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CA-158-2017 (SR. 3)
Monday-16.10.2017

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 158 OF 2017
IN
FAMILY COURT APPEAL (ST) NO. 15692 OF 2017

Shri. Rakesh Khanduji JadhavApplicant

V/s.
Smt. Smita Jadhav Nee Smita
PendharkarRespondent

* * * * *

Mr. Y.R. Singh, Advocate for the applicant.

CORAM :- SANDEEP K. SHINDE, J.
(VACATION JUDGE)

DATE :- 16TH OCTOBER, 2017.

P.C. :-

1. This Family Court Appeal is preferred against the order dated 26th March, 2017 below Exhibit-53 in Petition No. Civ. MA No. 125/2015 passed by the Family Court at Bandra. The subject application was filed by the

respondent, wife for modification of the judgment and decree dated 21st May, 2013 passed in Petition No.F-1910 of 2012. Besides the modification in terms of the maintenance amount, the Learned Family Court was pleased to direct thus :-

“The respondent shall avail access of the minor son, Aryan as directed by the order dated 30th December, 2015, Exhibit-1.”

2. By the order dated 30th December, 2015 passed by the trial Court, the respondent, husband was given a regular access to minor son, Aryan on first, second and the fifth Saturday in Children's Complex in the Family Court for two hours from 3.00 to 5.00 p.m.

3. Aggrieved by the order dated 26th March, 2017 the present Appeal is preferred. In this Appeal, an application is filed by the applicant, husband in May, 2017 seeking multiple reliefs including the relief for access of the child to the extent of first half of 50% of the Summer, Diwali and Christmas vacations and leave to

take the child at his native place at Aurangabad.

4. On 11th October, 2017 the Division Bench of this Court granted liberty to the applicant to approach the Vacation Court for relief of access to child during the ensuing Diwali vacation.

5. Heard Learned Counsel for the applicant and Learned Counsel for the respondent.

6. It appears that the interim order passed by the Family Court qua access of the child was carried to this Court, and vide order dated 15th October, 2016 in Writ Petition No. 7268 of 2016, this Court in para-17 recorded as under :-

“Considering these facts and the Consent Terms filed by both the parties in the Family Court, I am of the opinion that petitioner is entitled custody of minor child for atleast 50% of Diwali Vacation. Considering the fact that Diwali Vacation for child is from 21.10.2016 to 6.11.2016 I am of the opinion that petitioner is entitled for overnight custody of the child from

22.10.2016 to 29.10.2016 on condition that he has to file undertaking before this Court that on 29.10.2016 on or before 6 p.m. he will hand over custody of child to respondent wife at Child Complex in Family Court at Bandra. It is made clear that if petitioner fails to hand over the custody on 29.10.2016 on or before 6 p.m. respondent wife is at liberty to move before this court immediately for taking action against the petitioner.”

7. It appears, this order was not carried out in substance, as such gave rise to the contempt proceedings, wherein it was observed by this Court that dismissal of the contempt petition should not be construed as any license to the respondent (wife) to deny access to the petitioner in vacations in future and in such access, the petitioner is entitled to, under the consent terms or in the event of the consent terms are modified. However, by separate order dated 8th February, 2017 in Writ Petition No. 7268 of 2016 parties were relegated to the trial Court whereby the trial Court was directed to hear and decide

the Miscellaneous Application, issue of access expeditiously.

8. In view of the order dated 8th February, 2017 passed in Writ Petition No. 7268 of 2016 the Family Court was pleased to pass the order dated 22nd March, 2017 which is under challenge.

9. Perused the order dated 22nd March, 2017. It appears that the child was interviewed by the Learned Judge and he recorded a finding to the following effect :-

“During the interview, the nine years old child categorically stated that he neither wished to stay with the father nor ready to meet him.”
“During the interview, he was continuously requesting him to be taken away from his father. When asked why he is not willing to meet the father, he answered that his father pinches and beats him even on the small mistakes. He does not like to stay with the father. He likes his school and his new sister. I saw he was firm on the decision to stay with his mother.”

10. It appears that, on the backdrop of the

observations, the Learned Judge was pleased to pass the order whereby the father was granted access in terms of the order dated 30th December, 2015 i.e. on First, Second and Fifth Saturday for two hours from 3.00 p.m. to 5.00 p.m. as reproduced hereinabove.

11. The Learned Counsel for the petitioner has taken me through the observations made by this Court. In para-13 of the order dated 15th October, 2016 passed in Writ Petition No. 268 of 2016. It may not be possible for this Court to consider these observations, in as much as, those were at interim stage and finally the matter was remanded to the trial Court for its decision. The trial Court has passed the order after interviewing the child and therefore, in my opinion, the observations in para-13 of the order dated October 15, 2015 may not be relevant at this stage.

12. Considering the facts of the case and in particular the observations made by the trial Court in the impugned order after interviewing the child, I am not

inclined to grant this application at this stage. The application is rejected.

13. In view of this fact, the appellant is not entitled to access to his child during the ensuing Diwali vacation.

(SANDEEP K. SHINDE, J)