

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5678 OF 2017

Dinesh Kumar Chandel	...	Petitioner
Vs.		
Aditi Dinesh Chandel	...	Respondent

Ms Saloni M. Ghule for the Petitioner.
Mr. Abhijit D. Sarwate i/b. Mr. Mandar Soman for Respondent.

CORAM : R. G. KETKAR, J.
DATE : SEPTEMBER 04, 2017

P.C. :

Heard Ms Ghule, learned Counsel for the petitioner and Mr. Sarwate, learned Counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 09.05.2017 passed by the learned Judge, Family Court No.2, Pune below exhibit-115 in P.A. No.1414 of 2015. By that order, the learned Judge rejected the application for grant of temporary custody made by the petitioner for 24-25 days of minor daughter, Karishni.

3. By the administrative order dated 12.07.2017, the Hon'ble the Chief Justice has assigned this matter to this Court as praecipe dated 30.05.2017 was moved for clarification of the order dated 26.04.2017 passed by this Court in Writ Petition No.3623 of 2017. That Petition was instituted by the respondent challenging the judgment and order dated 20.03.2017 passed by the learned trial Judge below exhibit-95. The learned trial Judge had allowed the application made by the petitioner herein and directed the respondent herein to provide access of child Karishni from 25.03.2017 to 28.03.2017, among other directions. By order dated 26.04.2017, the respondent was directed to provide

access of child Karishni to the petitioner herein from 06.05.2017 to 20.05.2017.

4. Ms Ghule submitted that the petitioner herein had filed application exhibit-95 for grant of temporary custody for 11-12 days between 11.03.2017 and 02.04.2017 to him. By order dated 20.03.2017, the learned trial Judge directed the respondent to provide access from 25.03.2017 to 28.03.2017. Writ Petition (St.) No.8382 of 2017 was heard by this Court on 24.03.2017 and the matter was listed for admission on 07.04.2017 and till then, the impugned order was stayed. The order also directed the respondent to give access between 10.00 a.m. and 5.00 p.m. on 25.03.2017 and 01.04.2017, as the reasoned order was not made available to the parties. By the impugned order, the learned trial Judge rejected the application by deprecating the conduct of the petitioner herein and also imposing costs of Rs.2,000/-.

5. Ms Ghule submitted that application exhibit-115 was filed on 30.03.2017 for grant of temporary custody for 24-25 days to the petitioner herein. She submitted that Writ Petition (St.) No.8382 of 2017 was instituted challenging the access order passed by the learned trial Judge in respect of Holi Vacation and not Summer Vacation access. The access awarded by this Court in the said Petition fell during Summer Vacation. It was a compensatory access for not providing access of Karishni during Holi time. She submitted that the petitioner is therefore, entitled to access during Summer Vacation and the same cannot be connected with the order passed by this Court on 26.04.2017.

6. On the other hand, Mr. Sarwate submitted that no case is made out for clarification of the order dated 26.04.2017 as also no case is made out for interfering with the impugned order.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, petitioner herein had filed application exhibit-95 for grant of temporary custody for 11-12 days between 11.03.2017 and 02.04.2017. That application was decided on 20.03.2017. By the time this Court decided the Petition on 26.04.2017, the said period was already over. Instead of relegating the petitioner herein to file fresh application for Summer Vacation, I enquired from Mr. Sarwate as to whether respondent wife is willing to provide access for 15 days during Summer Vacation commencing from 06.05.2017. Upon taking instructions from the respondent, who was present in the Court, Mr. Sarwate stated that respondent has no objection for providing access for 15 days during Summer Vacation. It is in view thereof, petitioner herein was provided access from 06.05.2017 to 20.05.2017. In fact, Ms Ghule fairly stated that she was also not aware of filing of application of exhibit-115 by the petitioner in the trial Court on 30.03.2017.

8. In view thereof, it cannot be said that the learned trial Judge committed any error in holding that the petitioner was already given access during the Summer Vacation though it was not prayed for by the parties before the trial Court or before the High Court. Though the petitioner got access during the Summer Vacation, still, he pressed application exhibit-115 before the trial Judge. Filing of application exhibit-115 on 30.03.2017 was also not pointed out by the petitioner to his Advocate and to this Court as well.

9. In view thereof, no case is made out for clarification of the order dated 26.04.2017 or for interfering with the impugned order. Accordingly, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)