IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3777 OF 2017

Yashodhan Sunil Bhide … Petitioner
Vs.
Prajakta Yashodhan Bhide @ Prakakta Ram Munje … Respondent

Mr. Rajiv Chavan, Senior Advocate i/b. Ms Krupali H. Rajani and Mr. Samrat J. Thakker for Petitioner.
Mr. Mandar Limaye i/b. Mr. Saurabh Oka for Respondent.

CORAM : R. G. KETKAR, J.
DATE : APRIL 10, 2017

P.C. :

Heard Mr. Chavan, learned Senior Counsel for petitioner and Mr. Limaye, learned Counsel for respondent at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 21.10.2016 below exhibits-7, 27 and 28 as also the judgment and order dated 12.01.2017 below exhibits 42 and 43 passed by the learned Judge, Family Court, Thane in Petition No.A-308 of 2016. Rule. Mr. Limaye waives service for respondent. Having regard to the narrow controversy raised between the parties and at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

3. By order dated 21.10.2016, Family Court partly allowed the application exhibit-7 made by the petitioner for giving interim custody of minor son Mast. Abeer once in a week from 10.00 a.m. to 5.00 to him or his parents. The learned trial Judge did not consider application exhibit-27 made by the petitioner for regular / special / overnight

access / temporary custody of Mast. Abeer during festivals, birthday and vacation. Petitioner also prayed for regular overnight access of Mast. Abeer once in every fortnight from Friday to Saturday at his home at Pune and 50% overnight access during all the vacations during Summer, Diwali and Christmas. Application exhibit-28 made by the petitioner's parents and sister for access of Mast. Abeer once in 15 days was rejected with costs of Rs.5,000/- each.

4. By order dated 12.01.2017, Family Court rejected applications exhibits-42 and 43. By application exhibit-42, petitioner prayed for issuing direction to the respondent to provide access of minor son Abeer from 07.01.2017 to 08.01.2017 between 10.00 a.m. and 7.00 p.m. for attending new year events and party and / or any other convenient date as per the child's convenience. Application exhibit-43 was made for issuing direction to the respondent to provide access of Mast. Abeer from 13.01.2017 to 14.01.2017 for taking minor child at Pune on the occasion of Makar Sakranti or getting the access early in the morning on 14.01.2017.

5. Mr. Chavan submitted that by passage of time, the reliefs claimed in applications exhibits-42 and 43 have been rendered infructuous. He has, therefore, mainly confined his challenge to orders dated 21.10.2016 by which applications exhibits-7, 27 and 28 were decided.

6. In support of this Petition, Mr. Chavan submitted that while partly allowing application exhibit-7, the learned trial Judge has given access of Mast. Abeer to the petitioner on every first Saturday from 12 noon to 2.00 p.m. at Children Complex, Family Court, Thane. He submitted that the said access is not sufficient. It is also not in the interest of the child to have access of his father only for two hours. He relied upon the

decision of the Delhi High Court in the case of ***Paramjit Singh Lamba Vs. Prabjot Kaur***, **2004 (74) DRJ 106**, and in particular paragraph 4 thereof. In paragraph 4, the learned Single Judge of Delhi High Court (Hon'ble Mr. Justice Vikramajit Sen, as His Lordship then was) observed that so far as interests of the child are concerned, it is imperative that a meaningful exposure to both parents should be ordained by the Court. One hour every month is clearly counter-productive for the achievement of this objective. He, therefore, submitted that respondent may be directed to give access of Mast. Abeer every Saturday either at Children Complex, Family Court, Thane or at a mutually agreed convenient place.

7. As far as application exhibit-27 is concerned, the learned trial Judge did not consider it appropriate to decide it on the ground that there is history of litigations, and therefore, the learned trial Judge was not inclined to give overnight access of Mast. Abeer to the petitioner. The learned trial Judge further recorded that Petition is at initial stage of counseling. Parties are also before the Child Counsellor for parenting plan. The experience and observation during regular access will be considered for the vacation and overnight access. Mr. Chavan submitted that the learned trial Judge should have considered giving overnight access to the petitioner.

8. As far as application exhibit-28 is concerned, he submitted that the learned trial Judge rejected the application on the ground that Petition is instituted under Section 10(1) of the Hindu Marriage Act, 1955 (for short 'Act') and petitioner's relatives have no locus standi to file such application. The learned trial Judge observed that filing of such application is nothing but abuse of process of law and as such dismissed the same by imposing costs of Rs.5,000/- each i.e. in

aggregate to Rs.15,000/-. Mr. Chavan submitted that this was the first application made by the parents and sister of the petitioner. The learned trial Judge was not justified in observing that the application was abuse of process of law. He also relied upon Section 26 of the Act in support of his submission that even parents and sister have locus to file application for interim custody.

9. On the other hand, Mr. Limaye supported the impugned order. He submitted that having regard to the conduct of the petitioner as also age of Mast. Abeer, namely 4 years, no case is made out for invocation of powers under Article 227 of the Constitution of India. Mr. Limaye has invited my attention to the findings recorded by the learned trial Judge while rejecting applications exhibits-42 and 43. In particular, in paragraph 6, the learned trial Judge observed that petitioner has acted high-handedly and at one point of time, he had taken forcible access of child in the Court premises itself. In paragraph 7, the learned trial Judge also observed that petitioner had filed one CD showing recording of Mast. Abeer during access period. He did not obtain any permission from the Court. The photography and video-recording is not permitted in the Court premises. Even when the order below exhibit-24 was passed and the child was taken to meet grandmother of the petitioner who was admitted, at that time also, specific directions were given to the parties for not recording any video or taking any snaps / photographs. In short, Mr. Limaye submitted that the conduct of the petitioner is highly objectionable and in fact it is contrary to the specific directions issued by the Court.

10. Mr. Limaye further submitted that application exhibit-42 was made on 03.01.2017 seeking access of the child from 07.01.2017 to 08.01.2017. On the same day, application exhibit-43 was made for

providing access from 13.01.2017 to 14.01.2017, on the occasion of Makar Sakranti. He submitted that in paragraph 4 of the application exhibit-43, it was contended that ritual named as 'Bornahan' is performed every year, until the child turns 5 years of age. He submitted that the said ceremony is performed after attaining the age of one and not thereafter. In short, Mr. Limaye submitted that the applications for access were made without any justification.

11. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As far as application exhibit-27 is concerned, for the reasons recorded in paragraph 10 of the impugned order, I do not find that any case is made out for interfering with the order below exhibit-27. The learned trial Judge has not concluded finally issues raised in exhibit-27. In paragraph 10, the learned trial Judge has noted that the Petition is at initial stage of counseling. Parties are also before the Child Counsellor for parenting plan. I do not find any fault as far as order below exhibit-27 is concerned as depending upon the outcome of the parenting plan before the Child Counsellor as also experience and observations during the regular access, the prayers made in exhibit-27 can be considered.

12. As far as application exhibit-7 is concerned, the learned trial Judge has given access to the petitioner on every first Saturday from 12 noon to 2.00 p.m. at Children Complex, Family Court, Thane. Having regard to the decision of the Delhi High Court in the case of **Paramjit Singh Lamba** (*supra*), and in particular paragraph 4 wherein it is observed that as far as the interests of the child are concerned, it is imperative that a meaningful exposure to both parents should be ordained by the Court, in my opinion, clause 2 of the operative part of the impugned order dated 21.10.2016 deserves to be modified. During

the course of hearing, I suggested to the learned Counsel to consider giving access from 11.00 a.m. to 4.00 p.m. on every first Saturday. Mr. Limaye submitted that having regard to the age of the child instead of ordering access on every first Saturday between 11.00 a.m. and 4.00 p.m., it may be divided between every first and third Saturday from 12 noon to 2 p.m. at Children Complex, Family Court, Thane. Mr. Chavan submitted that instead of Children Complex, Family Court, Thane, the access may be given at some mutually agreed convenient place. Keeping in mind the interests of the child as also the fact that a meaningful exposure to both parents should ordained by the Court, in my opinion, interest of justice will be served by directing the respondent to give access of Mast. Abeer to the petitioner on every first and third Saturday from 12 noon to 2.00 p.m. at Children Complex, Family Court, Thane. The father, mother and sister of the petitioner are permitted to accompany petitioner during this period. The same can be reviewed after three months subject to the outcome of the access given to the petitioner on every first and third Saturday from 12 noon to 2.00 p.m. Even the venue for giving access can also be considered.

13. Mr. Chavan submitted that application exhibit-28 was made by the parents and sister of the petitioner for access of Mast. Abeer once in 15 days. This was the first application made by them. The learned trial Judge was, therefore, not justified in holding that the said application is nothing but abuse of process of law. The learned trial Judge was also not justified in imposing costs of Rs.5,000/- each. He submitted that as the Court has now modified clause 2 of the operative part of the impugned order and has directed respondent to give access of Mast. Abeer on every first and third Saturday from 12 noon to 2.00 p.m. and that petitioner's father, mother and sister are also permitted to accompany petitioner during his access, he is not pressing application

exhibit-28.

14. Mr. Limaye submitted that the learned trial Judge rightly held that parents and sister of the petitioner have no locus to maintain application. As the petitioner is not pressing application exhibit-28, it is not necessary to give any finding on this issue. The question whether parents and sister have locus to maintain such application is expressly kept open.

15. In the light of the above discussion, Petition is disposed of in the following terms:

a. Exhibit-7 is partly allowed. Clause 2 of the operative part of the order dated 21.10.2016 is modified. Respondent is directed to give access of Mast. Abeer on every first and third Saturday from 12 noon to 2.00 p.m. at Children Complex, Family Court, Thane to the petitioner along with his father, mother and sister;

b. Clause 4 of the operative part of the order dated 21.10.2016 is also modified and application exhibit-28 is disposed of as not pressed. Direction of payment of costs of Rs.5,000/- each issued while rejecting application exhibit-28 is set aside;

c. Rule is partly made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

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