

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.122 OF 2018
IN
FAMILY COURT APPEAL NO.77 OF 2018**

Chitra Vasant Shirsat .. Applicant

IN THE MATTER BETWEEN:

Chitra Vasant Shirsat .. Appellant

V/s.

Balchandra Dattaram Korgaonkar .. Respondent

Mr.Amrut M. Vernekar for the applicant

Mr.Balchandra Dattaram Korgaonkar, respondent present in person

**CORAM: K.K. TATED &
B. P. COLABAWALLA, JJ.**

DATED : JUNE 14, 2018

PC. :

1 This Civil Application has been filed by the Applicant for the following reliefs:

“a) That pending the hearing and final disposal of the Family Court Appeal, the enforcement, implementation and

execution of the Judgment and Order dated 30th November, 2017 in so far as it dissolves the marriage between the Applicant and the Respondent by a decree of Divorce and granting the custody of the minor son Balkrishna to the Respondent be stayed;

b) That pending the hearing and final disposal of the Family Court Appeal, the Respondent be restrained from disturbing the Applicant's custody of the minor son Balkrishna;

c) That pending the hearing and final disposal of the Family Court Appeal, this Hon'ble Court be pleased to direct the Respondent to continue to pay to the Applicant an amount of Rs.15,000/- per month as maintenance to the minor son Balkrishna.

d) That pending the hearing and final disposal of the Family Court Appeal, the Respondent be directed to pay to the Applicant an amount of Rs.35,000/- per month towards maintenance and Rs.25,000/- per month towards rent for separate residence.

e) That the Respondent be directed to forthwith pay to the Applicant, the arrears of Rs.2,75,000/- due towards the maintenance awarded to the minor son vide Order dated 3rd April, 2012 by the Family Court, Mumbai at Bandra and towards the main servant charges granted by this Hon'ble Court vide Order dated 8th October, 2014.”

2 We must mention that we have interviewed the child. He has been staying with his mother since birth and has not been separated from his mother since that time. He is currently staying with his mother in Vashi and studying in a school near his residence. He has been in this school since Nursery. He also has friends in that school. The child namely Balkrishna has been staying with his mother as well as grand

parents from his mother's side. After interviewing the child, we do not think that it would be in the interest of the child to uproot him from his present environment and hand over permanent custody to the respondent husband, as ordered by the Family Court in the impugned order. This being the case, we grant interim relief in terms of prayer clause (a) and (b) reproduced above. Over and above this, the Respondent husband shall pay Rs.15,000/- per month for maintenance for his minor son Balkrishna from the date of this order.

3 It is also clarified that as per clause 4 of the operative part of the impugned order, the Respondent husband shall continue to pay an amount of Rs.15,000/- per month by way of permanent alimony to the appellant as well as an amount of Rs.10,000/- per month by way of rent, which is without prejudice to the appeal filed by the Respondent husband challenging the award of maintenance being Family Court Appeal (St.) No.2912 of 2018. As far as prayers for enhancing the maintenance amount to the applicant as well as for the respondent son is concerned, the same is hereby rejected.

4 As far as prayer clause (e) is concerned, we are not deciding the same today and the appellant wife is at liberty and permitted to file separate Civil Application seeking arrears of maintenance, that are allegedly due and payable by the Respondent husband.

5 We make it clear that even though the custody of the minor child shall continue with the appellant wife as ordered earlier, the respondent husband shall have the right of access to the minor child on

every 1st and 3rd weekend, when the father will be entitled to take the child from the child's house at 9 a.m. on Saturday morning and return him back by 1 p.m. on Sunday.

6 Over and above this, the Respondent husband shall be entitled to take the child every first 1/3rd of each of the vacations of the child, provided he hands over his passport to the appellant wife which shall be returned to him simultaneously on the Respondent handing over the child to the appellant wife.

7 We are informed that the Respondent husband's passport is still lying in the Family Court. We direct the Family Court to release the Respondent husband's passport forthwith and hand over the same to him. For this purpose, the Respondent husband shall make a formal application to the Family Court.

8 The child namely, Balkrishna is studying in Vidya Vikasni High School & Jr.College, Vasai (E) (SSC Section). He is currently admitted to 7th Standard but due to the fact the Respondent husband has not jointly signed the application for re-admission of Balkrishna in the said school, he has not been admitted though he has been allowed to sit in class.

9 Today the Respondent husband / father has signed the covering letter addressed to the said school dated 14.06.2018 as well as the form given by the School for the purpose of re-admission of the minor child Balkrishna in the said school in 7th standard. On perusing the

application given by the School, we find that the photograph of the father, mother and child has to be affixed in the said application. The father undertakes to furnish his passport size photograph to the advocate for the appellant wife by tomorrow. The said undertaking is accepted.

10 If for any reason, the photograph of the Respondent husband is not supplied to the advocate for the appellant wife, we direct the said School to register the child in the absence of such a photograph.

11 Civil Application is disposed of in the aforesaid terms.

12 However, in the facts and circumstances of the case, there shall be no order as to costs.

13 Considering the fact that this order has been passed in open court in the presence of the Respondent husband, we expect that he shall comply with the undertaking given to this court without waiting for a copy of the order.

(B. P. COLABAWALLA, J.)

(K.K. TATED, J.)