Family Court at Bandra, Mumbai or or before 3rd May 2016;

(ii) Office to forward this order forthwith to the Registrar, District Court, Sangli by fax/e-mail or other urgent mode of communication to ensure transfer of Petition No.D-91 from the District Court,Sangli to the Family Court at Bandra;

(iii) Both parties shall appear before the Family Court at Bandra, Mumbai on 4th May 2016. The Family Court, Bandra Mumbai shall endeavour to take up the matter at the earliest and endeavour to pass appropriate orders interim or final on the respective custody applications on or before 7th May 2016. This short time schedule is required to be directed only in view of the fact that age of the minor child is two years and the paramount interest of the child is required to be taken into consideration by the Family Court on merits of the case.

(iv) The travelling expenses being an amount of

Rs.7500/- for each hearing for the next two hearings totalling to Rs.15,000/- shall be paid in advance by the respondent-husband to the applicant-wife before 4th May, 2016. In this regard, learned counsel for the applicant-wife shall inform the learned counsel for the respondent the bank account no. of the applicant-wife so that the said amount can be forwarded by RTGS by the respondent-husband.

(v) Respondent undertakes to co-operate with the applicant in the proceedings before the Family Court. Undertaking is accepted.

Misc.Civil Application is disposed of accordingly.

(G.S.KULKARNI, J)

