

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition (ST) NO. 13068 OF 2018

Namita Bakshi	...Petitioner
<i>Versus</i>	
Virendra Joshi	...Respondent

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Mr. R.T. Lalwani, a/w. Ms. S.J. Lalwani i/b. Prakash Mahadik, Advocate for the Petitioner.

Mr. Virendra Joshi, the respondent is present in person.

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CORAM : R. G. KETKAR, J.

DATE : 03rd MAY, 2018

P.C.

1. Heard Mr.R.T. Lalwani, learned counsel for the petitioner and Mr.Virendra Joshi, the respondent appearing in person, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 17.3.2018 passed by the learned Judge, Family Court No.7, Mumbai below Exhibit-115 in Petition No.A.287-2011. By that order, the learned trial Judge partly allowed the application made by the respondent herein and directed the petitioner-wife to give 50% overnight summer vacation access of minor child Monaal to the respondent-father in the following terms, amongst other directions :

- “a) from 26.3.2018 to 3.4.2018 and
- b) from 17.5.2018 to 4.6.2018.
- 3. Respondent-father shall collect the child-Monall from the gate of residence of petitioner-mother on 26.3.2018 at 10:00 a.m. and he shall return back the child to the petitioner-mother at her place on 3.4.2018 at 7:00 p.m.
- 4. Respondent-father shall again collect the child-Monaal from the gate of residence of petitioner-mother on 17.5.2018 at 10.00 a.m. and he shall return back the child to the petitioner-mother at her place on 4.6.2018 at 7.00 p.m.”

3. The matter was heard at length on 27.4.2018 when grievance was made by the petitioner that the respondent has not deposited the arrears of maintenance as ordered on 23.7.2013. It was submitted that the respondent is in arrears of Rs.6,70,000/-. In view thereof, the respondent made statement to the effect that without prejudice to his rights and contentions in the pending proceedings as also in this Petition, he will deposit amount of Rs.6,70,000/- on or before 2.5.2018 under intimation in writing to the Advocate for the petitioner. Office remark shows that the respondent has deposited demand draft of Rs.6,70,000/- in this Court on 2.5.2018.

4. Mr. Lalwani submitted that the respondent is disputing that he is in arrears of maintenance. It is, therefore, necessary to direct the Family Court to go into this aspect and find out whether the respondent has complied the order dated 23.7.2013. After verification, the

petitioner may be permitted to withdraw the amount towards the maintenance. He further invited my attention to the communication dated 24.4.2018 setting out therein the observations by Dr. Maya Nanavati, Administrative Trustee of Physio-Occupational-Speech Academy of Therapists-Foundation. He submitted that as the impugned order is passed on 17.3.2018, said material was not with him. He, therefore, seeks liberty to take out appropriate proceedings in the trial Court for bringing this material on record. He further submitted that the respondent has taken out various interlocutory applications and because of pendency of these applications, though the main proceedings are instituted in the year 2011, same are not disposed of till date. He, therefore, submitted that liberty may be reserved to the petitioner to take out application for expeditious disposal of the main petition.

5. It is not in dispute that paragraph-2(a) and (3) of the operative part of the impugned order are complied with. Now the respondent is to be given access of minor child Monaal from 17.5.2018 at 10:00 a.m. till 4.6.2018 at 7:00 p.m. After hearing the learned Counsel for the petitioner and the respondent appearing in person and after perusing the material on record, I do not find that the learned Judge has committed any error in passing the impugned order. In view thereof, no case is made out for invocation of powers under Article 227

of the Constitution of India. Petition fails and the same is dismissed, subject to following directions :

- [i] The learned Judge of the Family Court will verify whether the respondent has complied the order dated 23.7.2013 after hearing both the parties. The Family Court will pass appropriate order in relation to the amount of Rs.6,70,000/- deposited by the respondent in this Court and permit the petitioner to withdraw the amount after verification. Registry of this Court shall permit the petitioner to withdraw the amount after the appropriate orders are passed by the Family Court, as aforesaid.
- [ii] Liberty is reserved to the petitioner to file application for bringing on record the report dated 24.4.2018. Said proceedings shall be filed only after complying the order dated 17.3.2018.
- [iii] Liberty is also reserved to the petitioner to file application for expeditious disposal of the main Petition. If such an application is made, the learned Judge will pass appropriate order.
- [iv] The parties assure that they will inform each other whenever the child is taken outside the jurisdiction of Family Court, Mumbai.
- [v] Order accordingly.

(R. G. KETKAR, J.)