

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**TESTAMENTARY AND INTESTATE JURISDICTION****NOTICE OF MOTION NO.11 OF 2017****IN****PARSI SUIT NO.9 OF 2006**

Mahrukh Murad OomrigarApplicant

IN THE MATTER BETWEEN

Dr. Murad D. OomrigarPlaintiff

vs

Mahrukh Murad OomrigarDefendant

....

Ms. Zenobia S. Irani, for the Plaintiff.

Mr. P.M. Rustomkhan, for the Defendant/Applicant.

....

CORAM : S.C. GUPTA, J.

DATED: 18 DECEMBER, 2017

P.C. :

. Heard learned Counsel for the parties.

2. The Defendant mother seeks permission to take her son Vihan to USA from 16 December 2017 to 14 January 2018 for attending pre-wedding and wedding ceremonies and receptions of Vihan's cousin brother, Mr. Rutton Darius Kavasmaneck. Vihan suffers from certain medical conditions which call for a medical opinion in the matter. As I have noted in my order of 14 December 2017, there is no objection on the part of any of the doctors for Vihan to undertake the journey or stay proposed. The Plaintiff husband, as and by way of a magnanimous

gesture, even agrees to an order permitting Vihan to be accompanied by the Defendant mother to the proposed destination in USA. The Defendant mother, on her part, has equally reasonably agreed to submit to stringent terms and conditions in the form of undertakings given to the Court to ensure that this permission and order are strictly complied with both in letter and spirit. Accordingly, by consent of parties, the following order is passed. It is, however, made clear that this order is passed under special circumstances and shall not be used as a precedent for any future application. In case of any future application, the respective rights and contentions of the parties are expressly kept open, to be considered on their merits.

(i) The Defendant is permitted to take Vihan to USA for attending the ceremonies and receptions, as noted above. She, however, undertakes to bring Vihan back to India latest by 20 January 2018.

(ii) The Defendant further undertakes to the Court that in case the weather conditions prohibit any return journey from USA to India around 20 January 2018, she will immediately intimate to the Court as well as the Plaintiff father about the same and would, in any event, bring back Vihan to India as soon as the flights resume.

(iii) As a security, the Defendant shall deposit notarized copies of the title deeds of her two residential flats at Fourshore Apartments, 7th Floor, Juhu Tara Road, Mumbai - 400 049 and undertake not to create any third party rights in these residential flats till she fully complies with the undertakings as recorded herein.

(iv) The Defendant shall take a platinum medical insurance plan for Vihan for the entire period of his stay in USA. She will inform both the airlines and the insurance company about Vihan's epilepsy, autism and asthmatic bronchitis so as to comply with their respective procedures and also so that measures can be taken in case of an emergency appropriately.

(v) The Defendant shall administer medication as per the advice of Vihan's doctor, both whilst travelling to, and being within, USA and till he returns to India.

(vi) The Defendant shall endeavour to see that Vihan is regularly in touch with his father, i.e. the Plaintiff herein, over the telephone and, if possible, over skype, with proactive attempts on her part to see that such contact is duly established and maintained during Vihan's stay in USA.

(vii) It is made abundantly clear that under no circumstances will any alcoholic beverages of any nature whatsoever will be served to Vihan.

(viii) Vihan's visa shall be applied in the category of tourist visa and the status of the visa shall not be changed under any circumstances. The original passport of Vihan, which is handed over to the Defendant as per the directions of the Court on the last occasion, shall be returned to the Plaintiff on Vihan's return to India through the Defendant's Advocate.

(ix) The photocopies of passport, along with the visa stamped thereon, as also the travel papers, including tickets, insurance and other documents submitted to the Registrar of Parsi Matrimonial Court in pursuance of this order and undertaking to be furnished in accordance therewith, shall be made available to the Plaintiff through his Advocate. The copies shall be furnished at any rate before Vihan leaves the country.

(x) The Defendant shall make alternate arrangement for sending Vihan to Mumbai so as to be in custody with Plaintiff in accordance with this order in the event she herself is unable to do so on account of any emergency or otherwise.

(xi) It is made clear that there will be no religious indoctrination or any religious discussion with Vihan on the part of the Defendant. The Defendant will also ensure that neither her daughter nor anyone else makes any attempt to convert Vihan from Zoroastrianism to Jehovah's faith or any other religion in any manner whatsoever or attempt any religious indoctrination or any religious discussion with Vihan.

(xii) The Defendant shall file an appropriate undertaking with this Court confirming the above conditions and undertakings and also the following matters, that is to say, the particulars of her stay in USA with her address in USA and contact details, the facility of a hospital close to the place of residence in USA, and the availability of a physician nearby.

3. This order is passed in the presence of both the Plaintiff and

the Defendant. It is expected that the Defendant shall strictly comply with each and every term and condition and undertaking, which is made part of this order, in its true letter and spirit. It is also made clear that any infringement of the terms or conditions or undertakings shall be viewed very seriously and, in that case, the Court will revisit the question of access of the Defendant to her son Vihan.

4. It is needless to add that the terms and conditions laid down herein and the undertakings required of the Defendant are only with a view to see that no untoward circumstance arises in future. These terms and conditions and undertakings do not anyway signify that the incidents to be ensured against have already occurred in the past. All rights and contentions of the parties on merits in this behalf are expressly kept open.

(S.C. GUPTE, J.)