

IN THE HIGH COURT OF BOMBAY AT GOA
MISC.CIVIL APPLICATION NO.1039 OF 2018
AND
MISC.CIVIL APPLICATION NO.1040 OF 2018
IN
SECOND APPEAL NO.75/2018
MISC.CIVIL APPLICATION NO.1039 OF 2018
IN
SECOND APPEAL NO.75/2018

Roxann Sharma	..	Applicant
Versus		
Arun Sharma	..	Respondent

Ms. C. Collasso, Advocate for the applicant.

Shri A. Veigas, Advocate for the respondent.

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MISC.CIVIL APPLICATION NO.1040 OF 2018
IN
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Arun Sharma	..	Applicant
Versus		
Roxann Sharma	..	Respondent

Shri A. Veigas, Advocate for the applicant.

Ms. C. Collasso, Advocate for the respondent.

Coram :- C. V. BHADANG, J.

Date :- 18th December, 2018

P.C.

Heard the learned Counsel for the parties.

2. The application MCA No.1039/2018 is filed by the

applicant, who is the mother of the child for permission to travel to Mumbai from 19/12/2018 till 05/01/2019 on account of Christmas vacation. There are certain other reliefs also claimed in the said application seeking direction to the respondent, to hand over the original PIO card to the applicant for the purposes of its conversion into OCI as mandated by the Government to all foreign nationals. The applicant is also seeking handing over of the passport of the minor, which is lying before this Court for the purposes of renewal and for conversion into OCI status.

3. MCA No.1040/2018 has been filed by the applicant/father of the child for overnight visitation rights during the Christmas vacation. It is submitted that the minor being a biological son of the parties, is entitled to spend equal quality time with both the parents for the welfare of the child and for his meaningful relationship and development with the non-custodial parent.

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

5. It may be mentioned that the dispute regarding the custody of the child between the parties has long drawn history. Presently, the competent Court has granted custody of the child to

the mother with visitation rights to the father thrice every week. That judgment has been confirmed in First Appeal against which the father has come up in Second Appeal. The Second Appeal is admitted.

6. There were earlier applications filed by the parties seeking rival reliefs. Previously, during Diwali vacation, the mother had sought permission to travel to Mumbai along with the child, when the father claimed overnight custody of the child. This Court, by an order dated 31/10/2018 had granted permission to mother to travel to Mumbai for the period from 09/11/2018 to 18/11/2018, subject to a day time custody being granted to the father in Diwali days, which order has been accordingly complied with. The learned Counsel for the applicant/ father in MCA No.1040/2018 has pointed out that the mother has approached the Hon'ble Supreme Court in SLP, in which similar reliefs about handing over of PIO card and the passport have been made.

7. I have perused the copy of the SLP as produced by the learned Counsel for applicant in MCA No.1040/2018.

8. A serious attempt was made to see whether the parties can arrive at an interim arrangement, which is acceptable to both

the parties on the limited issue of permission to the mother to travel to Mumbai, without visitation rights of the father being affected in a major way. However, again, unfortunately, the parties were unable to arrive at some arrangement on this limited issue. In such circumstances, the law has to take its own course. Although the individual rights of the parties such as that of the mother to travel to Mumbai and the visitation rights of the father are involved, in such cases, the paramount consideration is always about the welfare of the minor.

9. Shri Viegas, the learned Counsel for the applicant in MCA No.1040/2018, submitted that the mother can travel after the Christmas festivities are over. He, however, insisted for an overnight custody for two days of the child.

10. On giving my anxious consideration to the rival circumstances and the submissions made, I find that permission can be granted to the applicant in MCA No.1039/2018 to travel to Mumbai along with the minor from 27/12/2018 to 10/01/2019. This, however, shall be subject to a day long custody of the child being granted to the father for three days i.e. from 22/12/2018 to 24/12/2018 from 10.00 a.m. to 6.00 p.m. and in the morning of 25/12/2018 from 10.00 a.m. to 1.00 p.m. The issue about return of

the PIO card and the passport being pending before the Hon'ble Supreme Court is not dealt with, at this stage.

11. The applications are disposed of in the aforesaid terms.

12. Parties to act on the authenticated copy of the order.

C. V. BHADANG, J.

SMA