

JSN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 5 OF 2016
IN
PARSI SUIT NO. 8 OF 2013

Diana Hector Kothavala	... Plaintiff
<i>Versus</i>	
Hector Kothavala	... Defendant

Ms. N. Mehta, i/b Nityoah Suneel and Associates for the Plaintiff.
Mrs. Taubon F. Irani, with Himanshu Nagarkar for the Defendant.

CORAM: G.S. PATEL, J
DATED: 27th September 2016

PC:-

1. The questions in this Notice of Motion by the Defendant husband are for a direction to change the names of the children to their names at birth; for production of documents relating to the purported name change of the children; that the minor children be produced in this Court to assess their well being and that the Defendant's mother be allowed to meet the minors.

2. On 18th February 2015 the matrimonial disputes between the parties were compromised and settled. All allegations by the parties against each other were withdrawn. Parties agreed that the Plaintiff

would retain custody of the minor children and the Defendant gave up all claims on behalf of the minor children against the Plaintiff. In clause 2(c) of the order passed on that day, I noted that the Defendant agreed not to press a claim for access to or a custody of the children. However, I made clear that should the children at any time express a desire to meet the Defendant they would be permitted to do so. I recorded the Plaintiff's unconditional acceptance on this. There is no appeal against that order.

3. Mrs. Irani for Defendant says that her client came across a notice in the Afternoon Despatch & Courier of about 15th October 2015 to the effect that the Plaintiff had changed the name of the children so that they took their mother's name as the middle name and her maiden name as their surname. The daughter's name was changed to Anayana Diana Dordi and the son's name was changed to Areez Diana Dordi. The newspaper advertisement seemed to indicate that this was done on the basis of joint Affidavit of both parties. The Defendant had filed no such Affidavit.

4. There is an Affidavit in Reply filed by Ms. Mehta by the Plaintiff. Ms. Mehta points out that nowhere has the Plaintiff claimed that the Affidavits for the name change were jointly made by the Plaintiff and the Defendant. Copies of the two Affidavits are annexed at pages 51 and 53. These were made by the Plaintiff alone. There was no joint Affidavit. It was on this basis that the names of the children were changed. Mrs. Irani's submission is that these Affidavits were made for the purpose of submission to the school. I do not think this is correct or even of any very great consequence. There is no joint Affidavit nor can a joint Affidavit be presumed.

The application that was made for a name change was made only by the mother following her divorce and not otherwise. This is *inter alia* evident from pages 45 and 46 of the paper book as well.

5. As to the question of whether the Defendant is entitled to demand that the minors should carry his name, given that the custody is with the mother and the Defendant has given up in an undertaking to this Court all rights to access for reasons I will not get into at this stage, I do not think that it is possible for him to press this claim as a matter of right at all. The paternity of the children is not in doubt. What is that stake here is the identity they wish to carry or which the mother wishes them to carry for the rest of their lives. It is not for the father in these circumstances to impose his will on either the mother or on these children.

6. I have no material before me to direct the production of children in this Court to, as the prayer says, 'check on their welfare'. There is nothing to indicate that there is any harm being caused to the children. Once again, I find children being used as instruments in a battle between two adults. This I will not allow. I will not, since this order is being dictated in open Court, repeat or revisit the allegations that have been made against the Defendant. Of course, these have been withdrawn and even if repeated in these papers are once again withdrawn. That is not the issue. I am concerned with the effect on the minors. I have no report before me from any counsellor indicating that they are either keen on meeting their paternal grandmother or that their emotional condition is stable enough to allow this.

7. I will however leave it open to the Defendant to renew the application at a later stage. This is not to be seen as a permanent rejection of the right to bring that application.

8. Notice of Motion is disposed in these terms with no order as to costs.

(G. S. PATEL, J.)