

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4377 OF 2018

Snehal Kunder ... Petitioner
Vs.
Shann Kunder ... Respondent

Mr. Anil D'souza for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : MAY 4, 2018

P.C. :

Heard D'souza, learned Counsel for the petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 20.11.2017 passed by the learned Judge, Family Court No.5, Mumbai below exhibit-32 in Petition No.A-2690 of 2011. By that order, the learned trial Judge partly allowed the application exhibit-32 and restrained the petitioner from removing the minor child Anaya Grace out of the country without permission of the Court.

3. Petitioner filed application exhibit-27 for withdrawal of the consent terms filed by the parties on 22.04.2013. She also filed application exhibit-36 for maintenance. Respondent-husband filed application exhibit-32 for injunction restraining the petitioner-wife from taking away minor daughter out of the jurisdiction of the Family Court, Mumbai. He also filed another application exhibit-35 for giving access of minor daughter Anaya in the Children's Complex once a month for two hours on any working Saturday. By common order dated 20.11.2017, the learned trial Judge rejected the applications exhibits-27 and 36 filed by the petitioner-wife and partly allowed the application

exhibit-32. Application exhibit-35 was disposed of in view of the consent terms dated 22.04.2013. Petitioner has challenged order below exhibit-32 whereby she is restrained from removing the minor child Anaya Grace out of the country without permission of the Court.

4. In support of this Petition, Mr. D'souza has invited my attention to the prayers made in the application exhibit-32 as also the reply dated 25.07.2016. He submitted that petitioner being Director of Ryan International School has to travel frequently. Having regard to the age of the minor child, who is 9 years old, she has to take her daughter along with her. The respondent has given instances of 2008 and 2009. The petitioner came back to India and thereafter no instances are cited by the respondent. He submitted that in the reply, petitioner specifically asserted that Anaya is already studying in an international school so there is question of the child migrating to other countries for education. He submitted that the application exhibit-32 is made solely with a view to harassing the petitioner. He submitted that the learned trial Judge was not justified in issuing injunction against the petitioner.

5. I have considered the submissions advanced by Mr. D'souza. I have also perused the material on record. In paragraph 6 of the impugned order, the learned trial Judge has noted that petitioner is a Director of Ryan International School. Petitioner's mother, father and brother are also Directors of Ryan International School. They have more than 100 schools in India and a few schools outside India. Petitioner travels frequently abroad and has taken the daughter along with her without disclosing their whereabouts. There is possibility that petitioner may take minor child Anaya and migrate to countries where they have their schools and thus deprive him of meeting the daughter and having any communication with her. In paragraph 7, the learned

trial Judge noted that petitioner has not specifically denied the contention of respondent that she being a Director of Ryan International School has to travel frequently. She has also not specifically denied that her motive is to deprive him for access to the minor daughter Anaya. In the entire reply, she has not denied the contentions raised by the respondent. The petitioner has stopped giving child access to the respondent since long and has also filed application for withdrawal of the consent terms for child access. Having regard to the conduct of the petitioner, the learned trial Judge observed that if injunction is not issued, it will cause irreparable loss. Consistent with these findings, the learned trial Judge issued injunction restraining the petitioner from removing the minor child Anaya Grace out of the country without permission of the Court. In view thereof, I do not find that the learned trial Judge committed any error. For the reasons recorded in paragraphs 6 and 7, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Minal Parab