

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
 CIVIL APPELLATE JURISDICTION
Writ Petition NO. 8867 OF 2018
With
Civil Application No.1833 of 2018
In
Writ Petition NO. 8867 OF 2018

Amandeep Randhawa ...Petitioner
Versus
 Jehangir Salim Abdulla ...Respondent

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Ms.Firdous Moosa a/w. Mr. Anuj Dave i/b. Probus Legal, for the
 Petitioner.

Ms.Shirin Merchant i/b. Mr. Hitesh P. Vyas, Advocate for the
 Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 23rd AUGUST, 2018

P.C.

1. Not on board. At the request of Ms.Moosa taken up for admission.
2. Heard Ms.Firdous Moosa, learned counsel for the petitioner and Ms.Shirin Merchant, learned counsel for the respondent, at length.
3. By this Petition under Article 227 of the Constitution of India, the petitioner/wife has challenged the order dated 20.7.2018 passed by the learned Judge, Family Court No.2, Mumbai below Exhibit-29 in Petition No.D.98/2016. By that order, the learned trial Judge allowed the application made by the respondent/husband and directed the petitioner/wife to provide Summer Vacation access to children Jaseer and Mehr respectively to the respondent/husband from 28.7.2018 to 12.8.2018. It is common ground between the parties that in pursuance of the impugned order, the

respondent/husband is given access between 28.7.2018 and 12.8.2018. In view thereof, the challenge in this Petition does not survive.

4. Ms. Moosa submitted that the learned trial Judge, without any application being filed by the respondent/husband, has passed 'No-WS' order. She submits that the petitioner/wife is resident of California and assures that on or before 3rd September, 2018, she will file Writ Petition challenging the order of 'No-WS' passed against the petitioner/wife along with verified written statement of the petitioner/wife. She further submits that the learned trial Judge has fixed the matter on 4th September, 2018.

5. Ms. Moosa also invited my attention to paragraph-7 of the impugned order which records that this Court by order dated 27.3.2018 in W.P. No.3037/2018 has directed the trial Court to decide the application filed by the petitioner/wife under Section 9A of Code of Civil Procedure, 1908 (for short, 'C.P.C.') for deciding the issue of jurisdiction. It is common ground between the parties that the issue of 9-A is not decided. In view of Maharashtra Ordinance No.XVIII of 2018 and in particular Clause (3) thereof, as the preliminary issue under Section 9A is pending on the date of commencement of the Ordinance on 27.6.2018, the same shall be treated as an issue framed under Order XIV of C.P.C. and same shall be decided in accordance with law.

6. As the impugned order is implemented, this Petition is disposed of as infructuous reserving liberty to the petitioner/wife to institute fresh Writ Petition challenging the 'No-WS' order. Same shall be filed on or before 3rd

September, 2018. Ms. Merchant states that she will accept the service of the proposed Petition.

7. As the learned trial Judge has fixed the matter on 4th September, 2018, same shall be adjourned to 11th September, 2018. It is made clear that in case fresh Writ Petition is not filed along with verified written statement of the petitioner/wife, the trial Court will not be precluded from proceeding with the trial from 4th September, 2018.

8. In view of disposal of main Writ Petition, Civil Application No.1833/2018 does not survive and same is also disposed of.

9. All concerned parties, including the Family Court, to act upon the authenticated copy of this order. Order accordingly.

Pradipkumar
Prakashrao
Deshmane
Digitally signed
by Pradipkumar
Prakashrao
Deshmane
Date: 2018.09.24
18:25:33 +0500

(R. G. KETKAR, J.)

Deshmane (PS)