

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.2282 OF 2017
IN
WRIT PETITION NO.11240 OF 2015**

Dharik Anilbhai Jerajani

...Applicant

Versus

Mrs. Hvovi Dharik Jerajani & Anr.

...Respondents

.....

Ms Seema Sarnaik for the Applicant in CAW /2282 /2017 and
for the Respondent in WP/11240/2015.

Mr. Shreyas Adhyanthaya with Mr. Ashutosh Gavnekar for the
Petitioner in WP/11240/2015 and in CAW/2282/2017.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 28th SEPTEMBER, 2017.

P.C.:-

The Applicant-father by this application has sought 50% overnight access and overnight custody of his two minor children during Diwali vacation from 15.10.2017 till 22.10.2017.

2. Heard Ms Seema Sarnaik, the learned counsel for the Applicant and Mr. Shreyas Adhyanthaya for the Respondent No.1. Perused the records and considered the submissions advanced by the learned counsels for the respective parties.

3. It is not in dispute that the minor children are in custody of the Respondent-mother. The records reveal that previously, on the basis of the consent terms filed by the parties, the Applicant-father was given 50% overnight access and overnight custody during summer vacations.

4. The Applicant-father was also given liberty to apply for custody in future vacations. Accordingly, the Applicant-father has sought 50% overnight access during Diwali vacation.

5. It is seen that earlier the Applicant-father was allowed to have overnight access in Mumbai. Though by the present application, the Applicant-father has sought overnight access without any geographical restrictions, the learned counsel for the Applicant has restricted the prayer to take the children to the State of Gujarat, the hometown of the Applicant.

6. Mr. Shreyas Adhyanthaya, the learned counsel for the Respondent has no objection, if the access and overnight custody of the children is given to the Applicant in Mumbai. The learned counsel for the Respondent, however, objects for giving such access/ overnight

custody beyond Mumbai. He further submits that in the year-2014 the parents of the Applicant had taken the children from the school without permission of the Respondent, which had resulted in filing of a complaint before the police and an application under Section 97 of the Cr.P.C. for securing the custody of the children. He, therefore submits that the previous conduct of the Applicant-father and his parents raises an apprehension that the Applicant would not bring back the children to Mumbai.

7. I have perused the records, particularly the previous consent terms and orders passed in this Petition. The incident referred to by the learned counsel for the Respondent is of the year 2014. It is not in dispute that subsequent to 2014, the Applicant-father has availed overnight access of the minor children. During such access, the Applicant did not create any such situation and did not conduct himself in a manner as to doubt his bonafides or to give rise to an apprehension that he would not return the children. Furthermore, the learned counsel for the Applicant has stated that the Respondent-mother can talk to the children on Skype between 9.00 to 9.30 p.m. or any other convenient time, mutually agreed upon by the parties. The Applicant-father has also undertaken not to travel abroad and further

not to take the children beyond the limits of the State of Gujarat. Such assurance, in my view, should alleviate the fears of the Respondent-mother.

8. It is also pertinent to note that the Applicant-father is based in Gujarat. His parents and immediate family lives in Gujarat. Allowing the Applicant-father to take the children to Gujarat will help the children to meet their paternal grandparents, uncles, aunts and cousins. Such meet and interaction will help the children to develop a bond with their family members which is essential for emotional and social growth and over all development of the children.

9. Under the circumstances and in view of discussion supra, the application is allowed in following terms :-

(a) The Applicant-father shall have overnight access/
overnight custody of two minor children during
the Diwali vacation from 15.10.2017 to
22.10.2017.

(b) The Respondent-mother shall bring the children to

Kitab Khana, Flora Fountain, Fort, Mumbai on 15.10.2017 by 12.00 p.m. and the Applicant shall receive the children on 15.10.2017 by 12.00 p.m. from Kitab Khana. The Applicant-father is permitted to take the children to Gujarat.

(c) The Applicant will permit the children to talk to the Respondent-mother on skype or on phone once in a day between 9.00 to 9.30 p.m.

(d) The Applicant-father shall bring the children to Kitab Khana, Flora Fountain, Fort, Mumbai on 22.10.2017 by 1.00 p.m. The Respondent-mother shall receive the children from the Applicant-father from Kitab Khana, Flora Fountain, Fort, Mumbai.

(e) The Applicant-father, shall not travel abroad and shall not take the children outside the State of Gujarat without prior permission of this Court.

10. The civil application stands disposed of with liberty to make similar relief during further vacation.

(ANUJA PRABHUDESSAI, J.)