

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 726 OF 2018**

Mrs. Roxann Sharma,
49 years, permanent resident of 3425,
San Pasqual, Pasadena,
California – USA,
Presently resident of
2nd floor, CD Patanga,
Aquem, Margao- Goa.

..... Petitioner.

Versus

1. Mr. Arun Sharma,
53 years,
presently r/o
No.80, Magnolia,
Bim Vaddo, Betalbatim,
Salcete, Goa.

2. State of Goa,
as represented by the
Chief Secretary,
Secretariat, Porvorim,
Goa.

..... Respondent.

Ms. Maria Caroline Collasso, Advocate for the Petitioner.

Shri Anacleto Viegas with Ms. Uma Prabhudessai, Advocates for the
Respondent no.1.

Mr. Amir Jamdar, Additional Government Advocate for the Respondent no.2.

CORAM: C. V. BHADANG, J.

Reserved on: 17th October, 2018.

Pronounced on: 22nd October, 2018.

Order:

The petitioner is the wife of the respondent no.1. The parties have a minor child by name Thalbir out of the wedlock. The respondent no.1 had filed Matrimonial Petition no.59/2013/III for custody of the minor child, before the learned Senior Civil Judge at Margao, in which there was a Cross Objection by the petitioner. The learned trial court by a judgment and decree dated 6/3/2018 has dismissed the petition, while allowing the counter claim of the petitioner and the permanent custody of the minor child is handed over to the petitioner, with visitation rights to the respondent no.1 on every Tuesday and Thursday from 3p.m to 6.30p.m and from 3p.m to 9.30p.m. on Saturdays. The petitioner (the respondent before the trial court) has been directed to reside with the child within the jurisdiction of the trial court and not to leave the State of Goa or the country with the child without prior permission of the Court.

2. Feeling aggrieved, the respondent no.1 challenged the same before the learned District Judge in Regular Civil Appeal No.20/2018. The learned District Judge has dismissed the said appeal on 29/6/2018 which is subject matter of challenged before this Court in Second Appeal No.75/2018, which has been admitted on 5/10/2018 and is pending.

3. The present petition has been filed by the petitioner seeking the following reliefs :

- a) That necessary orders be passed to permit the petitioner mother to leave India along with her son Thalbir Sharma to proceed to the USA.
- b) That necessary orders be passed directing that the passports of the petitioner and her son Thalbir Sharma be released to her in order to permit her to travel to the USA.
- c) That necessary orders be passed directing the respondent to hand over the PIO card of the child to the petitioner.
- d) Pending the present petition the petitioner mother along with her son Thalbir Sharma be permitted to travel to Mumbai for a period of 15 days.

4. It appears that as there was no specific challenge to any judicial or quasi judicial order raised in the prayer clause, the petition was initially placed before the Division Bench. The Division Bench on 16/7/2018 passed the following order:

In paragraph 7 of the Writ Petition, the Petitioner has stated that the Petitioner is aggrieved by the conditions imposed by the learned Senior Civil Judge, Margao,

Goa, in Marriage Petition No.59 of 2013. The Petitioner has also stated that the judgment and the order passed by the learned Senior Civil Judge, is assailed. The learned counsel for Respondent no.1 submitted that the prayer for return of passport cannot be separated from the challenge to the order passed by the learned Senior Civil Judge and that the matter pertains to the jurisdiction of the learned Single Judge, where four petitions between the parties are already pending.

2. The Registry and parties will take steps to place the matter before the appropriate Court.”

5. Thus according to the petitioner she is aggrieved by the condition as imposed by the learned Senior Civil Judge by the virtue of the judgment in Matrimonial Petition no.59/2013/III. That judgment (as has been confirmed by the first Appellate Court) is subject matter of challenge in Second Appeal No.75/2018, which as noted earlier is already admitted and is pending.

6. It would be significant to note that the petitioner has not amended the prayer clause and thus in my considered view it would not be appropriate to entertain this petition. The learned counsel for the petitioner was asked whether the petitioner is desirous of filing a civil application in the second

appeal, where the relief as sought can be considered on their own merits. However, the learned counsel for the petitioner insisted for deciding the present petition.

7. I have given my anxious consideration to the circumstances and the submissions made and in view of the fact that the petitioner is in effect seeking permission of the Court to travel abroad, in modification of the impugned judgment and decree dated 6/3/2018 passed by the trial court (which is subject matter of challenge in the second appeal), it would not be appropriate to entertain this petition. Thus with a liberty to the petitioner to file properly constituted application in the second appeal, if so advised, the present petition is disposed off with no order as to costs. Rival contentions of the parties on merits are left open.

C. V. BHADANG, J.

Ap/