

IN THE HIGH COURT OF BOMBAY AT GOA
MISC. CIVIL APPLICATION NOS. 909 & 913 OF 2018

MISC. CIVIL APPLICATION NO. 909/2018
IN
SECOND APPEAL NO. 75/2018

Roxann Sharma	...	Applicant
Versus		
Arun Sharma	...	Respondent

Ms. Caroline Collasso, Advocate for the Applicant.

Shri Anacleto Viegas, Advocate for the Respondent.

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Ms. Caroline Collasso, Advocate for the Respondent.

CORAM : C.V. BHADANG, J.

DATE : 31st OCTOBER, 2018

ORAL ORDER:

Both these applications can be conveniently disposed of by this common order.

2. The parties herein are husband and wife, who are blessed with a son named Thalbir, who is aged 6½ years.

3. The father of the minor had filed Matrimonial Petition No. 59/2013 seeking permanent custody of the minor, in which, the mother had filed a counterclaim. The learned Trial Court has dismissed the petition filed by the father, while allowing the counterclaim. The permanent custody of the child is handed over to the mother, subject to visitation rights to the father from 3:00 p.m. to 6:30 p.m. on every Tuesday and Thursday and from 3.00 p.m. to 8:30 p.m. on every Saturday. The Trial Court has directed the mother to whom, the permanent custody is granted, not to leave the Country or the State of Goa, with the child, without the permission of the Court. The said judgment has been confirmed in appeal by the learned District Judge, against which a Second Appeal is filed by the father of the minor, which is pending.

4. Although, there was some dispute as to whether, the visitation rights were being given to the father, presently such visitation is being permitted and is being given as per the order of the Trial Court.

5. MCA No. 909/2018 is filed by the mother for permitting her to travel to Mumbai alongwith the minor from 5th to 20th November, 2018, while MCA No. 913/2018 is filed by the

father for granting overnight custody of the child during the diwali vacation i.e. from 3rd to 11th November, 2018.

6. I have heard the learned Counsel for the parties.

7. It is submitted by Ms. Collasso, the learned Counsel for the applicant in MCA No. 909/2018 that the applicant is having a rented apartment in Mumbai, where she is having her personal belongings and as the said apartment has remained closed there is a mess created in the apartment, which she needs to deal with. It is submitted that the applicant is an American National and is required to visit the Consulate for some personal work. It is also submitted that the applicant has had no holidays with the minor and wants to spend a period of 15 days during diwali vacation in Mumbai. It is also submitted that she wants to consult a specialist in child dentistry, for the minor.

8. On the contrary, it is submitted by Shri Viegas, the learned Counsel for the applicant in MCA No. 913/2018 that although, the applicant-mother claims to be an American National, she is having a Jamaican passport and there is likelihood of the applicant leaving the Country with the child. It is submitted that the child is allergic to dust and thus, taking him

to the flat, which requires cleaning would not be in the interest of the child. It is submitted that she had visited Mumbai alongwith the child in breach of order passed by the Supreme Court as well as the Trial Court and this Court, in respect of which a contempt petition is pending before this Court. It is submitted that the child is found to be comfortable with the father, his grandmother as well as his aunt and needs to spend quality time, particularly during diwali being a hindu festival, so that the child assimilates the hindu traditions and way of life. It is submitted that Dr. Patkar from Borda, Margao had treated the child and has now advised that the child does not need any dental treatment. It is submitted that the application filed by the mother is by way of counter blast to the application for visitation rights during diwali filed by the father.

9. I have carefully considered the circumstances and the submissions made. The mother is having the permanent custody of the child with visitation rights to the father as aforesaid, which has been confirmed by the First Appellate Court. The interim custody of the child was granted by the Supreme Court, to the mother on 17.02.2015 and since then, the child is staying with the mother. At present the only permission sought by the mother is to travel to Mumbai from 5th to 20th November, 2018.

On the contrary, there is a claim by the father for overnight custody of the child during diwali vacation. An attempt was made to find out some interim arrangement, which is acceptable to the parties. However, unfortunately, it did not materialise. The mother was ready and willing to give a day long access/visitation to the father at Mumbai, where according to the mother, the father is having a residential house. However, the father insisted that during the festive time, the child needs to spend some quality time alongwith the grandmother and the aunt of the child in Goa.

10. It is now well settled that any order, in a dispute of the present nature has to be in the best interest of the child, which is a paramount consideration. As noticed earlier, the permanent custody of the child has already been granted to the mother with visitation rights to the father. In view of the conflicting claims by the parties and also to ensure that the interest of the child is not adversely affected, some interim arrangement has to be worked out. In my considered view, having regard to the fact that the permanent custody of the child is granted to the mother and the child is staying with the mother from the year 2015, it would not be appropriate to grant overnight custody of the child to the father during the diwali vacation from 3rd to 11th November, 2018

as prayed. At the same time, the mother will also have to be permitted to travel to Mumbai alongwith the child without visitation rights of the father being affected in a major way.

11. After giving anxious consideration to the circumstances and the submissions made, I find that the following order will meet the ends of justice:

ORDER

The applicant/mother in MCA No. 909/2018 is permitted to travel to Mumbai alongwith the child for a period of ten days from 9th to 18th November, 2018, subject to the following conditions:

- (a) The applicant/mother shall surrender her Jamaican passport, if any, before this Court, till her return from Mumbai.
- (b) A day long custody of minor Thalbir being given to the father on 6th and 7th November, 2018 from 10:00 a.m. to 6:00 p.m.
- (c) The applicant shall ensure that the child is not exposed to any allergic conditions.

12. The Civil Applications are disposed of in the aforesaid terms.

C.V. BHADANG, J.

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