

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL APPLICATION NO. 269 OF 2017
IN
FAMILY COURT APPEAL NO. 182 OF 2017

Ms. Deepa Sreekumar

.....Applicant

V/s.

Mr. Sreekumar Puthenmadathil

....Respondent

Mr. Hitesh P. Vyas for the applicant

Mr. Nitin P. Dalvi a/w Ms. Bhavana Punalekar for the respondent

**CORAM : SMT. VASANTI. A. NAIK,
SARANG V. KOTWAL, JJ.**

DATE : DECEMBER 11, 2017.

P.C.

Heard.

The learned counsel for the applicant submitted in the morning session that the child is not ready to meet his father and in the aforesaid background it would not be possible for the mother to provide access as directed by the Family Court. It is stated that this Court may interview the child so as to consider as to what is the will of the child. In view of the said request, we agreed to interview the child at 2.50 p.m. in the chamber.

We had interviewed the child for more than 15 minutes. The boy is aged 13 years and he is capable of understanding the questions posed to him.

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The child stated that he is staying away from his father/non applicant for more than 7 years as his parents are separated since then. When we had asked the child whether the father had behaved badly with the child he had answered in the negative and had stated that his father did not scold or beat him except on one occasion when he was about 6 years of age and was reluctant to sleep with his father. He stated that his father had pulled him and caught hold of him in such a manner that he could not breathe very easily. The other incidents of which the boy spoke pertain to the matters between his parents and to the period when he was barely 3 or 4 years of age. We doubt whether a child would remember in detail exactly what happened between his father and the mother when he was 3-4 years of age. The child narrated that there were fights between the father and the mother when he was 3 or 4 years of age and on a couple of occasions his father had assaulted the mother. We asked him as to how he could remember distinctly everything that transpired between his father and mother when he was only 3 or 4 years of age but he could not explain properly. We find after interviewing the child that the respondent/father had not misbehaved with the child at any point of time. The relationship between the father and the child would be separate and distinct from the relationship between the husband and the wife. Merely because there were some fights between the father and the mother and the child thought that his father was wrong, the child cannot refuse to meet or talk to his father for a couple of years, as directed by the Family Court. The child may not be tutored by the mother when the child is brought to the Court but surely the incidents that occurred when the child was 3 or 4 years of age must have been informed

and told to him time and again when he grew older and that should be the reason why the child has narrated the incidents by giving particulars and details though he claims that he was only 3 or 4 years of age then. The incidents could be true or they could even be the perception of the mother.

In the aforesaid set of facts, we are not inclined to stay the operative part of the order passed by the Family Court in the proceedings for divorce and for custody. However, in the interest of justice and considering the welfare of the child, we modify the order only to the extent that instead of the time of access between 10.00 a.m. to 06.00 p.m. during the vacation of the child, the appellant-wife should provide the access between 12.00 noon to 03.00 p.m, during the pendency of the appeal.

The civil application is allowed in the aforesaid terms and disposed of.

[SARANG V. KOTWAL, J.]

[SMT. VASANTI A. NAIK, J.]