

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1102 OF 2018
IN
WRIT PETITION NO. 11552 OF 2017

Jatin Kantilal Karani	.. Applicant / Org. Respondent
<u>In the matter between :</u>	
Rishita Jatin Karani	..Petitioner
VS.	
Jatin Kantilal Karani	..Respondent

Mr. Vivek Kantawala with Ms Parul K. Vedak, Ms Bhairavi Waravadekar, Amey Patil for Applicant / Original Respondent.
Mr. Gautam Ankhad with Ms Heena Chheda, Mr. Bharatkukar Jain and Mr. Ashish Venugopal i/b. Hariani & Co. for Respondent / Original Petitioner.

AND
CIVIL APPLICATION NO. 1139 OF 2018
IN
WRIT PETITION NO. 11552 OF 2017

Rishita Jatin Karani	.. Applicant / Petitioner
<u>In the matter between :</u>	
Rishita Jatin Karani	..Petitioner
VS.	
Jatin Kantilal Karani	..Respondent

Mr. Gautam Ankhad with Ms Heena Chheda, Mr. Bharatkukar Jain and Mr. Ashish Venugopal i/b. Hariani & Co. for Applicant / Petitioner.
Mr. Vivek Kantawala with Ms Parul K. Vedak, Ms Bhairavi Waravadekar, Amey Patil for Respondent.

CORAM : M. S. SONAK, J.
DATE: 05 JUNE 2018

P.C : (In Chamber)

1] Heard learned counsel for the parties.

2] Civil application no. 1139 of 2018 is not on board. At the request of the learned counsel for the parties, the same is taken on board.

3] Civil application no. 1102 of 2018 seeking clarification / modification of the order dated 5th December 2017 has been moved relying upon the liberty granted in paragraph 11 of the order dated 5th December 2017.

4] Although, several contentions have been raised as regards the maintainability of such an action, for the order, which is proposed to be made, it is really not necessary to go into such contentions, at this stage.

5] There is already, an order for expedition of Custody Petition No. D-42 of 2016. In fact, the Custody Petition was to be disposed of by 28th February 2018. The time is now extended upto 31st October 2018. Both parties, including in particular Mr. Jatin Karani has assured this Court that they will cooperate with the Family Court in the matter of expeditious disposal of the Custody Petition. The parties are also directed not to seek any unnecessary adjournments which invariably hamper the progress of the Custody Petition.

6] In terms of the orders in force, the father Jatin has already been granted access to the children during Summer vacations from 10 am to 7 pm. However, presently, such access, has to be availed at Vadodara.

7] By civil application no. 1102 of 2018, it is submitted that the position of access be slightly modified, so that the grand parents

and great grand father of the children, who are based in Mumbai, also, get to spend some quality time with the children. The great grand father is 85 years old and is in no position to travel to Vadodara to meet the children.

8] The objections as to maintainability proceed mainly on the ground that the previous orders relating to access have attained finality. Normally, there is no finality as such about interim orders relating to custody and access. Such matters have to be essentially resolved or at least attempted to be resolved on the basis of peculiar and manifold situations which arise in such matters. No doubt, the principle that the welfare of the children is paramount, is always required to be kept in mind. Such welfare cannot be placed in some straitjacket. Such welfare, in a given case, will *inter alia* include, opportunity to bond with family members and spend quality time with parents or grand parents or great grand parents. The request that the children come to Mumbai for a few days so that they can spend time with the grand parents or the great grand father, in the present case, is quite reasonable. As it is, the Summer vacations are on and some change, will certainly, not be harmful to the interests of the children. The fact that the great grand father is 85 years of age and it is not reasonably practicable for him to travel to Vadodara, is not seriously disputed.

9] Taking into consideration the aforesaid aspects, the orders as regards access deserve to be slightly modified, in so far as the current Summer vacation is concerned. This modification, will apply only for the current Summer vacations and is ordered in view of the peculiar and exceptional circumstances as aforesaid.

10] Accordingly, Rishita with the children will arrange to arrive at Mumbai's ITC's Grand Central Hotel at Parel (Lalbaug) latest by 10 am of 7th June 2018. Jatin undertakes to reserve appropriate accommodation at the said hotel from 7th June 2018 to 11th June 2018, where, Rishita and the children, can stay during the said period. Lodging and boarding expenses for the aforesaid period shall be borne by Jatin. Jatin will be at liberty to take the children to his home at Matunga or at such other places in Mumbai between 7th June 2018 and 10th June 2018 (between 10 am and 7 pm on each of the days). Jatin to ensure that the children reach the hotel room at 7 pm on each of these days, including, in particular, on 10th June 2018. Jatin to also reimburse air travel expenses in respect of travel by Rishita and the children. The access orders which hold a field presently are modified to the aforesaid extent in so far as the current Summer vacation access is concerned.

11] Mr. Kantawala, the learned counsel for Jatin, on basis of instructions from Jatin, makes a statement that Jatin will have no objection if Rishita withdraws the maintenance amount deposited by Jatin before the Hon'ble Gujarat High Court. Mr. Kantawala submits that if such an application is made by Rishita before the Hon'ble Gujarat High Court, Jatin will not object to such withdrawal, though, this shall be without prejudice to Jatin's right in the proceedings instituted by him before the Hon'ble Gujarat High Court. This statement is accepted.

12] This Court, earnestly hopes that the parties, resolve their disputes amicably at the earliest keeping in mind the welfare of the children. If necessary, the parties, can opt for mediation.

13] Both the civil applications are disposed of in the aforesaid terms.

14] Parties to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)

Chandka