IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6816 OF 2017

Shalini Pillai … Petitioner
V/s.
Jaykrishnan Pillai @ Unni … Respondent

Mr. S.N. Vaishnav a/w Ms. Nupur J. Mukherjee i/b M/s. N.N. Vaishnawa & Co. for the Petitioner.
Mr. A.V. Sutrale for the Respondent.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 27th SEPTEMBER, 2017.

P.C. :

1 The Petitioner has invoked the writ jurisdiction of this Court to quash and set aside the order dated 09.02.2017 in Petition No.2189 of 2013 passed by the learned Judge of Family Court, Bandra.

2 The Petitioner had filed a Petition for divorce on the ground of cruelty, for declaration that he is a sole guardian of the minor child Anika and other consequential reliefs. The parties on being referred for mediation, entered into consent terms on 08.11.2014 which read as under :-

"1. Both the parties have withdrawn all the allegations made against each other.

2. Both the parties shall have 50% in a Flat No.C-603, Vrajdham, Rambaug Lane, Poinsur, Borivali-West, Mumbai-400 092.

3. Both parties have decided to sell that flat and each party has 50% share in the share proceed after paying the brokerage or any other charges requiring for selling flat.

4. The petitioner-Shalini Pillai shall pay all the loan of the above flat alone.

5. the respondent-Jayakrishnan Pillai shall deposit Rs.15,00,000/- (Rupees Fifteen Lacs only) in the name of daughter Kum. Anika Pillai as Fixed Deposit and his daughter would get that amount with interest when she became major.

6. Both the parties have no any other dues against each other.

7. The petitioner has no any past, present or future claim of maintenance against the respondent and she has relinquished it voluntarily.

8. The respondent is also not having any claim against the petitioner.

9. Both the parties have decided to settle the child access issue separately in the Court.

10. Both the parties will file an application for converting this petition under Section 13-B of the Hindu Marriage Act for getting a decree of divorce.

11. Petitioner shall allow the respondent to talk with child on phone twice in every week i.e. on Wednesday and Saturday at about 6.00 p.m.

12. The petitioner has rights to take all fixtures fixed or installed in flat before sale of flat and respondent has no objection for it. The petitioner has to show invoices of her fixtures. ”

3 It appears that the parties have complied with most of the terms but have not yet complied with clause 10 of the terms which required them to file an application to convert the Petition No.2193 of 2013 to Petition under Section 13B of the Hindu Marriage Act,1955.

4 The learned Judge by the impugned order framed issues as under :-

> 1. Does the petitioner and respondent are entitled to get the decree in view of consent terms below Exh.23 i.e. compromise decree?
>
> 2. Does the respondent prove that he is entitled for access for welfare of minor?
>
> 3. What order and decree? ”

Aggrieved by this, the Petitioner has filed this Petition. Suffice it to say that the issues so framed are not in consonance with order dated 06.09.2016 and are framed without there being Petition under Section 13B of the Act or pleadings for access of the child.

5 Be that as it may, in the course of the hearing, the learned counsel for the Petitioner and the Respondent submitted that clauses Nos.2, 3 and 4 of consent terms dated 08.11.2014, have already been complied with. They have agreed to file an application under Section 13B of the Hindu Marriage Act, 1955 before the Family Court, Bandra, Mumbai, on 12.10.2017.

6 The learned counsel for the Respondent submits that respondent-husband has already invested/deposited an amount of Rs.15,00,000/- in fixed deposit in the name of the child Kum. Anika. The learned counsel for the Respondent submits that a separate application for access of the child will be filed in the Family Court on 12.10.2017. The learned counsel for the Petitioner as well as the Respondent have agreed that the said application shall be decided by the Family Court on merits, in accordance with law.

7 The learned counsel for the Petitioner under instructions submits that the Petitioner will give telephone number (land-line) as well as her cell phone number to the respondent-father so as to enable him to talk to the minor child, as per clause 11 of the consent terms dated 08.11.2014.

8 Both the parties have further agreed that in the event the child refuses to talk to the father, the said issue as regards talking to the child twice a week, as per clause No.11, shall be decided by the Family Court.

9 The learned counsel for the Petitioner further states that the Petitioner shall provide the residential address of the child

to the Respondent on or before 12.10.2017. The respondent undertakes not to enter the building wherein the child resides.

10 The statements are accepted as undertaking to the Court. In view of the above statements and with consent of the parties, the impugned order is set aside. Parties are directed to act in accordance with the aforesaid agreed terms.

11 The family Court shall decide the application filed under Section 13B of the Hindu marriage Act as well as the application for access, as expeditiously as possible. The Family Court may interview the child and refer the child and/or the parties to the counselor, if deemed necessary.

12 Petition stands disposed of accordingly.

(SMT. ANUJA PRABHUDESSAI, J.)