

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12463 OF 2018

Pranjali Rahul Deshpande ... Petitioner
Vs.
Rahul Suresh Deshpande ... Respondent

Ms Seema Sarnaik a/w. Ms Sangeeta Salvi for Petitioner.
Mr. Naveen Sharma i/b. Mr. P. J. Pardeshi for Respondent.

CORAM : R. G. KETKAR, J.
DATE : NOVEMBER 1, 2018

P.C. :

Heard Ms Sarnaik, learned Counsel for the petitioner and Mr.Sharma, learned Counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the order dated 29.09.2018 passed by the learned Judge, Family Court No.2, Pune below exhibit-90 in P.A.No.569 of 2016. By that order, the learned trial Judge rejected the application made by the petitioner for modification of the access order dated 20.03.2017 passed below exhibit-9 and passed following directions:

“2. The petitioner shall give access of the son to the respondent in Children Complex of family Court, Pune on every 1st and 3rd working Saturdays of every month between 3.00 p.m. to 5.00 p.m.

3. During the access period the petitioner shall not cause any disturbance to the respondent and the son.

4. During the access period after handing over the son to the respondent in presence of the staff members of the Children Complex of Family Court, Pune, the petitioner shall stay out of the Children Complex.

5. The petitioner shall co-operate the respondent for the execution of smooth access to the son.”

3. Ms Sarnaik has invited my attention to order dated 20.03.2017

below exhibit-9 passed by the learned trial Judge. By that order, the learned trial Judge allowed the application for access filed by the respondent in the following terms:

- “(a) The petitioner shall provide access to the child Vihan to the respondent on first Saturday of every month between 3.00 p.m. to 5.00 p.m. at Children Complex Centre attached to Family Court, Pune for first four months.
- (b) The first access will fall on 1st April 2017, and from August 2017 onwards for 8 months, the access shall fall on 1st, 3rd working Saturday.
- (c) After one year period, the access arrangement will be reviewed.”

4. Ms Sarnaik submitted that instead of waiting for period of one year for review of access arrangement, respondent filed application exhibit-61 for Diwali vacation access. By order dated 13.10.2017, the learned trial Judge allowed that application in the following terms:

- “2. Limited day time access is granted to the child Vihaan to the respondent from 14th October 2017 to 18th October 2017.
- 3. The respondent shall pick up the child at the gate of the house of the parents of the petitioner on every access day referred above at 10.00 a.m. in the morning and take child to his house and drop back child at 5.00 p.m. at the same place.
- 4. In case of non compliance of the access order, following consequences shall follow:
 - (a) For each days of access, the petitioner shall provide equal days of regular access on forthcoming Sunday as directed referred above.
 - (b) She shall pay compensation of Rs.3,000/- per loss of access if compensatory access not provided. (In case the access above does not happen).”

5. On the same day, petitioner filed application for modification of order dated 13.10.2017. The learned trial Judge modified clauses 2 and 3 of order dated 13.10.2017. She submitted that nothing went wrong. On 21.12.2017, the learned trial Judge passed order below exhibit-83. The order was passed by consent of the parties by giving access of Son Vihan to the respondent on 23rd and 25th December 2017 between 8.00 a.m. and

8.00 p.m. She invited my attention to the application (exhibit-H, pages 67 to 76) and highlighted the incident that took place in the evening of 23.12.2017 and in the morning of 25.12.2017. She also invited my attention to the photographs showing the manner in which the respondent whisked away the minor son Vihan. She submitted that on 19.01.2018, Head Mistress of Pre-Primary Section of M.E.S. Bal Shikshan Mandir, Kothrud, Pune reported disturbed behaviour of son Vihan after Christmas Vacation. She submitted that despite disturbed behaviour of son Vihan during Christmas Vacation, which was given pursuance of order dated 21.12.2017, still, the learned trial Judge has rejected the application made by the petitioner for modification of order dated 20.03.2017 below exhibit-9. She has also taken me through the interim report dated 22.04.2018 and the final report dated 09.07.2018 submitted by Dr. Bhooshan Shukla, Child and Adolescent Psychiatrist. She submitted that the learned trial Judge was, therefore, not justified in rejecting the application exhibit-90 made by the petitioner for modification of the order dated 20.03.2017 passed below exhibit-9.

6. On the other hand, Mr. Sharma supported the impugned order. He invited my attention to paragraphs 17 to 20 of the impugned order. He submitted that the learned trial Judge has given access between 3.00 p.m. and 5.00 p.m. on every 1st and 3rd working Saturday of every month in Children Complex of Family Court, Pune, among other directions. He, therefore, submitted that no case is made out for interfering with the impugned order.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that child Vihan is aged about 6 years. A perusal of the impugned order shows that the parties were referred to Dr.

Bhooshan Shukla, who is Child and Adolescent Psychiatrist, Pune. He is qualified MD, DNB, MRCPsych (London). Dr. Shukla has conducted individual assessment sessions with both the parties and son Vihan. He has also noted historical facts about the relationship of the couple, their stay in the United States and India, loss of two unborn babies (one as induced abortion and the second due to birth defects), preciousness of Vihan as a child born after prolonged wait by both families, his infancy and illnesses and subsequent estrangement of parties. The learned trial Judge has considered this report in paragraph 17 and reproduced the observations made in the interim report dated 22.04.2018 at exhibit-133. The learned trial Judge has referred to the final report dated 09.07.2018 at exhibit-134 where Dr. Shukla gave valuable suggestions.

8. After considering the interim and final reports, in paragraph 19, the learned trial Judge observed that the son Vihan must get company of the respondent to spend some time with him. There should be good rapport and bonding between son and the father. The learned trial Judge further observed that respondent never acted for damaging the mental state of the son when access was going on in Children Complex of the Family Court, Pune. In such circumstances, if the visitation between the son and father are completely stopped then it would be dangerous for the healthy growth of the son. For the welfare and healthy growth of the son, it is necessary to restart the visitation between the son and father immediately.

9. Ms Sarnaik has not invited my attention to any development that took place post final report dated 09.07.2018. The petitioner has not made any allegation against the Psychiatrist. The Psychiatrist, being an expert and neutral person, his reports carry weight. The petitioner has also not made any allegations against Dr. Bhooshan Shukla. In view

thereof and for the reasons recorded in paragraphs 17 to 19 of the impugned order, I do not find that any case is made out for interfering with the impugned order. Hence, Petition fails and the same is dismissed. It will be open to the parties to move the learned trial Judge on account of change of circumstances.

10. At this stage, Ms Sarnaik applies for stay of this order for a period of 4 weeks on the ground that the Family Court had stayed its own order till 16.11.2018. The Family Court had stayed its own order till 16.11.2018 so as to enable the petitioner to approach this Court. As I have dismissed the Petition, I do not find that any case is made out for staying the impugned order. Hence, oral application is rejected. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab