

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.4844 OF 2017

Mrs. Armin Cyrus Devghadwala
a.k.a. Armin Behruz Irani Petitioner
Vs.
Cyrus Noshir Devghadwala & Others Respondents

Mr. Dormaan J. Dalal for the Petitioner.
Ms Hetal Patel i/by Mr. Subhash Hulyalkar for
Respondent Nos.2 to 6.
Mrs. S.V. Sonawane, APP, for the Respondent-State.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE : DECEMBER 08, 2017

P.C:

We have heard the learned Advocate appearing for the petitioner and perused the petition. Though the respondents other than the 7th, 9th, 10th to 13th, save and except respondent No.1, have appeared on private notice, on perusal of the affidavit and the annexures thereto, we do not think that a writ of habeas corpus can be issued. The male minor child is in the custody of the first respondent. He is stated to be the husband of

the petitioner and there is an ongoing matrimonial dispute. On the earlier occasion we were informed that the petitioner had sought custody and equally access to the child. However, she has not been able to access the child. It is in these circumstances that the trial Court's order granting interim custody to the petitioner-wife has not been executed and enforced. The petitioner has made an application to the trial Court seeking to invoke Order XXXIX, Rule 2A of the Code of Civil Procedure, 1908. Even that application is pending. The petitioner has also sought to invoke the trial Court's jurisdiction by requesting it to take such action as is permissible in law. It is in these circumstances that when the petitioner is seeking an arrest warrant for production of the child and when those proceedings are pending, we cannot issue a writ, as prayed for. The petitioner has already availed of the alternate remedies and is aware of her rights in law. In such circumstances, a writ of habeas corpus cannot be issued. The petition is entirely misconceived and is dismissed.

(SMT. BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI, J.)