

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

**WRIT PETITION NO.219 OF 2018
WITH
CIVIL APPLICATION NO.86 OF 2018**

Aneesha Dutt

...Petitioner

Vs.

Ashu Khurana Dutt

...Respondent

Mr.Santosh Paul with Mr.Vijay Nair i/b. Mr.Wasim Ansari for Applicant.

Mr.Rohan Cama with Mr.Mangesh Kokare and Mr.Deep Morabia i/b. M/s.Zaid S.Ansari & Associates for Respondent.

Coram : G.S.KULKARNI, J

Date : 21st FEBRUARY 2018

P.C.

Heard learned Counsel for the parties.

2. The challenge in this petition is to the order dated 27th April 2017 passed by the Family Court at Mumbai, by which the application of the petitioner for allowing the third child Ahren aged 9 years to travel to Thailand for four weeks with the petitioner-mother to meet his grandfather (father of the petitioner) who is 77 years old and who has undergone a cancer surgery and who has various ailments, has been partly allowed

subject to certain terms and conditions which reads thus:-

“1. The Application Exh.29 is partly allowed.

2. The child-Ahren is allowed to travel to Thailand with the petitioner-mother for two weeks during the forth coming Summer vacation commencing from 28.4.2017 to 12.6.2017 on following terms and conditions:-

i) Petitioner-mother shall take permission from the City Civil & Sessions Court, Mumbai wherein her Anticipatory Bail Application No.ABA/100494/2017 is pending and also take permission from Cyber Police station, BKC, Mumbai, where FIR is lodged against her for travel to Thailand for 2 weeks.

ii) Petitioner-mother is also directed the comply with all the terms and conditions and directions as mentioned in the order passed below Exh.44 in Petition D-87/2012, dated 10.3.2016, and they are:-

a) The child-Ahren is allowed to visit Thailand along with her mother-petitioner for two weeks during forth coming summer vacation commencing from 28.4.2017 to 12.6.2017 on the terms and conditions as stated by the Hon'ble Supreme Court of India in its order dated 25.8.2015 and conditions imposed by my Ld. Predecessor in order dated 19.11.2015 below Exhs.35 & 36.

b) The petitioner-mother is entitled to accompany the child-Ahren to Thailand for two weeks during forth coming summer vacation after giving information to this Court and to the Registry of Hon'ble High Court.

c) The petitioner-mother shall submit the passport of child-Ahren before the Registry of Hon'ble High Court immediately after her return.

d) The Registrar of Hon'ble Bombay High Court is hereby requested to handover the required passport to the petitioner-mother to enable her to travel to Thailand with her child-Ahren in consultation with the Regional Passport Officer and such other authorities as may be considered necessary.

e) She shall give undertaking that she will abide all the terms and conditions imposed by Hon'ble Supreme Court in order dated 25.8.2015 as well as this Court in order dated 19.11.2015 and in this order.

f) The petitioner shall file an undertaking before this Court stating therein that she and her child will return to India within period of two weeks from her departure from the country. It is also made clear that in the event the respondent with her child does not return in terms of the undertaking to be furnished, the extent of share holding of the petitioner-wife in the companies mentioned in the Report of Registrar of Companies shall stand

forfeited.

g) The petitioner-mother is also hereby directed to furnish undertaking that she shall submit copies of her and her child-Ahren to and fro journey/travel tickets before proceeding for Thailand.

h) The petitioner-mother shall also give undertaking that she will not file any custody or divorce or any other proceeding against the petitioner in Thailand Court.

3. Petitioner-mother is further directed to submit permission granted by the City Civil & Sessions Court and Cyber Police Station, BKC, Bandra, Mumbai permitting her to travel to Thailand before proceeding to Thailand.

4. Petitioner-mother is further directed to produce all the necessary documents, permissions and undertaking in this matter towards compliance of above said order before proceeding for Thailand and also furnish copies thereof for the respondent-father.”

3. It needs to be noted that in the application in question which was filed by the petitioner, apart from the principal prayer that the petitioner be allowed to take her son Ahren to Thailand during the summer vacation commencing from 28th April 2017 to 12th June 2017 on the terms and conditions as stipulated by the Supreme Court in its order dated 25th August 2015 in Civil Appeal No.6516 of 2015 the petitioner had also prayed that for the future the Court rationalise and standardise the procedure for travel of the applicant with her son Ahren Dutt to Thailand. The prayers in the Petitioner's application in which the impugned order is passed reads thus:-

“a) Pending the hearing and final disposal of the present Custody Petition, this Hon'ble Court be pleased to allow the Applicant to take her son, Ahren Dutt, during the forthcoming summer vacation commencing from 28 April 2017 to 12 June 2017, to visit Thailand and Singapore for 4 weeks during the said period on the same terms and conditions as ordered by the Hon'ble Supreme Court of India in

its Order dated 25/08/2015 in Civil Appeal No.6516 of 2015 and direct the Registrar of the Hon'ble High Court of Bombay to hand over the passport of Ahren Dutt for the purpose of travel; and/or

b) In case this Application is heard after the Travel Period as prayed in clause (a), the Applicant be permitted to take her son, Ahren Dutt, anytime thereafter to visit Thailand and Singapore for a period of 4 weeks on the same terms and conditions and prayed above;

c) This Hon'ble Court rationalise and standardise the procedure for travel of the Applicant with her son Ahren Dutt to Thailand or such other destination abroad by the process of informing this Hon'ble Court of the vacation period and furnishing undertakings in accordance with the same terms and conditions as laid down by the Hon'ble Supreme Court in its judgment and order dated 25/08/2015 in Civil Appeal No.6516 of 2015 without having to move further Applications and/or such other terms as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case;

d) Pass such further and other reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case;

e) Cost of the application to be provided.”

4. Learned Counsel for the petitioner has submitted that the petitioner-wife has been dragged into several unwarranted proceedings by the respondent-husband. He submits that there are FIRs filed against the petitioner at different places and thus there are multiple proceedings pending between the parties. It is submitted in regard to the issue of travel of the petitioner with a minor child Ahren, the petitioner was required to approach the Supreme Court in the earlier round and relief was granted to the petitioner.

5. Be that as it may, the grievance of the petitioner in assailing the impugned order dated 27th April 2017 is two fold, firstly that the Family

Court ought not to have imposed the condition no.(i) as prescribed in the operative portion of the order directing the petitioner to take permission from the City Civil & Sessions Court, Mumbai, in the pending Anticipatory Bail Application as also to take permission from Cyber Police Station, BKC, Mumbai, where FIR was lodged against her, for travel to Thailand for two weeks. The second grievance is that the prayer for rationalising and standardising the procedure for future travel was completely overlooked.

6. As clear from the submissions advanced by the learned Counsel for the parties, it is quite clear that after passing of the impugned order (27 April 2017) till this matter is being heard today, certain events have taken place which are relevant to be noted. The petitioner considering the impugned order of the Family Court that permission needs to be taken from the City Civil & Sessions Court, had moved two applications before the Sessions Court at Mumbai, in the pending anticipatory bail application. The first application was Miscellaneous Application (M.A. No.298 of 2017). As investigation was pending, the Court did not grant said application, however, granted liberty to the petitioner to make a fresh application. Accordingly the petitioner moved the second application M.A. No.731 of 2017 which came to be allowed by the learned Sessions Judge by an order dated 9th February 2018. In

allowing the said application, the learned Sessions Judge has observed that the issue concerned the petitioner intending to travel abroad along with the minor son Ahren. Taking into consideration the order dated 25th August 2015 passed by the Supreme Court, it was observed that earlier the Court had permitted the petitioner to travel abroad. It is also observed that there are civil litigations pending between the parties, as also in regard to the investigation under the FIRs the prosecution had ample period to progress the investigation. It was observed that prima-facie there are no chances of the petitioner not returning and the ground that the petitioner intends to meet her ill father was a valid ground. The learned Sessions Judge passed the following order:-

“Misc. Application No.731/2017 is allowed subject to following conditions.

- a) the applicant shall furnish the surety as per the order in ABA No.1202/2017 prior leaving to the India.*
- b) The applicant shall furnish additional cash surety of Rs.2,00,000/- before the Investigating officer or before the trial court.*
- c) The applicant shall furnish full address details of her travel programme and addresses and address proofs with landline numbers of the proposed place of destination in Thailand.*
- d) The attendance of cyber police station during the travel period is relaxed, which will be revived after return of the journey.*
- e) The applicant shall report investigating officer prior leaving to India and immediately after return.*
- f) In the event of any breach of any of these conditions the order of pre-arrest bail shall be deemed to be cancelled.”*

7. It is on this background, I have heard the learned Counsel for the parties. Mr.Paul, learned Counsel for the petitioner, submits that in

view of the order dated 9th February 2018 passed by the Sessions Court, the petitioner along with the minor son Ahren be permitted to travel to Thailand. It is his submission that though the period of travel as set out in the application before the Family Court which was 28 April 2017 to 12 June 2017 has already bygone, nonetheless, he submits that the issue before the Court was also qua the prayer of the petitioner to rationalise and standardize the procedure for travel of the petitioner along with the minor son Ahren to Thailand which was not considered by the Family Court. My attention is drawn to the specific prayers in that regard which are prayer clauses (b) and (c) (supra). It is submitted that the petitioner has bonafide pursued the proceedings before the Family Court, before this Court and the Sessions Court and now in view of the order dated 9th February 2018 passed by the Sessions Court, there is no impediment for this Court to consider all the prayers as made in the petition. Learned Counsel for the petitioner submits that in the light of the orders passed by the Supreme Court and the impugned order passed by the Family Court, sufficient conditions are already imposed on the petitioner and on the same terms and conditions, the petitioner be permitted to travel along with the minor child Ahren for a period of three weeks commencing from 16th March 2018 and also in the Summer Vacation in May 2018.

8. On the other hand, Mr.Cama, learned Counsel for the respondent, has vehemently opposed this petition. The first submission of Mr.Cama is that the petition itself has become infructuous in as much as the travel period as prayed in the application before the Family Court has lapsed being the period commencing from 28th April 2017 to 12th June 2017. The second submission is that the petitioner should clarify her stand as to whether she has accepted the impugned order passed by the Family Court in totality and if the petitioner has accepted the impugned order, then there is no question of entertaining a challenge to the impugned order passed by the Family Court. Mr.Cama has brought to my notice the order dated 6th June 2017 passed by the Sessions Court and the order passed by this Court dated 14th December 2016 in Writ Petition No.13079 of 2016 wherein this Court considering the situation as prevailing at the relevant time had thought it appropriate that the petitioner should approach the Family Court by making a fresh application to seek a permission to travel to Thailand with son Ahren. Mr.Cama has also made submissions on the order passed by the Supreme Court to contend that though the order of the Supreme Court dated 25th August 2015 records that immovable properties mentioned by the petitioner are owned by companies in which the petitioner has certain shareholding, that would not reflect the correct position of the petitioner's shareholding and the petitioner should be called upon to

disclose whether she has sufficient shareholding in the said companies so as to be an adequate security, to permit her to travel abroad. Mr.Cama lastly contends that even considering the order which is passed by the Sessions Court on 9th February 2018, it would be appropriate that the petitioner approaches the Family Court by making a fresh application and all the issues including the issues of permission to travel can be considered and decided afresh by the Family Court. He submits that even the prayer of the petitioner to rationalise and standardise the procedure for travel can also be taken into consideration in such adjudication.

9. Having heard the learned Counsel for the parties and having perused the impugned order passed by the Family Court and the order dated 25th August 2015 passed by the Supreme Court and the recent order dated 9th February 2018 passed by the Sessions Court on M.A. No.731 of 2017, in my opinion, the interest of justice would be served, if the petitioner is permitted to undertake travel to Thailand along with the minor son Ahren for a period of three weeks commencing from 16th March 2018 as also for three weeks in Summer Vacation commencing from 2nd May 2018. This considering the specific orders which are passed by the Supreme Court. Earlier when before the Supreme Court a similar issue had arisen in regard to the travel of petitioner along with

the minor son Ahren to Thailand, the Supreme Court having called for a report of the Registrar of Companies which was laid before the Court and the Supreme Court having considered the said report, opined that the immovable properties mentioned by the petitioner are owned by Companies in which the petitioner has certain shareholding. The relevant extract of the order dated 25 August 2015 passed by the Supreme Court reads thus:-

“4. By our previous order, we had required the appellant to lay details of the property which she owned in India and which she is willing to offer as security for the return of the minor child Ahren to India after the period of two weeks of the proposed visit to Thailand is over. In response to the aforesaid order of this Court details of the property claimed to be owned by the appellant has been laid before the Court which has been duly verified through the Jurisdictional Registrar of Companies by orders passed to the said effect. The report of the Registrar of Companies which has been laid before the Court has been duly perused by us. It appears that the immovable properties mentioned by the appellant are owned by companies in which the appellant has certain shareholding. It appears that the percentage of such shareholding as against the total equity capital of the companies in question is a disputed fact.”

10. Against the above order passed by the Supreme Court, the respondent had filed review petition (civil) No.2952 of 2015 which also came to be dismissed by the Supreme Court by an order dated 29th September 2015.

11. It is on the above conspectus and considering the order dated 14th December 2016 passed by this Court in Writ Petition No.13079 of 2016

the petitioner had re-approached the Family Court by making the prayers as noted above seeking permission to travel to Thailand to meet her ailing father alongwith minor son Ahren who is stated to have immense affection and love for his grandfather. As it had come on record that there are number of FIRs which are filed by the respondent against the petitioner before different Courts and that the parties are entangled in several litigations at several places, the Family Court thought it appropriate to make a direction that the petitioner shall take permission from the City Civil & Sessions Court where the petitioner's anticipatory bail Application was pending in regard to the said FIR's. Accordingly, the petitioner bonafide approached the Sessions Court by two successive applications. The first application was not entertained as the investigation was pending, however, liberty was granted to the petitioner to move a fresh application. Thereafter the petitioner had moved Miscellaneous Application No. 731 of 2017 wherein the respondent also appeared as an intervener. The learned Sessions Judge allowed the said application as noted above, however, making the following observations:-

“8. Perused the documents on record. Considered submissions. It is seen that this is second application for permission to travel abroad. Her earlier application was rejected on the ground that investigation was in progress and she was asking for blanket order for permission to travel abroad. It is to be noted that now more than six months have left after starting of investigation. Moreover, the applicant had applied before the Hon'ble High Court for permission to travel abroad

of her child. The Hon'ble High Court kindly please to wait for the order of this Court regarding the permission to travel abroad. Now matter before the Hon'ble High Court is fixed on 21.02.2018. I have also gone through the orders of Hon'ble High Court and Hon'ble Supreme court. All these Courts have allowed the applicant to travel abroad. The Hon'ble Supreme Court has also expressed views on the return of the applicant in India. It is also seen that these orders are passed in the matter of custody of the child and the orders were passed before filing of this crime. It is seen that now the prosecution has got ample period for the progress of the investigation. There are civil litigations pending between the parties. Therefore, prima facie there are no chances of non returning of the applicant. Moreover, stringent conditions can be imposed to secure the presence of the applicant. The applicant has taken ground that she wants to meet her ill father. The ground is absolutely a valid ground. The custody of the child is not the issue before this court. The issue before this court regarding investigation of crime. Admittedly, the investigation is in progress. The applicant is seeking permission to travel Thailand for a period of three weeks. Of course, when the application was filed one of the prayer was christmas vacation period or any period thereafter. Hence, the permission can be granted at this stage for the period of three weeks for a single trip on stringent conditions. Hence, I pass the following order.” (emphasis supplied)

12. On the aforesaid premise, in my opinion, learned Counsel for the petitioner would be correct in his contention that the petitioner complying all the conditions which are imposed by the Family Court in the order dated 27th April 2017 as also permission being granted by Sessions Court by the order dated 9th February 2018, the petitioner should be permitted to travel to Thailand for a period of 3 weeks commencing from 16th March 2018 and for three weeks commencing from 2nd May 2018. In my opinion, if such limited permission is granted, this would avoid multiplicity and repetition of the proceedings

on this issue before the Family Court for the immediate travel requirement of the petitioner in the coming months of March and April, 2018. Admittedly the prayers as initially sought was for a period from April to June 2017 in the application before the family Court, which could not materialise as in the meantime, the parties were trying to work out some settlement, as also the petitioner had approached the Sessions Court by moving necessary application as directed by the Family Court, which has succeeded in the Sessions Court passing the said order dated 9th February 2018.

13. In regard to the prayer as made in the petition to rationalise and sandardize the procedure for future travel by the petitioner to meet her father along with the minor son, admittedly, there is no consideration to this aspect by the Family Court and it would be appropriate that this issue is visited afresh by the Family Court on the appropriate material that would be placed by the parties before the family Court, so that suitable orders in that regard can be passed after hearing the parties. As there is no adjudication on the said issue, it would not be appropriate for this Court to consider the said issue in this petition. In the light of the above discussion, the following order would meet the ends of justice:-

ORDER

- i. The petitioner along with her minor son Ahren is permitted to travel to Thailand for a period of three weeks commencing from 16th March 2018 and secondly for three weeks commencing from 2nd May 2018, however, this shall be subject to the conditions as set out in paragraphs 2 to 4 and imposed on the petitioner by the impugned order dated 27th April 2017 passed by the Family Court;
- ii. The petitioner is permitted to approach the Family Court by appropriate application in regard to the prayer to rationalise and standardise the procedure for travel of the petitioner along with the minor child Ahren in future. Such application shall be decided by the Family Court on its own merits and after hearing the parties;
- iii. In regard to the access of the minor child Ahren is concerned, during the period he would be available in India, it would be open for the respondent to make necessary application before the Family Court, which shall be considered by the Family Court on its own merits;
- iv. All contentions of the parties on the merits of the pending proceedings before the Family Court are expressly kept open.
- v. The petition is thus disposed of in the above terms. No costs.
- vi. Needless to observe that a reference and considering of the order dated 9 February 2018 passed by the Sessions Court in this order, would not preclude the respondent to challenge the same. It is open for

the respondent to assail the said order if the respondent is in any manner aggrieved by the same. All contentions of the parties in that regard are expressly kept open.

vii. In view of disposal of the writ petition as above, the civil application does not survive. It is accordingly disposed of.

(G.S.KULKARNI, J)