

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO. 187 OF 2016

Apeksha Mrugen Shah

....Appellant
(Orig. Respondent)

V/s.

Mrugen Harish Shah

....Respondent
(Orig. Petitioner)

ALONGWITH

CIVIL APPLICATION NO. 289 OF 2017

IN

FAMILY COURT APPEAL NO. 187 OF 2016

IN

PETITION NO. 2416 OF 2014

Apeksha Mrugen Shah

....Appellant
(Orig. Respondent)

V/s.

Mrugen Harish Shah

....Respondent
(Orig. Petitioner)

* * * * *

Mr. P.A. Pol i/by. Mr. Sainand Chaugule, Advocate for the
respondent in Appeal and for applicant in Civil
Application.

Mr. Akhilesh Upadhyay, Advocate for the respondent in
C.A./original appellant.

CORAM :-**R.M. SAVANT &****SANDEEP K. SHINDE, JJ.****DATE :-****18TH DECEMBER, 2017.****P.C. :-**

1. The above Family Court Appeal arises out of the order dated 30th August, 2016 passed by the Learned Judge, Family Court, Bombay by which order, the application filed by the husband for restoration of the custody of the minor son, Jainiel came to be allowed and the appellant, wife was directed to restore the custody of the minor son, Jainiel to the husband in terms of the directions as contained in Clause-2 of the impugned order. An interim arrangement as regards the access was arrived at by way of consent terms dated 4th March, 2016 filed in the Family Court. After the above Appeal came to be filed in this Court, by order dated 15th October, 2016 the Division Bench of this Court (V.M. Kanade & Smt. Swapna Joshi, JJ) directed that access be given to both

the parties. It seems that, in terms of the consent terms filed before the Family Court, as also, in terms of the order before the Family Court dated 15th October, 2016 the parties are amicably taking access of the son, Jainiel, though, it is sought to be suggested on behalf of the respondent that, he has been denied access which finds a mention in the Affidavit-in-reply filed by him. In the above Family Court Appeal, the impugned order dated 30th August, 2016 has been stayed and therefore the custody of Jainiel continues with the appellant, wife.

2. The Learned Counsel for the appellant, wife who has the custody of the son, Jainiel, on instructions of the wife, makes a statement that, she would provide access to the respondent, husband in terms of the consent terms, as also, as per the order dated 15th October, 2016 passed by the Division Bench. Statement accepted. The said position as regards the access would continue pending the hearing and final disposal of the Marriage Petition in question and the application for custody filed

by the respondent, husband. Hence, it is not necessary, to keep the above Appeal pending. Since, the Marriage Petition, as well as, the application for custody are pending before the Family Court, it would be just and proper to direct the Family Court to hear and decide the marriage petition, as well as, the application for custody expeditiously and latest by 31st October, 2018. The above Family Court Appeal to accordingly stand disposed of.

3. In view of the disposal of the Appeal, the above Civil Application does not survive. The same to accordingly stand disposed off.

(SANDEEP K. SHINDE, J)

(R.M. SAVANT, J)