

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7268 OF 2016**

Rajesh Khanduji Jadhav

..Petitioner

Vs.

Smita Pendharkar Nee Jadhav

..Respondent

Ms Sulbha Dhamale for the Petitioner

Mr. Ajit Karwande for the Respondent

CORAM : R. M. SAVANT, J.

DATE : 8th FEBRUARY, 2017

P.C.

1 The Writ Jurisdiction of this court is invoked against the order dated 5-8-2015 passed by the Learned Judge of the Family Court in Misc Application bearing No.125 of 2015 filed by the Respondent-Wife. The said Misc Application has been filed by the Respondent-wife for modification of the consent terms dated 21-5-2013 and also seeking injunction. The said order dated 5-8-2015 has been superseded by the subsequent order dated 30-12-2015 which reads thus :

1. The application is partly allowed.

2 The Respondent shall take the regular access to minor Aryan on 1st, 3rd & 5th Saturday in Children Complex in this Family Court for 2 hours from 3.00 p.m to 5.00 p.m.

3 The Petitioner shall give respondent access to the minor son on 1st, 3rd & 5th Saturday as mentioned above. She shall bring the child in the Children Complex on 1st, 3rd and 5th Saturday as per above mentioned time. If the petitioner fails

to give respondent the access to minor Aryan, she shall pay the cost of Rs.2000/- per day of missed access and if respondent fails to take access to the son, he shall pay cost of Rs.2000/- for each missed access.

4 Both the parties shall co-operate each other for smooth access.

2 Hence the reading of the order dated 30-12-2015 disclosed that the Petitioner herein i.e. the husband has been granted custody to the extent mentioned in the said order. The said order dated 30-12-2015 has been passed in the interim application filed by the Petitioner in the said Misc Application filed by the Respondent-wife. Pertinently the said order dated 30-12-2015 has not been challenged, however in the above Petition there are prayers relating to the claim of the Petitioner to permanent custody as also over night access from Friday night to Sunday evening as well as 50% access during vacations. As indicated above, the said Misc Application has been filed in June 2015. The consent terms of which modifications are sought can be said to be exhaustive and also cover the aspect of custody of the child Aryan.

3 In my view therefore, without entering into the merits of the claim of the Petitioner, however having regard to the fact that the said Misc Application is pending since the year 2015, it would be just and proper to issue directions to the concerned Family Court to hear and decide the said Misc Application expeditiously. Hence the following directions:

- (i) The Petitioner would be entitled to access in terms of the order dated 30-12-2015 passed by the Family Court.
- (ii) Since the pleadings are complete as also it seems that written submissions have also been submitted by the parties, the concerned Family Court is directed to hear and decide the Misc Application No.125 of 2015 latest by 31-3-2017.
- (iii) Needless to state that the contentions of the parties are kept open for being urged before the Family Court.

4 With the aforesaid directions, the Writ Petition is disposed of.

[R.M.SAVANT, J]