IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FAMILY COURT APPEAL NO.192 OF 2016
ALONGWITH
CIVIL APPLICATION NO.318 OF 2015

Mr. Anurag Kulshrestha ..Appellant
Versus
Mrs. Sapna Kulshrestha @ Sapna Srivastava ..Respondent

Mr. Anurag Kulshrestha – Appellant in person present.
Mrs. Sapna Kulshrestha @ Sapna Srivastava – Respondent and son Ishaan present.

CORAM : R. M. SAVANT &
SMT. SADHANA S. JADHAV, JJ
DATE : 19th JULY, 2017

P.C.

1 The above Family Court Appeal is directed against the judgment and order dated 10.07.2013 passed by the Learned Principal Judge, Family Court, Mumbai, by the said order, Misc. Application No.3 of 2013 filed by the Appellant herein came to be rejected. However, certain directions as regards the access of the child Ishaan came to be issued in the operative part. The said operative part reads thus :-

> "The Misc. Application is rejected and disposed off.
>
> However, the access of the child Ishaan can be had by the present Petitioner in the Children's Complex of this court under the supervision of the Marriage Counsellor on alternate Saturdays between 4.00 p.m. to 5.30 p.m. in the next two months (July and August 2013). Thereafter the child will be interviewed again by the Marriage Counsellor and assessed.
>
> In the event the child does not agree to meet the father, he shall not file a contempt proceeding against the mother.

The report of the Marriage Counsellor shall be final.

No order as to costs."

Hence in terms of the operative part, the access of the child Ishaan was facilitated in the Children's Complex of the Family Court at Thane on alternate Saturdays between 4.00 p.m. to 5.30 p.m. Thereafter the child was to be interviewed again by the Marriage Counsellor and assessed.

2 The Appellant herein and the Respondent who were husband and wife were involved in a proceeding being Marriage Petition No.F-1596 of 2009. In the said Marriage Petition, Consent Terms came to be filed on 04.10.2010. In the context of the present Family Court Appeal, it is required to be noted that by filing said Consent Terms, the Appellant and the Respondent had decided to dissolve their marriage by mutual consent. In so far as the access of the child Ishaan is concerned, clause (4) of the said Consent Terms are material and are reproduced hereinunder :-

> "4. It is agreed that Petitioner No.1 shall have once a month Visitation Rights without his new partner/family of up to 4 hrs at a prior notice to Petitioner No.2 and she will be informed of where the child is being taken. The right of visitation is applicable only if Child Ishaan consents for the meeting."

Hence the right of visitation was contingent upon Ishaan consenting to

the meeting. It is required to be noted that the Consent Terms have been signed by the Appellant Mr. Anurang Kulshrestha and by the Respondent Mrs. Sapna Kulshrestha @ Sapna Srivastava.

3 The Appellant thereafter filed the instant Misc. Application No.3 of 2013. The application was principally founded on the ground that the Respondent-wife has not complied with the Consent Terms in the matter of access to the child Ishaan. The Appellant had therefore prayed in the said application that a show-cause notice be issued to the Respondent-wife for violation of the Consent Terms which forms a part of the judgment and order dated 04.10.2010, that the Respondent-wife be dealt in accordance with the provisions of the Contempt of Courts Act, 1971 and be punished accordingly and the third relief sought was a direction to the Respondent to purge the contempt by directing the Respondent to give access to the Petitioner of his son Ishaan. As indicated above, the sum and substance of the grievance of the Appellant herein i.e the Petitioner in the said application was that the Respondent-wife had failed to give access of the son Ishaan and it is on the basis that the Appellant who was the Petitioner in the said application had sought the punishment of the Respondent-wife.

4 The parties were heard by the Learned Principal Judge of the

Family Court, Mumbai. The parties urged contentions for and against the said Misc. Application. The Learned Judge of the Family Court had also interviewed the child in her Chamber. The Learned Judge has recorded in the impugned order that the child was reluctant to meet the Appellant. However, it is recorded that he has agreed to meet his father i.e. the Petitioner at least twice in a month on Saturdays between 4.00 p.m. to 5.30 p.m. under the supervision of the Marriage Counsellor for the time being and if the said access goes on smoothly, the child has said that he shall definitely think of meeting his father outside the Court. The Learned Principal Judge of the Family Court having regard to what the child stated in her Chamber as also having regard to clause (4) as extracted above of the Consent Terms came to a conclusion that no contempt has been committed by the Respondent-wife and hence there was no question of issuing any show-cause notice to her or taking any action pursuant thereto against her. The Learned Principal Judge of the Family Court further observed that there was no question of purging of the contempt by the Respondent-wife. In respect of the other reliefs which were sought which have been briefly adverted to in the earlier part of this order, the Learned Principal Judge of the Family Court observed that the same cannot be granted in the said application in view of the Consent Terms entered into between the parties on 04.10.2010. The Learned Principal

Judge accordingly rejected the Misc. Application, however granted visitation rights to the extent mentioned in the operative part of the said order. As indicated above, it is the said judgment and order dated 10.07.2013 which is taken exception to by way of the above Family Court Appeal.

5 We have heard the Appellant in person Mr. Anurag Kulshrestha. The Appellant in person would again reiterate the submission that was made before the Family Court, namely that he has been deprived of the access of the son Ishaan and therefore the conduct of the Respondent-wife is in violation of the Consent Terms. The party in person thereafter sought to raise myriad issues as regards how on account of him there has been upward career mobility of the Respondent-wife, and the alleged manner in which the Respondent-wife conducted herself in the house, which facts according to us are irrelevant for the purposes of the present Family Court Appeal.

6 Having regard to the nature of the controversy, namely the visitation rights of a father, we made earnest efforts to see that the Appellant is not deprived of the access and therefore directed the Respondent and the child Ishaan to remain present before us. Accordingly, today the Respondent-wife and the son Ishaan are present

before us. In order to ascertain the wishes of the son, we have interviewed the son in our Chamber. He informed us that he is born on 11.09.1999. Ishaan is therefore nearing 18 years of age. Ishaan told us that he has passed the 12th standard examination from Billabong High School, Thane. He further told us that he is desirous of pursuing a law course and is desirous of appearing for the CLAT examination. In the course of our interview, we have found Ishaan to be of a loving and caring disposition and we have also found him to be very stable and clear in his thinking. He informed us that since the year 2011-2012 he is intermittently meeting his father i.e. the Appellant once in two months or may be once in three months. He further informed us that in June 2017 he has stayed with his father in his house for a period of four days and that in May 2017 he had met his father on two occasions. On the first occasion he had gone out for lunch with his father, after which the father left him at his mother's residence at about 10 p.m. He further informed us that on the second occasion he had dinner with his father and thereafter the father has left him at the residence of his mother. He told us that his mother i.e. the Respondent does not come in the way of he meeting his father. He also told us that he regularly talks to his father as and when he calls him, except in the last seven days. He very innocently told us that he is wary of meeting his father because sometimes his father

raises his voice and shouts at him. He told us that he has no problem meeting his father provided that he does not berate him or shout at him. In the course of our interview, we did not find any bias in him in favour of either of the parents. However, since he has been living with his mother since the year 2011, it is natural that there is bound to be more affinity towards the mother than the father. He was aware of his father's as well as mother's professional qualifications. We found him to be sensible, balanced and a boy who is capable of standing on his own feet in future. In spite of his parents being involved in litigation we found him to be calm and composed. The Appellant in fact is fortunate to have a son like Ishaan, and should therefore conduct himself in a manner which would endear him to Ishaan.

7 In our interaction with Ishaan it is therefore revealed that it is not as if the Appellant has not met his son Ishaan since the Consent Terms were filed as was sought to be vehemently projected by him. The Learned Principal Judge of the Family Court in the impugned order dated 10.07.2013 had directed that the access of the child can be had by the Petitioner in the Family Court before the Counsellor on alternate Saturdays between 4.00 p.m. to 5.30 p.m. Ishaan informed us that though he and his mother were present between 4.00 p.m. to 5.00 p.m. on the concerned Saturdays, the Appellant did not remain present before

the Marriage Counsellor in the Family Court on the pretext that he does not want to have access in the Family Court and that too before the Marriage Counsellor.

8 Before concluding, it would not be out of place to mention that the manner in which the Appellant in person conducted himself was most deplorable. He made every attempt to misguide and mislead us. He even gave us veiled threats that the TV channels were covering the instant matter. Notwithstanding the above, we proceeded to address the alleged grievance of the Appellant as regards the access of the son Ishaan which according to him was being deprived by the Respondent-wife. However after interviewing Ishaan, we have come to the conclusion that the grievance of the Appellant is not bonafide and is only an attempt to harass the Respondent-wife. In the facts and circumstances as mentioned above, we do not find any cause to interfere with the impugned order dated 10.07.2013. The Family Court Appeal is accordingly dismissed.

9 In view of the dismissal of the Family Court Appeal, the Civil Application does not survive and to accordingly stand disposed of as such.

[SMT. SADHANA S. JADHAV, J] **[R.M.SAVANT, J]**