

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application NO. 40 OF 2018
IN
Contempt Petition NO. 404 OF 2012

Mr. Sachin R. Mhatre	...Applicant
<i>Versus</i>	
Aditi Mhatre	...Respondent

....

Mr. Sachin R. Mhatre, the applicant present in person.
Mr. R.T. Lalwani a/w. Ms. S.J. Lalwani i/b. Prakash Mahadik i/b. Flavia Agnes, for the Respondent.
Mr. A.R. Patil, AGP, for the State.

....

CORAM : R. G. KETKAR, J.

DATE : 27th APRIL, 2018

PC.

1. Heard Mr.Sachin Mhatre, the applicant appearing in person and Mr. R.T. Lalwani, learned counsel for the respondent, at length.
2. By this application, the applicant has *inter alia* prayed for following reliefs :

- a. To direct the Respondent to arrange the handover of the minor son Atharva to the Applicant for overnight access on any two days between 19th to 21st April, 2018 on occasion of birthday of the Applicant or to give access similar to earlier orders passed by this Hon'ble Court.
- b. To direct the Respondent to arrange the handover of the minor son Atharva to the Applicant for overnight access on any two days between 5th to 7th May, 2018 on the occasion of birthday of the minor child

Atharva or to give access similar to earlier orders passed by this Hon'ble Court;

- c. To direct the Respondent to arrange the handover of the minor son Atharva to the Applicant for overnight access for half of the summer vacation of the minor child or to give access similar to earlier orders of access passed by this Hon'ble Court;
- d. To direct the Respondent to arrange for the handover of the minor son Atharva to the Applicant for overnight access on 15th and 16th June, 2018 on the occasion of father's day or to give access similar to earlier orders passed by this Hon'ble Court;
- e. To appoint a Commissioner of the Court for smooth handover of minor son Atharva to the Applicant and to direct the Respondent or her representative coming for handover to strictly obey all the instructions of the Marriage Counsellors or any other commissioner appointed by this Hon'ble Court for smooth handover of the minor child to Applicant;
- f. To allow the Applicant to deposit the amount of maintenance in the Hon'ble Court till smooth handover of the minor child is given to the Applicant by the Respondent;"

3. It is not in dispute that the Petition instituted by the applicant for custody being Petition D-94/2010 as also Petition No.A-1709/2012 for divorce is dismissed by the learned Principal Judge, Family Court, Mumbai on 8.6.2016. It is equally not in dispute that aggrieved by these order, the applicant had instituted the substantive appeal in this Court being F.C.A. (L) No.23907/2016. The applicant appeared in person and sought permission to withdraw the appeal as well as Civil Applications filed therein with liberty to file a fresh appeal along with

applications after taking legal advice. This Court disposed of the appeal as withdrawn with liberty to file fresh appeal along with appropriate applications after accepting the undertaking given by the applicant. It is not in dispute that as of today the applicant has not preferred appeal against the order dated 8.6.2016 passed by the Family Court.

4. The operative part of the order passed by the Family Court insofar as the aspect of access is concerned, is to the following effect :

- “4) The petitioner shall avail access of minor child Atharva on every working Saturday from 11:30 a.m. to 4:00 p.m. in the Children's Complex of Family Court, Mumbai.
- 5) The respondent or anybody on her behalf shall bring the child Atharva sharp at 11:30 a.m. and take back his custody sharp at 4:00 p.m. from the Children's Complex, Family Court, Mumbai, on the day of access.”

5. In the affidavit filed by the respondent it is stated that the applicant has not taken access as per the order of the Family Court dated 8.6.2016 from till June, 2017 i.e. for more than a year. That apart, the applicant has not filed appeal challenging the order of the Family Court.

6. As far as prayer clause (a) is concerned, the applicant has prayed for overnight access on any two days between 19th and 21st April, 2018 on occasion of birthday of the applicant or to give access similar to earlier orders passed by this Court. As far as prayer clause (a) is

concerned, by passage of time this prayer has become infructuous. Insofar as the earlier orders passed by this Court granting access is concerned, in view of the order passed by the Family Court on 8.6.2016, said request cannot be entertained. If at all the applicant desires to obtain orders relating to access on the lines of the earlier orders, he ought to have filed substantive appeal and taken out application in that appeal. As far as prayer clauses (b), (c), (d), and (e) are concerned, the same are also not in tune with Clauses (4) and (5) of the operative part of the order dated 8.6.2016 passed by the Family Court.

7. That apart, the present application is taken out in Contempt Petition which alleges violation of orders dated 9.3.2012 (Exhibit-A), 16.6.2012 (Exhibit-C), 26.7.2012 (Exhibit-E) and 14.8.2012 (Exhibit-F) passed in Petition No.D-94/2010.

8. In my opinion, present application is wholly misconceived. The applicant is not entitled to any relief as prayed for in the application. The applicant is at liberty to file substantive appeal against the order dated 8.6.2016 and file applications for obtaining interim orders therein. Civil Application fails and the same is dismissed.

(R. G. KETKAR, J.)