

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 596 OF 2018

IN

WRIT PETITION NO. 2306 OF 2018

Ashu Dutt ... Applicant

In the matter between

Ashu Dutt ... Petitioner

versus

Aneesha Dutt ...Respondent

Mrs. Taubon F. Irani, for the Applicant/Petitioner.

Mr. Santosh Paul, i/by Mr. Wasim Ansari, for the Respondent.

CORAM : SMT. BHARATI H. DANGRE, J

DATE : 8th MARCH, 2018.

P.C. :-

1. The present civil application is taken out in Writ Petition No.2306 of 2018 and by the said application, the Applicant seeks a relief to restrain the Respondent from using the Company property documents / alleged stolen property documents of all properties for travelling abroad and to

submit original property documents of the properties to the Registry of this Court.

A relief is also sought to direct the Respondent to produce all original share certificates and her passports, her mother and father's passports. Further, relief is also sought to direct the Respondent to produce bank guarantees or properties as collateral security, which she and her family own in India, Singapore and Thailand and other countries instead of using stolen properties and claiming company ownership of Petitioner's companies.

2. The learned Counsel for the Applicant (husband) and the learned Counsel for the Respondent (wife) are ad-idem to the fact that the issue as regards permission to the Petitioner to travel along with her minor son Ahren is already put to rest by the order passed by this Court dated 21/2/2018 (Girish Kulkarni, J.) in Writ Petition No.219 of 2018. The learned Single Judge has set aside the order dated 27/4/2017 passed by the Family Court, by which the application of the Petitioner - wife for allowing the child Ahren, aged 9 years, to travel to Thailand for a period of four weeks with the Petitioner -

mother to meet his grand-father, aged 77 years and who had undergone a cancer surgery, has been partly allowed subject to certain terms and conditions. On a detailed consideration of the controversy involved, the learned Single Judge of this Court was pleased to dispose of the writ petition and the operative portion of the part of order reads as under:-

(i) The petitioner along with her minor son Ahren is permitted to travel to Thailand for a period of three weeks commencing from 16th March 2018 and secondly for three weeks commencing from 2nd May 2018, however, this shall be subject to the conditions as set out in paragraphs 2 to 4 and imposed on the petitioner by the impugned order dated 27th April 2017 passed by the Family Court;

(ii) The petitioner is permitted to approach the Family Court by appropriate application in regard to the prayer to rationalise and standardise the procedure for travel of the petitioner along with the minor child Ahren in future. Such application shall be decided by the Family Court on its own merits and after hearing the parties;

(iii) In regard to the access of the minor child Ahren is concerned, during the period he would be available in India, it would be open for the respondent to make necessary application before the Family Court, which shall be considered by the Family Court on its own merits;

(iv) All contentions of the parties on the merits of the pending proceedings before the Family Court are expressly kept open.

(v) The petition is thus disposed of in the above terms. No costs.

(vi) Needless to observe that a reference and considering of the order dated 9 February 2018 passed by the Sessions Court in this order, would not preclude the respondent to challenge the same. It is open for the respondent to assail the said order if the respondent is in any manner aggrieved by the same. All contentions of the parties in that regard are expressly kept open.

In view of disposal of the writ petition as above, the civil application does not survive. It is accordingly disposed of.

3. The present Civil Application No.596/2018 has been moved by the Applicant subsequent to the passing of the order by the learned Single Judge on 21/2/2018. An allegation has been made in the application that there is no compliance of the order passed by the Family Court regarding submission of the documents and the Applicant goes to the extent of saying that the Respondent is pledging stolen property documents of the companies where she does not own a single share and over which she has no rights and no company has authorized her to offer them as collateral.

It is also alleged in the said application that there is no

compliance of the order passed by the Apex Court and also the common order passed in Exhibit-14 and Exhibit-15 in interim Application No.294 of 2015 and Application No.295 of 2015 in Petition No.D-87/12, which requires submission of original share certificates with the Registrar of the Family Court being taken from the Registrar of Hon'ble Apex Court, where the respondent claimed that they were kept to obtain the order of the Hon'ble Family Court. It is also alleged in the application that the Respondent - wife did not have any shareholding in any company and even the Registrar of Companies ('ROC', for short) has certified to that effect. It is alleged that on earlier occasion the respondent had travelled by submitting irrelevant photocopies and no proof of shareholding was submitted and she is unable to produce a single share certificate to show ownership and/or payment record to show that she has ever held any share. In this backdrop, it is prayed that the Respondent be restrained from using any company's documents which are alleged to be stolen for the purposes of travelling abroad and submit the original property documents of all properties with the Registrar of the High Court.

4. I have extensively heard the learned Counsel Mrs. Taubon F. Irani for the applicant and Mr. Wasim Ansari for the Respondent. The Applicant and the Respondent are Thai national and they were married as per the Thai Law. Due to differences and discord in the marital life, they came to be separated in the year 2012 and faced a long battle in regards custody of two children. Several orders were came to be passed relating to the custody of two children namely Anav and Arshiya and the custody of these children came to be handed over to the Applicant – father. The present application relates to a custody battle of third child Ahren and the application before the Court pertains to the permission granted to the Respondent – wife to travel to Thailand along with minor child – Ahren. The application which is listed before this Court today relates back to the proceedings initiated in the year 2015 and decided by the Bombay High Court by an order dated 25/6/2015 by which the application filed by the Applicant - wife for permission to take her minor child along with her to Bangkok - Thailand to meet the ailing grand-father, was refused by the High Court. The liberty was prayed to take Ahren to Bangkok for a period of two weeks.

The refusal of the High Court was based on earlier order passed by the Apex Court, by which the order dated 18/7/2014 granting leave to travel was reversed. The Hon'ble Apex Court, considered such request once again made, by taking into consideration the efflux of time and the altered circumstances and issued notice to the husband and directed him to personally remain present in the Court.

5. On 10th August, 2015, the Hon'ble Apex Court directed that the Petitioner-wife to file list of properties and an opportunity was also given to the Respondent to file response. Direction was also given to the Registrar of the Bombay High Court to whom the list of properties would be furnished, to verify authenticity of the claim of the Petitioner to be the owner of the said properties through the Jurisdictional Registrar of Companies and submit a report to the Court on the next date. Accordingly, an affidavit came to be filed before the Hon'ble Apex Court by the Respondent Aneesha Dutt in which she has categorically stated that she herself with her father Jaswant Singh Madan have controlling interest in the management of three companies, namely (i) Northbridge Consulting Pvt. Ltd. ii) Cycus Technologies Pvt. Ltd and (iii)

Ashu Dutt Network Pvt. Ltd. and their group Companies. She stated that the said Companies belong to her father and she did not own any immovable properties in India and all the properties are under the ownership of the Companies. In furtherance of the said directions, a detail report was placed before the Hon'ble Apex Court through the Registrar of the High Court Bombay along with a copy of report of ROC dated 17/8/2015. The said report mentions that the ROC had confirmed that the properties mentioned in the affidavit are not held by the petitioners / Ms. Aneesha Dutt in her individual name and on examination of the said fact, which was mentioned in paragraphs 3 of the affidavit and it was also mentioned that the Registrar of Companies is not in a position to confirm as to the details of the shareholders and to what extent they are holding shares in the respective companies as the relevant Form No.2 filed by the respective Companies are lacking details of allottees.

6. Based on the said report from the ROC, the Hon'ble Apex Court on considering the entire gamut of the issue observed that pendency of the custody proceedings and the residence of two children in India, would constitute the best

form of security that could be available to ensure the return of third child, Ahren. The Hon'ble Apex Court allowed the appeal and set aside the order passed by the Family Court and permitted the Appellant to take third child, Ahren, to Thailand for a period of two weeks with prior intimation to the Family Court indicating the date of departure and date of return. The Appellant - wife was directed to file undertaking before the Court stating that she and her child will return in India within a period of two weeks from the departure of the country. The Hon'ble Apex Court also made it clear that in the event the Appellant with her child did not return in terms of the undertaking to be furnished, the extent of shareholding of the Appellant in the companies mentioned in the report of ROC shall stand forfeited. Thus, the Hon'ble Apex Court permitted Respondent - wife to travel along with her son for a period of two weeks and on complying with the conditions, the Respondent - wife travelled and she travelled abroad from 29/8/2015 to 10/9/2015. The Family Court by an order dated 10/3/2015 allowed the wife to take the child along with her to visit Thailand from 12/3/2016 to 31/3/2016 on the same terms and conditions laid down by the Hon'ble Apex Court in

the order dated 25/8/2015. By another order dated 19/11/2015, Family Court at Bombay allowed application of wife and permitted to take the child Thailand from 17/12/2015 to 3/1/2016.

Thus, it can be seen that on three occasions the Respondent - wife had travelled along with the child with due permissions from the competent Court.

7. Then another application was moved before the Family Court seeking the permission to travel in the forthcoming summer vacation commencing from 28/4/2017 to 12/6/2017 and the said permission was granted by the Family Court by order dated 27/4/2017 subject to certain terms and conditions enumerated below:

“1. The Application Exh.29 is partly allowed.

2. The child-Ahren is allowed to travel to Thailand with the petitioner-mother for two weeks during the forth coming Summer vacation commencing from 28.4.2017 to 12.6.2017 on following terms and conditions:-

(i) Petitioner-mother shall take permission from the City Civil & Sessions Court, Mumbai wherein her Anticipatory Bail Application No.ABA/100494/2017 is pending and also take permission from Cyber Police station, BKC, Mumbai, where FIR is lodged against her for travel

to Thailand for 2 weeks.

(ii) Petitioner-mother is also directed the comply with all the terms and conditions and directions as mentioned in the order passed below Exh.44 in Petition D-87/2012, dated 10.3.2016, and they are:-

(a) The child-Ahren is allowed to visit Thailand along with her mother-petitioner for two weeks during forth coming summer vacation commencing from 28.4.2017 to 12.6.2017 on the terms and conditions as stated by the Hon'ble Supreme Court of India in its order dated 25.8.2015 and conditions imposed by my Ld. Predecessor in order dated 19.11.2015 below Exhs.35 & 36.

(b) The petitioner-mother is entitled to accompany the child-Ahren to Thailand for two weeks during forth coming summer vacation after giving information to this Court and to the Registry of Hon'ble High Court.

(c) The petitioner-mother shall submit the passport of child-Ahren before the Registry of Hon'ble High Court immediately after her return.

(d) The Registrar of Hon'ble Bombay High Court is hereby requested to handover the required passport to the petitioner-mother to enable her to travel to Thailand with her child-Ahren in consultation with the Regional Passport Officer and such other authorities as may be considered necessary.

(e) She shall give undertaking that she will abide all the terms and conditions

imposed by Hon'ble Supreme Court in order dated 25.8.2015 as well as this Court in order dated 19.11.2015 and in this order.

(f) The petitioner shall file an undertaking before this Court stating therein that she and her child will return to India within period of two weeks from her departure from the country. It is also made clear that in the event the respondent with her child does not return in terms of the undertaking to be furnished, the extent of share holding of the petitioner-wife in the companies mentioned in the Report of Registrar of Companies shall stand forfeited.

(g) The petitioner-mother is also hereby directed to furnish undertaking that she shall submit copies of her and her child-Ahren to and fro journey/travel tickets before proceeding for Thailand.

(h) The petitioner-mother shall also give undertaking that she will not file any custody or divorce or any other proceeding against the petitioner in Thailand Court.

3. *Petitioner-mother is further directed to submit permission granted by the City Civil & Sessions Court and Cyber Police Station, BKC, Bandra, Mumbai permitting her to travel to Thailand before proceeding to Thailand.*

4. *Petitioner-mother is further directed to produce all the necessary documents, permissions and undertaking in this matter towards compliance of above said order before proceeding for Thailand and also furnish copies thereof for the respondent-father."*

It is this order, which was challenged in Writ Petition No.219 of 2018 and the order passed thereupon is already reproduced above.

8. The said order of the Family Court was put to test before this Hon'ble Court in Writ Petition No.219 of 2018. In the said application before the Family Court, the prayer was made seeking permission to travel during the summer vacation of April-2017 and a relief was also sought from the Court to rationalise and standardise the procedure of travel of the Applicant. This prayer was sought in view of the fact that the Court be able to lay down the terms and conditions subject to which she may be permitted to travel, on every independent occasion and she would be bound by the said terms and conditions.

The learned Family Court in the impugned order did not avert to the said rationalization and standardisation as prayed but had allowed the application permitting the travel from 20/4/2017 to 12/6/2017 on the terms and conditions as stipulated by the order of the Family Court dated 19/11/2015. When this order was dealt by the learned Single Judge in Writ

Petition No.219 of 2018, the learned Single Judge was pleased to observe that the Family Court did not proceed to rationalise and standardise the procedure for future travel and in such circumstances, the learned Single Judge permitted the Petitioner to approach the Family Court by moving an application for appropriate application seeking rationalisation and standardisation of the procedure for travel of the Petitioner along with minor child Ahren in future and issue directions to the Family Court to decide the matter on its own merits and pass the order. The learned Judge also granted permission to travel abroad from 16/3/2018 for a period of three weeks and again from 2/5/2018 for a period of three weeks subject to the terms and conditions set out by the learned Family Court in the impugned order.

9. The grievance raised by the learned Counsel in the application is non-compliance of the terms and conditions of the order passed by the Family Court on 19/11/2015 on an interim application seeking renewal of passport of Ahren and for taking the child abroad. It is urged by the learned Counsel that by virtue of the directions issued by the Family Court on

an order passed below Exhibit-14 and Exhibit-15, on 19/11/2015 the following condition was imposed:

“Before visiting Thailand with child, the respondent shall file the certified copies of documents of her share holdings in various companies, submitted before Hon’ble Supreme Court along with certificate of Registrar of Companies or she shall give her personal bond of Rs.5,00,000/- along with solvent surety of Rs.5,00,000/- before this Court.”

It is alleged that there is no compliance of this condition.

An attempt is made by the learned Counsel for the Applicant to canvas before this Court with the torn “necessary documents”, which include the documents relating to the property in its original and also this stolen property documents which are alleged to be put to use.

I do not find any substance in the said submission canvassed by the learned Counsel. Perusal of the clause 4 of the order passed by the Family Court on 27/4/2017 would refer to those necessary documents, terms and undertaking towards compliance of the clauses 1 to 3 of the order dated 27/4/2017. The clauses mentioned above required the Petitioner - mother to seek permission from the City Civil and Sessions Court, Mumbai, wherein an anticipatory bail

application is pending and also a permission from Cyber Police Station, BKC, Mumbai, where FIR has lodged against her. Further reference is made to an order dated 10/3/2016 which in turn refers to the order passed by the Hon'ble Apex Court on 25/8/2015 as a condition precedent for travel abroad. The condition also stipulates compliance of order dated 25/6/2015 passed by the Hon'ble Apex Court as well as an order dated 19/11/2015 of Family Court. Though the learned Counsel would vehemently argue that it mandates compliance of clause 6 of order dated 19/11/2015, it can be seen that there is no question of issuing of the certified copy of the documents of share-holdings as has been directed by the Family Court in its order dated 19/11/2015. As on one hand, the learned Judge of the Family Court imposes a condition of compliance of the directive imposed by the Hon'ble Apex Court in the order dated 25/8/2015. When the learned Counsel was specifically asked to point out that portion of the order of the Apex Court where it had issued a direction to produce the documents in relation to the property, the learned Counsel would invite my attention to paragraphs 4 to 7 of the order. On perusal of these

paragraphs, in my considered view, there is no stipulation in respect of the submission of any of these documents relating to the property or the shareholding, since the Hon'ble Apex Court itself had before it the report from the Registrar of Companies, which revealed that there are shares in the name of the wife but there is no property in her name and even the affidavit which was submitted before the Hon'ble Apex Court, the Respondent had categorically stated that she and her father Jaswant Singh Madan had controlling interest in the management of three companies namely (i) Northbridge Consulting Pvt Ltd, (ii) Cycus Technologies Pvt Ltd and (iii) Ashu Dutt Network Pvt Ltd and their group companies. She had also made a statement that the companies belong to her father and herself but she did not owned any immovable property in India and all the properties are under the ownership of the companies.

10. The statement made in the Affidavit came to be accepted by the Hon'ble Apex Court and the Hon'ble Apex Court by referring to the report of the Registrar of Companies, which was laid before it, concluded that the immovable properties mentioned by the wife are owned by the companies in which

she had shareholding and in this background and with the said observation, the Hon'ble Apex Court allowed the appeal, setting aside the order of the Bombay High Court and permitted the wife to travel with the third child Ahren to Thailand. It is not permissible for the Family Court or this Court to vary any terms contained the order passed by the Hon'ble Apex Court, which had ensured the return of the mother with the child by imposing stringent condition that if there was any breach of undertaking by the mother, it would result into forfeiture of her shareholding in the companies.

11. The Applicant expressed an apprehension in the present application, which was also expressed before the Hon'ble Apex Court, and it was attempted to canvas that since the Respondent - wife is a citizen of Thailand and she has no property in India, there is every possibility that she may not return. The said apprehension were brushed aside by the Hon'ble Apex Court by making an observation that two children of the Respondent were residing in India and that is the sufficient assurance for her to return for the sake of the aforesaid two children. The learned Counsel for the Applicant, therefore, could not insist upon compliance of the condition

by the Family Court, which is contrary to and not in consonance with the directions of the Hon'ble Apex Court and rather travels beyond the order of the Apex Court. It was not for the first time that the Respondent - mother is taking the child and, in fact, it is not the case of the Applicant that she had flouted the terms and conditions when she travelled and therefore the apprehension seems to be totally unfounded. This Court possessed of sufficient powers to deal with any defiance of the orders including the terms and conditions imposed by it while permitting the Respondent to travel with the child.

In such circumstances, the application is totally misconceived and is without any merit and substance and deserves to be rejected and is accordingly rejected.

[SMT. BHARATI H. DANGRE, J]