

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

WRIT PETITION NO. 11308 OF 2015

Uma Ashish Ghat	]	
C/o. Col. D.M. Purandare,	]	
B-20 Amar Aashiyana,	]	
Wanowrie, Pune- 411 040	]	... Petitioner.

V/s.

Ashish Anil Ghat	]	
A-204 Paranjpe Magnolia,	]	
Near Kumar Sahawas,	]	
Opp. Mont Vert Biarritz,	]	
Baner Pashan Link Road,	]	
Pashan, Pune- 411 021	]	... Respondent.

- Mr.Sanjay Bhojwani for the Petitioner.
- Mr.Abhijit D. Sarwate for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATED : 9th OCTOBER, 2017.

JUDGMENT :-

1] Rule. Rule made returnable forthwith.

2] Heard learned counsel for both the parties finally at the stage of admission itself.

3] By this Writ Petition, the Petitioner-mother is challenging the order dated 10/09/2015 passed by the Principal Judge, Family Court No.1, Pune thereby rejecting her application filed under Section 26 of the Hindu Marriage Act for educational expenses of her minor son Master Dhruva.

4] It is submitted by learned counsel for the Petitioner that since Master Dhruva is in custody of the Petitioner-mother and at present he is taking education in 6th standard in the Vigbyor High School, she has to incur the expenses for his education which are totally to the amount of Rs.1,39,750/-. She has to pay this amount over and above the amount of Rs.18,000/- towards his co-curricular activities. It is submitted that the Family Court, has vide its earlier order granted an amount of Rs.5,000/- per month only, as interim maintenance and in the said amount these educational expenses of the child cannot be satisfied. Therefore, it has become necessary to direct the Respondent to pay this amount for educational expenses of the minor child Dhruva.

5] It is submitted that the Family Court has however rejected this application only on the ground that the Petitioner has

changed the school of Master Dhruva without the knowledge and consent of the Respondent-father. It was held that, earlier Dhruva was taking education in Bharatiya Vidya Bhavan School. Thereafter, the Petitioner has changed the said school and enrolled him in the expensive school like Vigbyor High School without the knowledge and consent of the Respondent. Therefore, when the Petitioner is herself earning and she has taken decision to change the school of Master Dhruva of her own, so at that time she must have considered the school fees of Vigbyor High School. Thus, on this sole ground it was held that the Petitioner cannot be entitled to get the school expenses of Master Dhruva.

6] According to learned counsel for the Petitioner, the reason given by the Family Court for rejecting the application cannot sustain as the Petitioner has admitted Dhruva in the Vigbyor School with consent of the Respondent and it was a joint decision of the Petitioner and the Respondent. To substantiate this submission, learned counsel for the Petitioner has pointed out to the application of the enrollment of Master Dhruva to Vigbyor School to show that on the application form, the signature of the Respondent is also appearing thereby indicating that he was also a party to the said

decision. Hence, according to learned counsel for the Petitioner, the reasoning given by the trial Court for rejecting the Petitioner's claim for school expenses cannot be called as legal and proper.

7] As against it, learned counsel for the Respondent has supported the said order but not for the reasons stated therein. According to him, when the application for maintenance was filed earlier in the said proceedings and the amount of Rs.5,000/- per month was awarded towards the maintenance of Master Dhruva, at that time also this fact that Master Dhruva was studying in Vigbyor High School and these school expenses to the tune of Rs.1,39,750/- per month were required to be incurred was considered by the Family Court and thereafter only, the amount of Rs.5,000/- per month was awarded. Hence on the same ground the Petitioner cannot file another application seeking the same amount.

8] Secondly, it is submitted that in the proceeding filed under the Protection of Women from Domestic Violence Act, the Petitioner is already awarded an interim maintenance of Rs.15,000/- per month and Rs.5,000/- towards the alternate rental accommodation. Therefore, she is having sufficient means, hence no interference is warranted in the impugned order.

9] In this case, perusal of the earlier application for interim maintenance filed by the Petitioner shows in the said application also the Petitioner has very much pleaded that as Master Dhruva was studying in the Vigbyor High School, she has to spend this amount of Rs.1,39,750/- for his educational expenses. In the said application, she has also claimed the amount of Rs.1500/- per month towards his co-curricular activities. It is pertinent to note that after considering the said expenses, the Family Court has, at that time granted the interim maintenance at the rate of Rs.5,000/- per month. In such situation, there was no change in the circumstances, as such, for the Petitioner to file this fresh application towards educational expenses of Master Dhruva. Therefore, whether the admission of Master Dhruva was taken with consent of the Respondent or otherwise, the fact remains that this aspect of school expenses of the child was considered as it was pleaded in the earlier application, when the order of the interim maintenance at the rate of Rs.5,000/- was passed.

10] Apart from and in addition to that, now in view of the order passed in the proceedings under the D.V. Act by the Magistrate Court and which is confirmed upto this Court in W.P. No.919 of 2017

by order dated 29/09/2017, the additional amount of Rs.15,000/- per month is granted as interim maintenance and while granting the same, this amount of Rs.5,000/- per month which is already granted in this proceeding is also considered. Therefore, at this stage, I do not find that any interference is called for in the impugned order passed by the Family Court of rejecting the Petitioner's application for the payment of the educational expenses of Rs.1,39,750/- for Master Dhruva.

11] The Second order of the learned Family Court passed in the same proceeding and which is also challenged in this Writ Petition is dated 03/11/2015, by which the application filed by the Petitioner for dismissing the petition of the Respondent under Order 39 Rule 11 of C.P.C. was rejected. However, at the same time, the trial Court has stayed the order of interim maintenance awarded to Master Dhruva on the ground that the access of Master Dhruva is not given to the Respondent.

12] According to learned counsel for the Petitioner, the Family Court has committed a grave error in linking the access of the child with the payment of maintenance, especially when the Petitioner is not at all responsible for the child being not ready to

meet his father. It is submitted that the Family Court itself has categorically held that non-compliance of the order of giving access to the Respondent father is not intentional, deliberate or willful and hence rejected the prayer of the Respondent of striving out the Petitioner's defence under Order 39 Rule 11 of C.P.C.. However, against its observation and finding, the Family Court has stayed the order of interim maintenance.

13] In this respect, learned counsel for the Petitioner has pointed out to the following observations made by the Family Court in its impugned order, “the Court had after interviewing the child suggested the Petitioner to counsel Master Dhruva and make him ready to meet his father but even thereafter, there is no access to the Master Dhruva by the Petitioner. The age of Master Dhruva is 12 years, so he is of tender age. He is not completely matured but at this age children have their views and specific opinions. Sometimes they are impressed by their custodial parents. In the present case, we do not know the exact reason why Master Dhruva is not ready to meet his father. The child of 12 years is not an article which can be given forcefully to another person. We have to understand his mindset and respect his wishes. No doubt the father has right to have access of

child but at the same time we have to understand the wishes of the child. In the present case, it appears *prima facie* that Master Dhruva himself does not wish to have access. It does not appear that the Petitioner herself has denied the access of Master Dhruva. So, the Petitioner cannot be held responsible for the denial of access of Master Dhruva and she cannot be punished for the same by dismissal of the petition”.

14] In considered opinion of this Court, these very observations made by the learned Family Court in paragraph No.6 of the order, very well make out a clear case for interference in the impugned order passed by the Family Court of staying the order of maintenance. It is pertinent to note that for these very reasons, the Family Court has rejected the prayer to dismiss the petition under Order 39 Rule 11 of C.P.C., holding that the Petitioner should not be held responsible for denial of access of Master Dhruva to the Respondent and she cannot be punished for the same by dismissal of the petition. The same analogy need to be applied now. The order of interim maintenance therefore cannot be stayed on the ground that access of the child is not extended. When trial Court itself has observed that child of 12 years is not an “article” whose custody or

access can be forcefully given then one fails to understand how the child's maintenance order can be stayed. There is absolutely no connection between the two. If the child does not want to meet his father or mother, it does not mean that the child does not require any amount for his livelihood. It also does not absolve the father from his liability of maintaining his dependent child. The reasons for not meeting the father, from the child's point of view may be totally different as observed by the Family Court itself and may not necessarily be because of the influence or tutoring by the custodial parent.

15] Though, the learned counsel for the Respondent in this respect has relied upon the order of the Apex Court in the case of *Vivek Singh vs. Romani Singh*, (2017)3 SCC 231, in respect of “The Parental Alienation Syndrome”, to point out that such denial of access may be on account of the influence exerted by the custodial parent, however here in the present case, the Family Court has not at all held that on account of the influence exerted by the Petitioner-mother, the child is not ready for meeting his father. The Family Court has observed that, in this case, “we do not know the exact reason that why Master Dhruva is not ready to meet his father”.

Further, it is also observed that, “though he is not completely mature, at this stage, the children have their views and specific opinions”. It is also observed that, “Master Dhruva himself does not want to have access”. In such situation there is absolutely no justification for staying the interim order of maintenance.

16] The only remedial measure in such situation is to counsel the child so that he will be ready to have access with his father but staying the order of interim maintenance and thereby depriving him from the essential requirements of the life cannot be called a legal, equitable or correct. After all the grant of maintenance is for his survival and such order of maintenance cannot be conditional, in the way that if the child refuses to have access to his father, he will not be entitled to maintenance. The impugned order passed by the Family Court linking payment of maintenance to the access of child being not justified or legal needs to be set-aside.

17] Hence, the Writ Petition is allowed to that extent and the impugned order passed by the trial Court on 03/11/2015 staying the order of maintenance of Master Dhruva till the access is given to the Respondent stands quashed and set-aside. However, it is done so, with a fervent hope that child is counseled by mother or if necessary

by an expert to meet his father.

18] Learned counsel for the Petitioner submits that vide order passed by this Court on 05/02/2016 the Respondent has deposited an amount of Rs.65,000/- in this Court towards arrears of maintenance and the Petitioner may be allowed to withdraw the said amount. In view of the disposal of this petition, the Petitioner is at liberty to withdraw the said amount of Rs.65,000/-.

19] As regards further arrears of maintenance learned counsel for the Respondent fairly concedes that the Respondent will deposit 50% of the arrears before Diwali Vacation and remaining 50% before the Christmas Vacation. The statement is accepted.

20] The Writ Petition stands disposed off in above terms.

21] Rule is made absolute in above terms.

(DR. SHALINI PHANSALKAR-JOSHI, J.)