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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION Stamp NO. 6830 of 2018

Mr. Nilesh Rode

..Petitioner.

Vs

State of Maharashtra & Anr

..Respondents.

Mr. Nirmal Mohan Pillai for the petitioner.

CORAM : SMT.BHARATI H.DANGRE, J.

5th March, 2018.

P.C. :

1 The present writ petition is moved by the petitioner who is a doctor by profession and a father of minor daughter Ananya borne out of his wedlock with respondent No.2 Swarna who is also a medical practitioner. Respondent No.2 had instituted proceedings against the petitioner under Section 498A, 406 read with Section 34 of IPC with Vanrai Police Station and same is under investigation. The petitioner has sought a pre-arrest bail from the competent Court at Dindoshi. Attempts were also made to settle the discord between the parties but they turned to be unsuccessful. Respondent-wife has also instituted proceedings under Section 13 (1) (i-a) of the Hindu Marriage Act seeking divorce which are pending before the Family Court, Bandra.

2 In this backdrop, the petitioner moved an interim application

before the Family Court at Bandra praying for an access to his daughter Ku. Ananya for celebrating her birthday in the Children Complex Bandra on 6/3/2018 on account of her birthday. The said application was sworn and filed before the Family Court on 3/3/2018. On the same day the matter was taken up by the Family Court at Bandra and the learned Judge of the Family Court passed the following order :

ORDER

“Put up on fixed date”.

The learned counsel for the petitioner informs that the fixed date is 28/3/2018.

A reply has also been filed by the respondent reiterating a long story of an unsuccessful marriage relationship and the same has been put forth to oppose the relief sought by the petitioner to have an access on a single day i.e. birthday of the child.

3 The learned counsel for the petitioner mentioned the said matter before me today at 11:00 a.m. and sought an urgent circulation in view of the exigency expressed. The learned counsel was informed that let a copy of the application be served on the other side. The matter appears before me in the afternoon session and the learned counsel for the petitioner has placed on record an intimation issued to the counsel for respondent no.2 intimating that the matter is likely to be taken up in the afternoon session as per the directions of the Court. However, when the matter was called out, neither the respondent nor the counsel for the respondent is present.

4 In the peculiar facts and circumstances of the matter, it is taken up for hearing. From the record it appears that the relationship between the petitioner and respondent no.2 is going through a rough pace and is in turmoil. The petitioner is facing serious allegation at the hands of respondent No.2. However, at this stage, this Court is not concerned with the said proceedings. A limited relief is sought by the petitioner who is father, seeking access to his daughter for a limited period on 6/3/2018, the said day being the birthday of his daughter. It is natural for a father to have access to his own child and to spend some precious moment with the child specifically when it is a special day for the child as well as the parents. The petitioner, father, has moved an application with the expectation that he would be in a position to meet his daughter on her birthday and he sought a limited relief of the access being granted for a limited period and that too in the court premises of Bandra so that he can have some celebration of his daughter's birthday in Bandra Court premises. The learned Magistrate did not entertain the application positively and when it was taken up on board on 3/3/2018 the application is simply postponed on the fixed date. Though an exhaustive reply has been filed by the respondent which is signed by the respondent, the said contents of the reply need not be gone into at this stage and it is not to be ascertained as to whether the father was at fault in the relationship which had turned sour or responsible for the marital discord which occurred between the petitioner and respondent no.2. What is important at the present moment is father having access to his daughter for a limited period keeping in view

the intimate relationship between the petitioner being the father and his daughter, he being entitled to equal access to his daughter and in the opinion of this Court father cannot be deprived of such an opportunity in the form of access for a limited period. The learned counsel for the petitioner submits that an access for two hours would suffice the purpose and he is seeking access to the child in Bandra Court Children Complex in Bandra Court.

5 In view of the facts and circumstances of the case, the interest of justice would be served if the petitioner/father is permitted to have access to his daughter Ananya, aged 6 years on 6/3/2018 from 2:00 to 4:00 p.m. in the children complex in Bandra Court. It is open for respondent No.2, mother to be remain present, if she so desires. The petitioner would handover the child to the mother sharp at 4:00 p.m.

It is made clear that this petition is entertained only in the peculiar backdrop of the facts of the matter and to render justice to a father in order to have access to his own daughter on account of her birthday of Ananya, which is special moment in her life and the memories of which she will cherish life long.

Rule made absolute in terms of prayer clause (a).

In view of this order, the writ petition is disposed of since nothing survives after this order granting limited access to the child for a single day.

All the concerned to act on an authenticated copy of this order.

[SMT.BHARATI H.DANGRE, J.]