

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 5350 OF 2018**

Gaurav Mahendra Surana] Petitioner

Vs.

Anjana Gaurav Surana] Respondent

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Mr. Amrut M. Vernekar, for petitioner.

Mr. Shivanand Mishra, for respondent.

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CORAM : R.G. KETKAR, J.

DATE : 3RD MAY, 2018.

P.C.

Heard Mr. Vernekar, learned Counsel for the petitioner and Mr. Mishra, learned Counsel for the respondent at length.

2. This Petition takes exception to the order dated 20th April, 2018 passed by the learned Judge, Family Court No.2, Mumbai in Interim Application No.127 of 2017 (Exhibit 87) in Petition No. A-3084 of 2014. By that order, the learned trial Judge has given temporary custody of the child to the petitioner from 7th May, 2018 at 10.00 a.m and directed him to drop the child back at the same place on 17th May, 2018 at 10.00 a.m.

3. Rule. Mr. Mishra waives service on behalf of the respondent. Having regard to the narrow controversy raised between the parties and at the request and by consent of the learned Counsel for the parties, rule is made

returnable forthwith and the Application is taken up for final hearing.

4. In support of this Petition, Mr. Vernekar has invited my attention to the order dated 29th April, 2017 passed by the learned trial Judge below Exhibit 33. By that order, the learned trial Judge gave 14 days summer vacation access in May, 2017. By consequent order dated 15th May, 2017 passed below Exhibit 33, the learned trial Judge gave access of 16 days in Summer Vacation. In other words, he submitted that in summer vacation in May, 2017 the petitioner was given access of 30 days. As against this, by the impugned order, the learned trial Judge has curtailed the access in Summer Vacation to 10 days as against 58 days of Summer Vacation of 2018 commencing from 7th May, 2018 and ending on 17th June, 2018. He submitted that no reasons are given for curtailing the access in Summer Vacation of 2018.

5. On the other hand, Mr. Mishra supported the impugned order. He submitted that the petitioner is not taking responsibility of education expenses of the child. Having regard to the conduct of the petitioner, even otherwise he is not entitled to access more than what is given by the impugned order. He further states that the respondent is present in the Court. Upon taking instructions from her, he states that the respondent will comply the impugned order by giving access from 9th May, 2018 to 14th May, 2018 and 31st May, 2018 to 4th June, 2018. Statement made by Mr. Mishra on instructions is recorded.

6. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. As noted earlier, by orders dated 29th April, 2017 and 15th May, 2017 passed below Exhibit 33, the learned trial Judge had given access of 14 days and 16 days respectively in the Summer Vacation of 2017. As against this, a perusal of the impugned order

shows that the learned trial Judge has not given reasons for curtailing the access. Respondent has filed application Exhibit 71 for issuing direction to the petitioner to pay Rs. 1,91,600/- towards admission of the minor child and also additional amount of Rs. 1,10,000/- towards next years admission fees for K.G of the said minor, in all aggregating Rs. 3,01,600/-. In so far as grievance of the respondent that the petitioner is not taking responsibility of expenses of education of the minor is concerned, Mr. Vernekar has invited my attention to the order dated 19th July, 2017 passed by the learned trial Judge below Exhibit 71. By that order, the learned trial Judge directed the respondent to produce all documents in respect of schooling expenses and claim reimbursement of that amount from the respondent.

7. Mr. Vernekar submitted that he has filed Petition for review of the order dated 19th July, 2017 which is pending. Without prejudice to the rights and contentions in the pending Review Petition, he has handed over cheque of Rs. 3,01,600/- drawn in favour of the respondent to the learned Counsel for the respondent. Learned Counsel for the respondent acknowledges receipt of the cheque.

8. As the trial Judge has not given any reasons in the impugned order, the same is liable to be set aside. The learned Judge of the Family Court will decide application Exhibit 87 afresh and shall give reasons while passing the impugned order. In the event of learned judge presiding over Court No.2 of the Family Court, Bandra, Mumbai is not available, the learned Principal Judge is requested to assign the matter to any other appropriate Court. Parties agree that they will appear before the learned Principal Judge on 7th May, 2018 and the learned Principal Judge will pass appropriate order assigning the matter to the Family Judge presiding over Court Room No.2 and in the event, Court Room No.2 is vacant, assign it to some other Court. Concerned Court shall fix

the suitable date and pass order within two weeks from the date of appearance of the parties. All the contentions of the parties on merits are expressly kept open. The respondent shall give access from 9th May, 2018 to 14th May, 2018 and from 31st May, 2018 to 4th June, 2018 subject to the orders that may be passed below Exhibit 87 afresh. Rule is made absolute in aforesaid terms with no order as to costs.

9. All the parties to act upon an authenticated copy of this order.

[R.G. KETKAR, J.]