

Ladda

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3371 of 2018

Rajkiran Bharat Kumar Gupta ..Petitioner.
Vs
State of Maharashtra & Ors ..Respondents.

Mr. Sandip M. Salvi, Advocate for the Petitioner.
Mr Chirag Shah i/by J.J.Shah for Respondent No.2.

CORAM : SMT.BHARATI H.DANGRE, J.
20th March, 2018.

P.C. :

1 The Petitioner-husband approaches this Court challenging order dated 6th February 2018, passed by Family Court No.4, Pune in Darkhast No. 71 of 2017 by which the application filed by the decree holder was allowed. The judgment debtor was directed to give access of son Ojas Kusurkar to the decree holder, as per the terms and conditions mentioned in the decree of divorce. It is to be noted that marriage between the Petitioner and the Respondent-wife came to be dissolved by judgment delivered on 30th June, 2014, subject to the terms and conditions which were signed by the parties and which were held to be part and parcel of the decree.

The present petition revolves around the implementation of condition No. 7 which reads thus :

“That, both the Petitioners had mutually agreed that the custody of their son Ojas Kusurkar will be with his mother i.e. Petitioner no.2 till the age of 18. Petitioner no.2 will maintain her son Ojas i.e. food, clothing, shelter, medicine. Petitioner no. 1 and 2 both will occur equal expenses of education from Primary to Higher Education till Ojas Kusurkar wants to get his higher education. Petitioner no. 1 and 2 both will bear educational expenses of son Ojas equally and they both will pay it directly in the school of son Ojas. Petitioner No.2 will give payment schedule of fees to be paid of Ojas’s educational expenses to the Petitioner no.1 at the beginning of the academic year whenever Petitioner no.2 will get the same. On the term of holiday of Ojas, it will be equally shared by both the Petitioner mutually. All holidays of son Ojas as per academic calendar of the school including non-working weekends will be shared equally shared by Petitioner No. 1 and 2.”

2 The husband approached the Family Court by filing a Darkhast and seeking implementation of the said decree and he prayed that he

should be granted weekly overnight access on Saturday and Sunday as agreed by the wife in terms of the consent terms and he was not granted overnight access overnight of 66 days for year 2016-17 and for 11 dys in 2017-2018 during long term vacations, as per the terms and conditions. The Family Court considered the said application and on perusal of the consent terms and specifically referring to term No. 7 noted that the father was not granted access in accordance with the said terms. Resultantly, the said application came to be allowed and the impugned order was passed on 6th February 2018.

It is this order, which is, assailed before this Court in the writ petition. The learned counsel for the Petitioner would make an unsuccessful attempt to argue before this Court that as per the wish of the child, he do not intend to be in the company of the father. He would invite the attention of this Court, to a specific statement is made in the application, wherein the husband had made a statement that he was residing in USA, but for availing the access of the child, he had returned to the country in April, 2017 and since then he is in India. The learned counsel for Respondent No.2 makes a categorical statement that at present he do not intend to leave the country and he is residing in India. The apprehension expressed by the learned counsel for the Petitioner that the

father is residing in USA is, therefore, totally unfounded as in the application, statement is made that he was residing in USA, but he has now returned to India.

In such circumstances, since the consent terms, which were signed by both the parties, resulted into decree of divorce, keeps condition No. 7 intact and the parties are duty bound to abide by the said terms. By the impugned order, the Judge of the Family Court has merely directed the parties to act as per the agreed terms of the decree of divorce and has granted access for certain additional days on account of decree holder being deprived of the access during the period of holidays. No infirmity or perversity is found in the order impugned. The order impugned is therefore upheld. Parties are directed to comply with the said order. The present writ petition is dismissed.

[SMT.BHARATI H.DANGRE, J.]