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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
PUBLIC INTEREST LITIGATION (L)NO.27 OF 2015
ALONG WITH
CHAMBER SUMMONS NO.350 OF 2015

Kishwar Mirza ...Petitioner
vs.
State of Maharashtra & Anr. ...Respondents

Mr.Santosh Baliga i/b S.S.Abbas Naqvi for the
Petitioner
Mr.P.H.Kantharia, GP for the respondent No.1
Mr.Vijay Hiranath for intervenor For MAJLIS Manch
Ms Surabhi Singh for intervenor for SCREAM
Mr.V.R.Singh for intervenor for Child Rights
Foundation.

CORAM : A.S.OKA, &
G.S.KULKARNI, JJ.
DATE : MARCH 11, 2016

P.C.:

1 The learned counsel for the petitioners seeks permission to withdraw this petition. This being PIL, we cannot permit withdrawal.

2 We have perused the prayers made in this petition. The substantive prayers in this petition are in terms of prayer clauses (a) to(c) which read thus:

“(a) that this Hon'ble Court be pleased to issue Writ of Mandamus or any other Writ in the nature of Mandamus and pass necessary directions/orders.

(b) that this Hon'ble Court be pleased approve and authenticate the said Guidelines

(being Exhibit `A' herein) and thereby, direct the Ld. Principle Judge of the Family Courts and the Marriage Counsellors across the State of Maharashtra to implement the said Guidelines which has already been circulated to the said Courts by the Registry (Appellate Side) of this Hon'ble Court.

(c)that in the alternative, this Hon'ble Court be pleased to frame guidelines pertaining to the issue of access of minor child to the non-custodian parent outside the Family Court Children Complex."

3 Guidelines have been annexed as Exhibit-A. The guidelines have been prepared by the Child Rights Foundation, a NGO. A letter dated 6th January 2011 addressed by the Registrar Inspection-II of this Court to Shri Jatin Katira, of the Child Rights Foundation is a part of the said guidelines. It itself records that the said guidelines have been directed to be circulated to the Judges of the Family Courts and Marriage Counsellors attached to the State of Maharashtra.

4 Not only the guidelines but certain other material is placed on record. Prayer (b) suggests that this Court should approve the guidelines and direct the learned Principal Judges of the Family Courts and the Marriage Counsellors to implement the guidelines which are already circulated. All the Judges of the Family Courts and the Marriage

Counsellors are bound by law. All matters which are placed before the learned Judges of the Family Courts are required to be decided in accordance with law. The Guidelines cannot take place of a law. We are sure that as the guidelines have been already circulated, the learned Judges of the Family Courts are bound to go through the said guidelines.

5 Therefore, a writ of mandamus directing the Judges of the Family Courts and Marriage Counsellors to implement the guidelines issued by the NGO can never be issued. Issuing such a writ will amount to the interference with the judicial discretion of the Judges who are under an obligation to decide all the matters placed before them in accordance with law. As far as prayer(c) is concerned, the decisions of the Family Courts on the issue of access to minor child will have to be in terms of the settled law and not in terms of the guidelines. As far as the place where the access should be provided is concerned, it depends upon the facts and circumstances of each case. It can be never laid down as a proposition of law that in every case, the access to the minor child should be provided outside the Family Court children complex. Paramount consideration in such cases is the welfare of the minor child. If considering the paramount interest of the minor child, in the facts of a case, the learned Judge of the Family Court comes to the conclusion that access will have to be given outside the Family Court children complex, we are sure that such orders will be passed by the learned Judge of

the Family Courts.

6 If any NGO has any material which is relevant to deal with the issues which are dealt with by the Family Courts, the NGOs can certainly forward the said material to the High Court Administration so that Maharashtra Judicial Academy can certainly look into it.

7 If the Maharashtra Judicial Academy is of the view that the guidelines are material which are supplied by an NGO and are beneficial for the Judges of the Family Courts, we are sure that necessary steps will be taken by the Maharashtra Judicial Academy.

8 What we want to emphasis is that no NGO can come before the Court and seek a writ of mandamus directing the Family Courts to implement the guidelines framed by it. A writ Court cannot issue a writ of mandamus which will directly interfere with the judicial discretion of the Judicial Officers who are bound to decide the matters in accordance with law. Hence, we are unable to issue a writ of mandamus as prayed for in terms of prayer clauses(a) to(c).

9 Subject to what is observed above, we dispose of the PIL. Pending Chamber Summons and Notice of Motion do not survive and the same are disposed of.

(G.S.KULKARNI,J.)

(A.S.OKA,J.)