

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

CONTEMPT PETITION NO.444 OF 2017

Dr.Sandeep Shekar Shetty	
Son of Dr.Shekar Shetty	..Petitioner
V/s.	
Dr.Sarika Sandeep Shetty	..Respondent

**WITH
WRIT PETITION NO.9761 OF 2017**

Dr.Sarika Sandeep Shetty	..Petitioner
V/s.	
Dr.Sandeep Shekar Shetty	
Son of Dr.Shekar Shetty	..Respondent

Mr.Sajan Oommen a/w Mr.Amogh Singh i/b Ms.Khazala Zubair Khan for the Petitioner in Contempt Petition No.444 of 2017 and for the Respondent in Writ Petition No.9761 of 2017.

Ms.Seema Sarnaik a/w Ms.Sarah Kapadia i/b Ms.Kokila Kalra, for the Respondent in Contempt Petition No.444 of 2017 and for the Petitioner in Writ Petition No.9761 of 2017.

CORAM : SMT.BHARATI H. DANGRE, J.

DATE : 06th APRIL 2018

P.C.

1. The present liss between the parties revolves around a 9 years old child Saansh who is born out of the wedlock between the petitioner and the respondent. Pertinent to note that the petitioner and respondent both belong to highly educated class and are

Dentists by profession. After solemnization of the marriage on 08-10-2000, the parties resided together for almost a period of five years. In between the child was born and on account of certain irreconcilable matrimonial discord between the parties, the details of which this Court do not intent to deal with, the wife left the matrimonial house along with her child. The mother accompanied the child and she was residing at Bhiwandi along with her parents. It is the case of the petitioner that the father forcibly removed the child from her custody and he was brought to reside at their matrimonial house in Chembur from June 2016 and child resided with the father till November 2016. It was in June 2016 the petitioner also started residing in the matrimonial house but relationship did not improve resulting into the husband leaving the matrimonial home and residing separately with his parents. Since, then the petitioner mother is staying with the child at Chembur and father is residing separately.

2. The respondent-husband has instituted proceedings before the Family Court at Bandra seeking divorce and custody of the son Saansh and the Petition is numbered as Petition No.A-1019 of 2017. In the said affidavit an ad-interim application for access and other reliefs is filed in the year 2017 praying for interim custody

of minor son under Section 26 of the Hindu Marriage Act, and by way of an interim relief interim access is sought on several weekend from Friday evening to Sunday evening. Further 50% of the school holidays, festivals, birthday, an access is sought overnight. Certain other reliefs are also sought in the form of restraining the wife from alienating, ceiling or in any manner creating third party interest in the residential premises B/105, Vanamali Society, Moti Baug, V.K. Patil Marg, Opp. Dukes Factory, Chembur, Mumbai. Relief is also sought to restrained the wife from entering in the house in which the respondent-husband is staying namely 401 Rudresh Complex, 19th Road, Opp.Ambeakar Garden, Chembur, Mumbai-400 071 and restrained her from entering the clinic of the husband located in Chembur. On the said interim application, an order came to be passed on 11th May 2017 by the Family Court, Mumbai, wherein the petitioner-wife was restrained from entering into residential premises and also the clinic of the respondent-husband, thereby, granting the reliefs which were sought in terms of prayer clause (d) and (e) of the application.

3. The Family Court passed an order on 11th August 2017 to the following effect:-

ORDER

- “1. The application is partly allowed.*
- 2. This order is only to the extent of prayer clauses (a) (b) and (c).*
- 3. The petitioner's prayer for custody of child will be decided with main petition.*
- 4. Respondent-wife shall give access of minor son 'Saansh' to petitioner husband on every Saturday from 11.00 a.m. till Sunday 6.00 p.m.*
- 5. The petitioner-husband shall pick up the child 'Saansh' from the lobby of building of respondent on her address mentioned in the cause title on every Saturday at 11.00 a.m. and shall bring back the minor son at the same place at 6.00 p.m. on Sunday.*
- 6. Respondent shall co-operate the petitioner for smooth access.*
- 7. Petitioner is granted 50% vacation access of the minor child more specifically first half of every major vacations such as Summer Vacation, Diwali Vacation and Christmas Vacation.”*

4. Then, began the battle for the custody of the child Saansh and the child was referred to a counseling psychologist, the report of which is obtained on 06th February 2017.

The report is based on the Sessions held with the child from 15th November 2016 to 12th December 2016. The child was required to be referred to a psychological assessment, since the mother has noted certain abnormal rashes over the child and she

also noticed lack of confidence and feeling of insecurity and fear in the child resulting into disturbed sleep. The child psychologist, with the assistance of the mother dealt with child in different sessions and at the end of the sessions expressed an opinion that the serious concern expressed by the mother for which a specific reference was to be made to the psychiatric is addressed and no more counseling sessions, were required with the child Saansh. The application was contested by the respondent vehemently by filing a exhaustive reply. However, on 09th June 2017 the parties amicably filed joint pursis before the Court agreeing as to the manner in which the access would be availed and it was decided that the petitioner father would pick up child from the residence and avail access without interference of the petitioner. An order was passed by the learned Judge of the Family Court on 07th July 2017, modifying the terms and conditions of the access. It is the case of the petitioner as well as the respondent that the access was thereafter availed by the father on 09th June 2017 and further on 10th June 2017 and also on 17th June 2017. An application was also moved by the father seeking access on 10th July 2017 on account of his birthday at the children complex and the access was accordingly availed. The Family Court decided the application on interim access by the impugned order passed on 11th August 2017. By the said order the

application came to be allowed and the prayers made in prayer clauses (a), (b) and (c) were taken up for consideration by the Family Court. The respondent-wife was directed to grant access of the minor son to the petitioner-husband on every Saturday from 11.00 a.m. to Sunday 6.00 p.m. An arrangement was also worked out that the child would be picked up from the lobby of the respondent on the scheduled date and return the child at the same place according to the schedule. The father was also granted 50% vacation access of the child, first half of every vacation such as summer, diwali and such other vacations.

5. It was after this order the blame game between the parties have begun. For one or other reasons the access was not availed and this Court would refer to the orders which were required to be passed by this Court from time to time in order to make the access order passed by the Family Court fruitful and workable matter. Initially on 16th October 2017 as an attempt to resolve the issue between the parties, the matter was referred to the mediation. Prior to this, the matter was also referred to the Commissioner who has also submitted a report to the Commissioner who happened to be the Under Secretary of the Maharashtra State Legal Services Authority, Mumbai who had submitted a report on

16th October 2017. Subsequently, this Court was of the opinion that it would be more appropriate if the access would be availed in presence of an observer in the background of the specific case put up by the petitioner that the child does not want to meet the father and though the mother is ready and willing to abide by the directions issued by the Family Court and want the access order to be implemented, in view of the attitude of the child, he is not comfortable in meeting the father and that there was strict denial of the child to meet the father. In the said context, this Court sought a report from the observer. In the order dated 11th December 2017 passed by this Court there is a reference made to four reports of the observer, the latest being of the access granted on 13th January 2018. In spite of order of the Family Court dated 11th August 2017, the access was only restricted and limited to a day time access either in the Family Court premises and whenever an access was sought to be availed at a neutral place outside the Family Court. It has resulted into act of hurting accusations against each and other and institution of the Contempt proceedings, alleging disobedience of the said order with a specific defence in for unwillingness of the child to meet the father. The overnight access granted by the Family Court on Saturday night till Sunday was never availed nor was the access of vacation as granted by Clause No.7 of the impugned order

fructified.

6. The child Saansh is of tender age and he is at a stage of stepping into an adolescence and undergoing of major shift in thinking process and shaping of his personality. The Judge of the Family Court had an opportunity to interview the child and in the impugned order, in paragraph 7 the Judge Family Court specifically makes a reference to his interaction with the child in his chamber. The Judge has observed that the child is more of adult and he was confident, outspoken and matured. The child has narrated to the Hon'ble Judge all the specific dates and incidents and he specifically mentioned about his dislike towards the father. The child constantly expressed an apprehension that he should not be handed over to the father and he specifically stated to the learned Judge that he is more happy with the mother.

7. This Court also on request of the parties, made an attempt for settling the issue and on a specific request made by the parties had an opportunity to interact with the child Saansh in the chamber independently and also with his parents. The experience of this Court is the same as what has been expressed by the learned Family Court Judge in paragraph No.7 of the order. The child

appeared to be matured, out spoken and very bright. From the demeanor of the child it could be seen that Saansh is a intelligent child capable of understanding of what is happening around him and also aware about delicate relationship between his parents. The child, being staying with the mother for a considerable long period of time appeared to have developed a strong liking for the mother, which is but natural and was frightened at the idea of being separated from her. However, it could not be said that he was averse to the idea of being with the father with the only apprehension which he carried in mind was being taken away from his mother and being made to stay with his father in her absence.

It is very necessary to understand the tender age and the conduct of the child in the backdrop of the serious allegations by the wife and husband made against one another. It is very necessary that the child needs to be handled with great care and caution. Since, the age in which he is stepping into would create a strong and permanent impact of his mind.

In an attempt to deal with the issue and to verify whether the child was acting under the influence of the mother, this Court had directed the parties to explore the possibility of the father meeting with the child without any prior intimation by way of surprise visit either by visiting his school or the places of the tuition

classes. The parties explored this possibility and came up with the report that the child was still not ready and comfortable to be with the father. The learned counsel for the petitioner specifically pointed out that all the symptoms which the child was suffering from when he was initially referred the psychologist had returned and the child was completely nervous.

8. It can very well seen in entire gamut of situation that the parents are highly educated and in an era when parenting itself has become a skilled profession, both parents are enough matured to understand that in the tussle amongst themselves they should in no way cause any harm either psychological, mental or emotional to the child. Considering the educational background of both the parents and strata of the society to which they belong to, it is expected that the parties would act in a matured manner and ultimately cater to the welfare of the child. On perusal of the reports which have been produced on record either in the form of the report of the observer or the report of the psychiatric, including both report the initial report of February 2017 and the latest report of the January 2018, it appears that the child is capable of combating with the fears which he alleges. The psychologist in the latest report dated 12th January 2018 had a detailed session with the

child and has analyzed his fears and apprehension, after the psychologist have zeroed down the reason for his anger even towards the paternal side of the family and the feeling of distress which he had developed. However, the psychologist has also expressed that the fears expressed by the child have been allayed and he was equipped with the technique to combat them. In the conclusion the psychologist he has mentioned that the child was taught relaxing technique to clam his aggression and release his in built tension on which the child feel relaxed and he also express he would like to teach this technique to his mother who herself is undergoing tremendous tension. Thus, the psychologist have analyzed the signs of nervousness of the child. The apprehension expressed by the mother from time to time that the child has expressed, he does not wish to deal with the father and he is scared to deal with the father needs to be dealt with in the manner in which the psychologist had dealt with the said fears of the child. The fear may also be on account of an elements i.e. the paternal alienation syndrome which the child may be suffering from since for a healthy development of a child bonding of the child with both the parents mother and father is equally important. The child has a right to grow in a healthy atmosphere rather it is his right to have company of both his parents. Bonding with his mother would be

distinct bonding from the father. The parties before the Court are fighting for their rights in claiming access to their minor child out of their love and affection. But, here is a child who also has a right to be with his parents, both mother and father and he needs to be showered with love and affection from both of them.

9. It appears that due to the estranged relationship between the parties the child is not fortunate enough to share a bond with the mother and father together and will not be able enjoy their love and affection being showered at the same time. However, it is equally necessary that this love and affection is showered upon him may be in kits and pieas that is turn by turn from the mother and father. This of course is a unfortunate situation but in any contingency, if the parents are not able to reconcile their differences, the Family Court and this Court is left with no other option then to divide the happy moments of the child to be shared with equally by the father and mother in proportion. The report of the observer as well as Commissioner which have been placed on record had revealed that the child was uncomfortable with the father and at first blush immediately on meeting with him at first instance. However, the observer has subsequently observed that when the mother is not around child, the child was more

comfortable and was relaxed and he was seen openly talking and interacting with the father. However, the scenario was totally different, as can be seen from the observers report in presence of the mother and probably it is due to the apprehension in the mind of the child, that in any case do not want to cause any emotional harm to his mother since the child is very attached to the mother. As per the observers report, it is clear that the apprehension is of the child and posing a reserved posture before the father is on account of the fear that good behavior of the father would result into the child being permanently handed over to the father.

In order to remove the inhibition from the mind of the child at this stage, what is more important is to permit the father to have free access to the child. A free access means access in absence of the mother, a time of togetherness between the two and a time which is exclusively left to them with no interference from a third person or third party. This is the only possible way to revive the bond between the father and child and in any case it is not the case of the petitioner that the child had never enjoyed the company of the father and rather it was a period of approximately five months in 2016 when the child had stayed with the father exclusively at Chembur. In such circumstances, this bonding needs to be redeveloped at this age where the child stands, since probably after

lapse of around 1 to 2 years it would be of no avail since the feelings and emotions of the child would then be hardened and if he continues to carry same feeling which he carries towards the father today, it would rather harmful for the psychological, physical, emotional and mental development of the child. This situation is neither in the interest of the mother nor in the interest of the father. As it is already observed above that the parents come from back ground where they are matured enough to understand that their sole child is precious to them and they would take any steps so as to make child happy and would encourage him to blossom into a young man. This is what both the parties are desirous of looking towards to rather than spending their time in Courts and being even distracted from their noble professions. The parents would be happy if the child is happy and the happiness of the child can be ensured by both the parents, who are expected to behave in a responsible manner. The apprehension of the mother that the child will not be comfortable with the father can only be taken care of, if the father is left to the child exclusively and some time is given for both of them to develop and reestablish their bond as a father and son. At the same time it is to be seen that the mother who has cherished the child from such a long time and has taken care of the child and have done whatever best possible to keep the child happy

is also not to be deprived of her right to be with the child nor can the child be deprived of the company of his mother.

10. The petitioner has assailed the order passed by the family Court, making the arrangement of temporary access in the form of access on weekends and in the form of overnight access and also access for the period of vacation. The Judge of the Family Court has passed the said order after a detailed consideration and after observing the demeanor of the child and after taking into consideration the welfare of the child to be a guiding and paramount consideration in matters of such type and has worked out an arrangement which would grant the father overnight access on Saturday night and 50% of the access during the vacation. There is no perversity in the order passed by the Judge Family Court who on a detailed consideration of the interest of the child and after taking into consideration the dispute between the parties have thought it fit, to be an interim arrangement till the custody petition is decided. The Judge has also taken into consideration the growing age of the child and has passed the order of access in order to keep the bond of the child intact with the father till the main petition of the custody is decided. Since this Court is of the view that there is no illegality or perversity in the order passed by the Family Court

and this is only an interim arrangement till the custody petition is decided, the said impugned order needs to to be upheld with certain modification as suggested by the parties.

According to the learned counsel for the petitioner the order of access granted by the family Court permitting father to avail access on every Saturday from 11.00 a.m. till Sunday 6.00 p.m. needs to be modified of granting access on first, third and fifth Saturday by granting overnight access on these days. Let the child be drooped in terms of the direction No.4 of the Family Court in impugned order in the premises of the family Court and the child be collected on expiry of the said period from the Family Court itself in terms of the clause 4. As far as the vacation access is concerned the learned counsel for the petitioner informs that the child Saansh is having his vacation from 25th May 2018 to 20th July 2018. The learned counsel for the petitioner submits that she would avail the access of the child from 25th May to 15th June, since in the first fortnight of June she has planned a vacation of the child. Since the child will be out with the mother upto 15th June 2018, the mother is directed to handover the custody of the child to the father from 16th June 2018. However, for the remainder from 16th June 2018 for the period of upto 11th July 2018 the child is directed to be handed over to father, on availing the access, child would be returned to the

mother.

It is however made clear to the parties that the time lines and schedules are flexible as per the wishes of the child in the sense that in between if the child wants to visit either father or mother, intermittently, taking into consideration the wishes of the child, they would be honoured. Needless to state that when the access for vacation is being availed, there is no question of availing the access of in terms of the direction No.3 of the impugned order. It is made clear that during the respective access by the parties the interaction of the child with the other parent on telephone is most welcome stage.

11. It is to be noted that the learned counsel for the petitioner requested the Court that the access be permitted under the Supervision of some observer so that behavioral pattern of the child can be observed. This Court is of the specific opinion that the access on the earlier occasions was already granted in presence of the observer and what is noted from the report of the observer is that the child is uncomfortable in presence of the mother and the real issue which is identifiable by psychologist is that the child does not want to leave the company of the mother. However, gradually if the child is made to stay with the father, since now there is time for

the vacation to begins, the child would be leaving the mother only from 16th May 2018, the bonding can be developed between the father and child by granting overnight access as directed by the Family Court which is continued by this Court in terms of direction No.4 of the impugned order.

12. It is expected that both the parents would consider the access of the child with the deeper level of understanding and with an ultimate end to let their child blossom as a fully responsible young man and all his emotional, physical and psychological needs are catered by the parents by showering their love and affection on him. This Court expects mature behavior from both the parents by keeping in mind that the child's welfare is a paramount consideration and whatever are the causes for discord in the relationship, they can be ceased out so that if at all they are not able to live as a family, the child is not deprived of enjoying the company of both the parents as mother and father. With these expectations the Writ Petition is disposed of. No order as to costs.

13. It is expected that the parties would comply with this order with a positive approach in their mind. In the light of the aforesaid order the Contempt Petition No.444 of 2018 does not

survive and the same is dismissed.

14. At this stage Mrs.Seema Sarnik sought for grant of stay to the order passed by this Court, however, this Court is of the opinion in view of the fact that the petitioner propose to challenge the order, before the Apex Court. The matter was heard at length by this Court and it is seen by the Court that at this stage bonding between the father and son needs to be established and specifically when this Court has arrived at the conclusion that there is no perversity with the impugned order passed by the Family Court and it is a just an equitable order so as to ensure the welfare of the child Saansh, the prayer for stay is rejected.

(SMT.BHARATI H. DANGRE, J.)