

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 475 OF 2018**

Elizabeth Jose Diniz, 43 years of age,
housewife, w/o Jose Rosario Hipolito
Diniz, r/o Flat No. T1/T2, 3rd floor, R.D.
Residency Building, Sawant Wada
Cacora, Curchorem, Goa.

.... Petitioner

Versus

Jose Rosario Hipolito de Jesus de Diniz,
s/o late Mauricio Diniz, 52 years,
business, having his address at Dita
Classic Building, Shop No. 4, Opp. Fish
Market, Quepem-Goa.

.... Respondent

Shri Vibhav Rajiv Amonkar, Advocate under Legal Aid Scheme
for the Petitioner.

Shri Sidhesh Shet, Advocate for the Respondent.

CORAM:- C.V. BHADANG, J.

DATE:- 9th AUGUST 2018

ORAL JUDGMENT:

Rule made returnable forthwith. The learned Counsel
for the respondent, waives service. Heard finally by consent of
parties.

2. The petitioner is challenging the order dated
07.03.2018, passed by the learned Senior Civil Judge at
Quepem in Civil Miscellaneous Application No. 32/2017/A. By
the impugned order, the learned Trial Court has granted
visitation rights to the respondent-father, to visit their minor
daughter on every Saturday from 2:00 p.m. till 6:00 p.m. and on
every Sunday from 10:00 a.m. to 2:00 p.m. and also, to take the

minor child for outings on public holidays from 10:00 a.m. to 5:00 p.m. The visitation rights have been granted at Quepem Court.

3. The record shows that the petitioner was represented by an Advocate on legal aid, but, he did not appear or file reply to the application for interim reliefs. This is one of the circumstances considered by the learned Trial Court while granting visitation rights and limited custody on holidays. Although, the learned Trial Court has noted that in the matter of conflicting claims, of custody/visitation rights, there are no rights of the parents, which have to be enforced and it is only the child's welfare, which is the focal point for consideration, the Trial Court has missed that merely because the petitioner has not filed any reply, the application cannot be granted, particularly, allowing limited custody of the daughter, who is about 12½ years old, to the petitioner, on every public holidays from 10:00 a.m. to 5:00 p.m.

4. The perusal of the impugned order does not show as to whether, the Trial Court has interacted with the child, to ascertain her wish, if any, as the child will be in a position to express her wish and/or any reservations looking to her age.

The dispute of the present nature has to be handled delicately. There is also a serious issue, about the quality of the legal aid, which is granted to the petitioner as there is failure on the part of the Advocate on legal aid in filing reply and assisting the Court. Such a casual approach by the learned Counsel for the petitioner cannot be countenanced. In such circumstances, the only option is to set aside the impugned order by directing the learned Trial Court to decide the application for interim reliefs afresh.

5. In such circumstances, the following order is passed:

ORDER

- (i) The petition is partly allowed.
- (ii) The impugned order, is hereby set aside.
- (iii) The application for interim reliefs is restored back to the file of the learned Trial Court.
- (iv) The learned Counsel for the petitioner submits that the petitioner shall file reply to the application, within two weeks from today. The learned Trial Court shall allow the petitioner to file reply and then, shall decide the application for interim custody on its own merits and in accordance with law, after hearing the parties.
- (v) The parties to appear before the learned Trial Court on 23.08.2018 at 10:00 a.m.
- (vi) Rule is partly made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.