

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.6199 OF 2017

Mr. Yash Jinendra Munot] Petitioner

Vs.

Mrs. Mukta Yash Munot] Respondent

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Ms. Gauri Godse a/w Mr. Rohit Joshi, for Petitioner.
Ms. Seema Sarnaik, for respondent.

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CORAM : R.G. KETKAR, J.

DATE : 23RD APRIL, 2018.

P.C.

Heard Ms. Godse, learned Counsel for the petitioner and Ms. Sarnaik, learned Counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner/husband has challenged the judgment and order dated 26th October, 2016 below Exhibit 16 as also the judgment and order dated 27th March, 2017 below Exhibit 47 and 16 in P.D No.16 of 2016 passed by the learned Principal Judge, Family Court No.1, Pune.

3. By application Exhibit 16, respondent prayed for following reliefs:
- a. The Respondent be further granted interim custody of both children i.e Master Aryan and Ms. Miraya on every Saturday and Sunday from 11 am on Saturday till 7 pm on Sunday evening.
 - b. Necessary directions be given to the Petitioner to follow the timings of pick up and drop.

- c. The Respondent be given permission to call and talk to the children every day over the telephone, mobile.
 - i. Directions be given to exchange the telephone, mobile numbers.
 - ii. Time may be fixed if deemed necessary.
 - d. The Respondent be further granted interim custody of both the children Master Aryan and Ms. Miraya for half of all the major vacations viz. Diwali Christmas & Summer and other such directions may be given.
 - e. The Respondent be granted access of both the children on Respondent's birthday and on the birthdays of both the children's birthday and also all other Hindu festivals.
 - f. Guidelines as framed and approved by the Bombay High Court, in regards to access of children be followed.
 - g. The Petitioner be called upon to provide to the Respondent via documents all details, in regards to the school, education, extra-curricular activities.
4. By order dated 26th October, 2016, the learned trial Judge partly allowed that application. Clause 2 and 5 of that order read thus;
- “2. Respondent is granted access of both the children i.e Master Aryan and Ms. Miraya on 2nd and 4th Saturday of every month from 11.00 a.m to 1.00 p.m. at Vanita Samaj Sanstha, 1580/1581, Sadashiv Peth, Tilak Road, Pune – 411 030.
 - 5. The respondent should pick and drop the children along with the maid-servant or petitioner from the house of the petitioner”.
5. By order dated 27th March, 2017, the learned Principal Judge declined overnight access to the petitioner and gave access during Summer Vacation. Clauses 2 to 4 of that order read thus;
- 2. Respondent is granted access of both the children i.e Master-Aryan and Miss-Miraya on 28/03/2017 to 30/03/2017 from 2.00 p.m. to 6.00 p.m.
 - 3. Respondent is further granted access of both the children from 04/05/2017 to 07/05/2017, 11/05/2017 to 14/05/2017 from 11.00 a.m. to 05.00 p.m. daily.
 - 4. Further the respondent is granted access on birthday of

Master-Aryan and Miss Mirayaa from 2.00 p.m. to 5.00 p.m.”

6. The matter was moved urgently on the ground that the petitioner's brother Piyush is celebrating his 40th birthday in Dubai between 2nd May, 2018 and 10th May, 2018 and the petitioner desires to take children along with him to Dubai. In that view of the matter, I have interacted with the parties, their children as also parents of the petitioner and mother of the respondent. For whatever reasons, it is not now possible for the petitioner taking the children along with him to Dubai. In view thereof, I heard the parties in respect of the impugned orders as regards granting of access on Saturdays and overnight access.

7. A perusal of the order dated 26th October, 2016 shows that clauses 3 and 4 have become redundant. In view thereof, arguments centered around clauses 2 and 5. It is common ground between the parties that venue of Vanita Samaj Sanstha, 1580/1581, Sadashiv Peth, Tilak Road, Pune was changed and access was given at the place of the petitioner. It is also common ground between the parties that despite the Court granting access from 11.00 a.m to 1.00 p.m on 2nd and 4th Saturday, the petitioner was given access on 2nd and 4th Saturday between 11.00 a.m and 8.00 p.m in the presence of respondent or respondent's maid-servant.

8. In view thereof, it is agreed between the parties that the petitioner will be granted access of both the children on 2nd and 4th Saturday between 11.00 a.m and 8.00 p.m at his residence. At that time, either the respondent or her maid-servant will remain present.

9. In so far as order dated 27th March, 2017 is concerned, a perusal of clauses 2 to 4 shows that access was granted in the month of March, 2017

and in the month of May, 2017. The learned trial Judge noted that prayers (a) and (d) in application Exhibit 16 were dealt with in order dated 26th October, 2016. The petitioner pressed remaining prayers viz; (b), (c) (e) (f) and (g). In paragraph 5 of the order dated 27th March, 2017, the learned trial Judge observed that presently considering the age of the children, overnight access cannot be given.

10. In view thereof, liberty is granted to the petitioner to file a fresh application praying for the reliefs claimed in Exhibit 16 for access of the children on every Saturday and Sunday as also other reliefs claimed in Exhibit 16 including overnight access. If such application is made, the learned trial Judge will decide the application un-influenced by the observations made in the orders dated 26th October, 2016 and 27th March, 2017.

11. Ms. Godse made grievance that while disposing of the application on 26th October, 2016 and 27th March, 2017, the learned trial Judge did not consider the prayer clause (c) as regards permission to call and talk to the children every day over telephone/mobile. In view thereof, the learned trial Judge while deciding a fresh application, will also deal with this prayer. If such application is filed, respondent shall file reply to it within two weeks from receipt of the application and serve copy of the reply in advance on the other side. The trial Judge to decide application within two weeks from filing of the reply. In the light of the aforesaid discussion, Petition is disposed of.

12. All the parties including the trial Court to act upon an authenticated copy of this order.

[R.G. KETKAR, J.]