

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.8808 OF 2017

Julie Jayesh Shah	]	Petitioner
Vs.		
Jayesh Trilok Kumar Shah	]	Respondent

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Mr. R.T. Lalwani a/w Mrs. Sadhana Jaikar Lalwani i/b Prakash Mahadik, for Petitioner.

Mr. Rohan Cama i/b Sapana Rachure, for Respondent.

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CORAM : G.S. KULKARNI, J.

DATE : 22nd FEBRUARY, 2018.

ORAL JUDGMENT:

In this Petition, the petitioner-wife is before this Court challenging the order dated 17th July, 2017 of the learned Judge, Family Court No.2 at Mumbai, which was passed to execute an earlier order dated 4 July 2016. By the said order dated 4th July, 2016, the Family Court directed the respondent-father to take appointment of Dr. Harish Shetty Child Psychologist on 6th or 7th July, 2016 and communicate the same to the respondent-mother who was directed to take son Parshva (who would attain majority in July 2018), to the Psychologist at the appointed time and place. The Child Psychologist was requested to do the needful and submit a report. Thereafter, an application dated 12th July, 2016 was moved by the respondent below Exhibit 7 which was an application to execute the said order dated 4th July,

2016, making a prayer for an appropriate direction so as to ensure that the child Prashva is taken for counseling. On this application, the impugned order dated 17th July, 2017 is passed whereby the learned Judge of the Family Court has directed as under:-

“Therefore, the court is required to take coercive steps, so that the application will not become infructuous by efflux of time. In such circumstances, I am constrained to hold that the Judgment Debtor is not ready to make any affirmative statement before the court and if she does not follow the order the court will be constrained to execute the order **firstly by cancelling the maintenance of the Judgment Debtor, secondly by attachment of her movable properties, thirdly by attachment of her immovable properties, fourthly by striking off her defence in Petition No.D-35/2012 and fifthly her arrest and shifting custody of the child to the Decree Holder.**

The Judgment Debtor shall note and act accordingly”.

(emphasis supplied)

2. On this background, the petitioner-wife is before this Court assailing the above orders. This Court had time to time taken up this Writ Petition. By an order dated 4th August, 2017, this Court by consent of the parties had appointed Aekta Brahmhatt, Child Psychologist and Counsellor to interview the child and submit report to this Court in a sealed packet. The impugned order dated 17th July, 2017 was stayed.

3. Thereafter, on 29th August, 2017, this Court considered interim report of the said Counsellor and recorded the statement made on behalf of the petitioner, that the petitioner would take the son to the Counsellor on the

scheduled dates without any hesitation. Her statement was accepted and on the request of the Counsellor, this Petition was adjourned to 31st October, 2017.

4. Accordingly, Counsellor Aekata Bhambhatt has placed on record her report dated 28th October, 2017 which can be considered as a final report. The report clearly indicates that the Counsellor has made certain observations in regard to the effect of the legal issues between the parties on the child. Relevant observations are required to be noted which read as under:

“ A transference from the legal issues between his parents was observed and Parshva was getting affected by them. Normal strains in a father-son relationship were observed which could be corrected by therapeutic interventions along with counseling and appropriate guidance. Difficulties in Parent-child relationship are often observed and in other circumstances, the other parent, grandparents or a mentor or a counsellor plays the role of a mediator but Parshva has no guidance regarding the same. Efforts to heal the relationship and clear misunderstandings could not be done conclusively as the therapy sessions are still in progress.

Emphasis on Interpersonal relationships and Academic Goal setting techniques were used. A DMIT test was deemed important for an analysis of Parshva's intelligence and personality. Several requests for the same were delayed till the 23rd October by the custodial parent.

Parshva has shown improvement in the areas of self expression during the counseling sessions. A transference of strained emotions were observed because of the issues between his parents. He stated that he is getting affected by their battle if not influenced by it. Even if he is not being verbally coached and tutored; and is being encouraged to enhance his relationship with his father as stated by the mother, it is evident that he is imbibing the spirit of negativity and resentment towards his

father. The attitude and behaviour of the parent needs to reflect what is being said as it is a well-known fact that children learn more by what they see and observe rather than what they hear. Parshva requires a different perspective to reflect upon his equation with his father. Regular counselling sessions along with therapeutic play will help Parshva to think objectively and to make choices based on clear understanding and balanced emotions”.

The said Counsellor has in the concluding paragraph of the report made observations to be an ideal situation which read thus:

“Parental counselling and guidance for both parents is strongly recommended for Parshva's well being and happiness. An amicable resolution to their issues is encouraged in order to bring about stability and secure attachment for Parshva. A family is a unit and working with children in isolation is not possible without the support of both parents. The role of each parent is extremely important and non-negotiable in the development of a happy and stable child. In order to achieve the desired goals, Parents need to overlook their own personal conflicts for the higher goal of Parshva's future. The co-operation of both parents in this regard is anticipated”.

5. It is on the above background, this Petition was heard today. Learned Counsel for the parties have advanced their submissions. After some hearing there is consensus between the -parties that the present months are crucial academic months for the son. Son Parshva has outstanding record in academics as pointed on behalf of the petitioner and which is also not disputed by the respondent. It is also placed on record that the child has travelled to Hague/ Netherlands on 27th January, 2018 and returned on 4th February, 2018 to attend Model United Nations Conference. Thereafter, between 16th and 17th

February, 2018, son Parshva was scheduled to attend SISMUN Conference and visit Prague in connection with educational trip (Student Exchange Programme) organized by the School from 16th March, 2018 to 25th March, 2018 and further he would be appearing for ACT examination to be held on 7th April, 2018 and final examination of Grade II, IB from 21st May, 2018 to 31st May, 2018 and thereafter for SAT II examination which is likely to be held in June, 2018.

6. Learned Counsel appearing for the parties suggest that considering this academic schedule, it would be appropriate that if any further counseling is necessary, the same be undertaken only after SAT II examination will over on 2nd June, 2018. The suggestion is reasonable.

7. The learned Counsel for the petitioner on instructions has expressed all willingness of the petitioner to make son Parshva available for any further counselling to be conducted by Aekta Brahmhatt after 2nd June, 2018 till 7th July, 2018 when the son would attain majority. However, considering the age of son Parshava who would be attaining majority on 7th July, 2018, his availability for counseling shall be subject to the son Parshva readily and willingly accepting such counseling. It will be open to the learned Judge of the Family Court in case of any refusal on the part of Son Parshva to personally interview son Parshava and examine whether he is really unwilling

to go for such counseling. Needless to observe that the learned Counsel for the petitioner has fairly accepted that all co-operation in that regard would be extended by the petitioner so that son Parshava is taken for counseling on convenient dates of the Counsellor. It is accepted that between the said period, there are at least about two to four sessions of counseling, if situation so permits. Accepting the above consensus between the parties, the petition can be disposed of in the above terms.

8. However, before concluding, it is necessary to take note and make a comment on the order dated 17th July, 2017 passed by the Family Court, as also the orders dated 4th July, 2016 and another order dated 15th February, 2018 passed by the learned Judge of the family Court to an extent it shocks the judicial conscience of the Court. What is disturbing is the approach of the learned Judge of the Family Court to seek execution of such orders of counseling the son who at the relevant time had completed 17 years of the age and who now would be 18 years on 7th July, 2018. The learned Judge of the Family Court surprisingly has thought it appropriate to “*in terrorem*” execute such interim orders, more particularly when the order dated 4th July, 2016 had itself was to operate only for a limited period. A plain reading of the order dated 4th July, 2016 makes it clear that what was directed was that respondent-father would take appointment of Child Psychologist on 6th or 7th July, 2016 and in regard to the said appointment, the respondent-mother takes the child

to the Child Psychologist.

9. It is very surprising that not only the learned trial Judge after almost one year has entertained the execution application but passed the impugned interim order under the execution application. By the said order dated 17 July 2017, the learned judge of the Family Court has issued the following five consecutive directions:-

Firstly cancelling the maintenance of the Judgment Debtor;

Secondly attachment of her movable properties;

Thirdly attachment of her immovable properties;

Fourthly striking off her defence in Petition No.D-35/2012; and

Fifthly her arrest and shifting custody of the child to the Decree Holder.

10. The question is whether such directions could at all have been made in execution of the order dated 4th July, 2016, which itself had worked out. Secondly, what was sought to be achieved by the said order was forceful presence of son Parshva before the Counsellor who was a teenager, without verifying his willingness. In my opinion, the learned Judge of the Family Court to put it mildly is in a serious error and mistake in exercising jurisdiction vested in him in passing such an order, completely overlooking the delicate issue before him, namely counseling

of a teenager possessing outstanding understanding and high academic qualities.

11. In passing the impugned order, the learned Judge of the Family Court has overlooked the paramount interest of son Parshva to consider the psychology of son Parshva. Learned Judge of the Family Court has also failed to interview the child before passing such a drastic order. It is difficult to understand as to what weighed with the learned Judge of the Family Court to pass such a harsh order so as to terrify the petitioner-mother to face the five drastic consequences for the purported non-compliance of the order dated 4 July 2017. The learned Judge has failed to apply his mind as to whether such order can at all be implemented in such manner and method.

12. It is high time that the learned Judges of the Family Court who are confronted with such issues day in and day out and who are required to exercise the jurisdiction vested in them adopt an approach of sensitivity, judicious consideration of the circumstances and a humane approach in passing such orders. Parties and children before the Family Court are as it is in a disturbed state of mind, they are already suffering under the litigation. It is least expected that such judicial orders in a given situation do not add to the woes and suffering of such parties.

13. It is of paramount importance that all issues are considered in a judicious manner before passing such harsh orders and exhibiting an approach “*in terrorem*”. In executing such an order to make available a child for counseling, it can never be expected that the child who has completed 17 years and who would be a major in July 2018 can be physically made available by the mother before the Counsellor overlooking the circumstances and the basic psychology of the child. What is directed by the order dated 17th July, 2017 passed by the learned Judge was nothing but a forceful act to be undertaken by the petitioner-mother to physically produce the child before the Counsellor, failing which she will have to face not only arrest but also striking out defence, attachment of movable and immovable properties, cancelling of her maintenance. It is very difficult for a conscious judicial mind to come to any terms with such order. It is with pain and heavy heart the above observations are being made.

14. At this stage I am pointed out a further order dated 15 February 2018 passed by the learned Judge of the Family Court which in my opinion compounds my assessment on the nature of exercise of judicial powers by the concerned judge of the Family Court. In this order dated 15th February, 2018 in the last paragraph, the learned Judge of the Family Court has again repeated such undesired method, this time by directing the petitioner-mother to prepare a chart for giving compensatory access of 50 days/200 hours on or before the

adjourned date of hearing and if she fails to give such chart of compensatory access, her defence will be treated as struck down and the Petition will proceed, as if there is no written statement on record. There is definitely something which needs introspection by the concerned Judge of the Family court. There is a hope that on reading of this order, things would be mended and such judicial approach would not be repeated. Resultantly the orders dated 4 July 2016 and 17 July 2017 cannot be sustained and stand set aside.

15. Now coming to the Petition in hand, in my considered opinion, as the learned Counsel for the parties have agreed for a counseling as noted above, further adjudication of the petition is not called for. Accordingly, Petition is disposed of, however, accepting the counseling arrangement as agreed between the parties.

16. Copy of this order be forwarded to the Principal Judge of the Family Court at Mumbai.

(G.S. KULKARNI, J.)