

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

CIVIL APPLICATION No. 270 OF 2016

IN

FAMILY COURT APPEAL NO. 104 OF 2014

Aditi Abhinav Chandra

.... Applicant/
(Orig. Appellant)

In the matter between :

Aditi Abhinav Chandra

.... Appellant

vs.

Abhinav Rajiv Chandra and anr.

..... Respondents

ALONG WITH

CIVIL APPLICATION No. 280 OF 2016

IN

FAMILY COURT APPEAL No. 104 OF 2014

Abhinav Rajeev Chandra

.... Applicant
(Orig. Respondent)

In the matter between :

Aditi Abhinav Chandra

.... Appellant

vs.

Abhinav Rajiv Chandra and anr.

..... Respondents

Mr. Atharva A. Dandekar, Advocate for the Applicant-wife in CAM/270/2016 and for Respondent in CAM/280/2016.

Ms. Devika Deshmukh with Shreni Shetty I/by ANB Legal for Respondent-husband in Cam/270/2016 and for Applicant in CAM/280/2016.

**CORAM: ANOOP V. MOHTA AND
RAVINDRA V. GHUGE, JJ.**

DATE : April 11, 2017

ORDER:

1 In the first Application filed by the mother, the substantive prayer under clause 9(a) reads as under :

“9(a) That pending the hearing and final disposal of the Family Court Appeal No.104 of 2014, the Applicant herein may be permitted to apply for obtaining United States of America Visa without requiring to obtain the consent or concurrence of the Respondent for minor son of Applicant and Respondent Arjun and permit the said minor Arjun to travel to USA with Applicant subject to affording the right of access during school vacation of minor Arjun in accordance with the academic schedule of the U. S. school and further by retaining the access through electronic devices and access on week ends in such manner and on such terms and conditions as this Hon'ble Court may deem fit, just and proper in the facts of the case.”

2 In the second Application filed by the father, the substantive prayer put forth under prayer cause 23 (a) and (b) read as under :

“23 (a) That this Hon'ble Court be pleased to grant the sole physical custody of the minor child, Arjun to the Applicant.

23 (b) That this Hon'ble Court be pleased to restrain the Appellant from removing the minor child,

Arjun from the jurisdiction of this Hon'ble Court.”

3 We have heard the learned counsel for the respective sides at length on 4th of April 2017. After considering their submissions, we thought it fit and proper to speak to the child at issue namely; Arjun Abhinav Chandra, who is residing with his maternal grand parents namely; Mr. Shankar Sinha and Mrs.Sandhya Sinha. Accordingly, we posted the matter in chambers on 10th April 2017 at 3 pm considering the fact that the child was to appear for his last examination of the 7th Standard on 6th April 2017.

4 On 10th April 2017, we had a personal discussion with the child and we made an effort to understand the mind of the child and his desire. In our interaction with the said child, we have noted as under:

- a) The child said that he has cordial relations with the father as like his relationship with the mother.
- b) He desires to be in the company of his father as well as his mother.
- c) He also desires to enjoy the company of his father as well as

mother during his vacations and even weekly holidays.

- d) He is comfortable in residing with his maternal grand parents at their present residence in Mumbai.
- e) He desires to continue under the guardianship of his maternal grand parents.
- f) He specifically stated that he loves his maternal grand parents, his mother, his father as well as the paternal grand parents, equally.
- g) He has no grievance against any of his blood relations mentioned above and acknowledges the efforts taken by his maternal grand parents in his nourishment, education and well being.
- h) He also desires to visit his paternal grand parents as and when it is possible.
- i) He desires to complete his education upto the 10th Standard in India and under the guardianship of his maternal grand parents and with the support of both his parents.
- j) He also desires to visit his maternal uncle (mother's brother) whose family resides in Dubai.
- k) He is not comfortable with the idea of re-locating him in the United States of America (USA) at this stage till he completes his 10th Standard in India.

l) He has a strong desire to stay in USA for his higher education and career prospects.

m) He desires to visit his mother in the USA during vacations as long as she is there and return back to India for pursuing his education from the 8th Standard to the 10th Standard.

5 After our interaction with the child, we also had an interaction with his maternal grand parents namely; Mr. Shankar Sinha and Mrs.Sandhya Sinha. His maternal grand father is in service in a foreign company and is a highly qualified and educated person. His maternal grand mother is an accomplished school teacher and who is presently taking care of the studies and education and day to day activities of the child. In our interaction with the said grand parents, we have noted as under :

a) The maternal grand parents have expressed a high degree of respect for their son in law namely; Mr. Abhinav Chandra, who is an applicant before us in his Civil Application.

b) They stated that the parents of their son in law are highly cultured and educated persons, whom they respect a lot.

c) Their relations with the parents of their son in law are over a

period of about three decades and have close ties and mutual respect for each other.

d) They did not express any bias or prejudice against any of their relatives including the son in law as well as his parents.

e) They do not have any reservations for allowing the child to enjoy the company of his father as well as his paternal grand parents as and when occasion arises.

f) They do not have any apprehension with regard to giving their son in law an access to the child on holidays and in vacation as well a contact through internet or telephone/skype.

g) They desire that the child should share his vacations with his mother as well as his father proportionately.

h) Both the grand parents agreed that the child does have bright prospects in USA considering the quality of life, quality of education and the values of civic responsibilities that are taught in that country.

i) However, they submitted that they do not desire to compel the child to go to USA against his wishes.

j) They would take good care of the child if he desires to stay in India and pursue his education as long as he desires.

6 From the submissions of the learned Advocates for the respective sides, though we find that both these Applicants i.e. the wife as well as the husband are bitter about each other, the child at issue and the maternal grand parents have shown a high degree of respect for both these Applicants, their feelings as well as relatives of the son in law. We are quite amazed by the degree of maturity not only shown of the maternal grand parents, but the child Master Arjun as well.

7 The Applicant in the first Application which is the wife at issue and the mother of the child, we are categorically informed, has moved to New York on account of her transfer in January 2017 and in all probability she would be returning back to India in January 2020 when the said child would be in his 10th Standard for the academic year 2019-2020. He is presently undergoing education in the CBSE pattern.

8 We are aware that the admission of a student in the 10th Standard, be it the CBSE pattern or the SCC or the ICSE, is required to be registered at the beginning of the academic year which would

perhaps be somewhere around the 15th of June 2019. Only after the child is so admitted that he would be permitted to fill in his examination form some time around November 2019 and only in such circumstances, he would be permitted to take his 10th Standard examination in March 2020. Even if his mother, the first Applicant returns to India in January 2020, it would be legally impermissible to admit the child in the 10th Standard for the academic year 2019-2020. As such, the child would land in India in the midst of his 10th Standard curriculum and would not be permitted to take his examination in March 2020. We noticed in our discussion with the child that he expressed a desire that his run-up (preparation) upto the 10th Standard would be the foundation in the 8th and 9th Standards and hence he desires to continue his education at least till the 10th Standard in India.

9 The Applicant in the Second Application is the father at issue, who has specifically stated in the said Civil Application dated 26th September 2016 that though he has been working in Tokyo for the past several years, he is willing to take up an assignment in Indian within three months. Six months have passed pursuant to the filing of

the said Application and we are informed by the learned counsel for the said father that he has still not taken up a job in India. He is presently in India on a visit and is operating his office from his residence. It is, however, stated that he is willing to come back to India within three to four weeks as he has to wind up his work in Tokyo and relocate himself in Mumbai so as to be in Mumbai and have access to the child as and when permitted.

10 Considering the fact situation and our observations recorded as above, both these Civil Applications are disposed of with the following directions:-

(i) The child Arjun would pursue his educational activities/curriculum initially in the 8th Standard for the academic year 2017-2018 in the same school and under the guardianship of his maternal grand parents as at present.

(ii) If the father of the child namely; Mr. Abhinav, relocates to India , he would have access to spend time with the child during weekly holidays and national holidays keeping in view his education, study time and his preparations for any examination/test/tutorials as the case may be.

(iii) The maternal grand parents of the child would give Mr. Abhinav such access as stated above after he re-locates in India.

(iv) It shall be left to the child to plan his vacations in such a manner that he could spend time with his mother as long as she is in USA and with his father Mr. Abhinav, if relocates to India, so as to have the enjoyment of his company.

(v) Visits to near relatives or family functions by the child would be subject to the permission of the maternal grand parents.

(vi) On the second and fourth weekends, if the father Mr. Abhinav is located in India, he would be permitted to have the company of the child overnight from Friday evening (second and fourth Friday) till Sunday afternoon (lunch time) (second and fourth Sunday) so as to enable the child to stay along with his father in this period.

(vii) Besides the above arrangements, if the child desires to visit his father on any other week end and if he expresses his desire to his maternal grand parents, who shall be his guardian, they may accordingly plan his visit to his father.

(viii) In so far as the desire of the Applicant-mother to shift the child to USA and the desire of the father to have the sole physical custody of the child is concerned, we keep it open to both these Applicants to

consider their experience over 2017-2018 and if required, make an Application in February 2018 for modification of the above directions. If such Applications are filed, the Applicants shall bring to the notice of this Court the urgency involved and the Applications would then be decided on their own merit after considering the rival contentions of the parties.

(ix) The passport of the child Master Arjun presently with the Registrar (Judicial-I) of this Court shall be returned to the maternal grand father of the child namely; Mr. Shankar Sinha on an Application being made by him duly identified by the learned counsel for the Applicant.

11 With the above directions, both the Civil Applications stand disposed of. There shall be no order as to costs.

(RAVINDRA V. GHUGE J.)

(ANOOP V. MOHTA, J.)