

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2935 OF 2018

Roystan F. Marion	.. Petitioner
<i>Versus</i>	
Diana D'Silva and Anr	.. Respondents

...

Ms.Shradha Sawant for the petitioner.
Ms.Maya Pranjal Majumdar for respondent no.1.

CORAM: SMT.BHARATI H. DANGRE, J
DATED : 4th APRIL 2018

P.C:-

1 The present petition is taken out, being aggrieved by the issuance of a show cause notice to the petitioner at the instance of a Regular Darkhast instituted by the respondent wife in the Family Court No.7 at Bandra, Mumbai for executing the judgment dated 14th March 2012. The controversy between the parties appear to be in regards to Term no.3 of the Consent Terms, which was part of the decree. The Term no.3 in the Consent Terms jointly signed by the parties reads thus :

“It is agreed that the petitioner No.1 will bear all expenses of the child Tiara (expenses including medical, education, food, cloth, marriage of the daughter)”.

2 The bone of contention between the parties is about the fees to be paid of a particular school. According to the respondent, the Consent Terms recorded that the child would remain in joint custody of the petitioner nos.1 and 2. However, it is the specific argument of the learned counsel for the respondent that the petitioner has remarried and has a child out of the said wedlock, and therefore, the daughter is not comfortable in residing with the father and she has shifted to her mother and is presently residing in Versova. The school in which, she was earlier attending, was located at Malad. However, now the daughter since Academic Year 2016-17 has been admitted in an ICSE school at Lokhandwala, Andheri. The petitioner father has refused to bear the educational expenses on the count that the fees of this school are on a higher side and it is not affordable for him to bear the said educational expenses of the daughter.

It can be seen that the execution proceedings have been filed by the wife and a show cause notice have been issued as to why the execution proceedings should not be proceeded. The Family Court is ceased of the said proceedings in the Regular Darkhast and this Court cannot act as an executing Court, executing the decree passed by the Family Court. It is open for

the parties to agitate their grievance before the Court where the execution proceedings are pending and the Court is expected to implement a decree in its true sense and spirit after affording necessary opportunity to the parties. The present Writ Petition is not maintainable and hence, liable to be dismissed.

(BHARATI H. DANGRE, J)