

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition NO. 61 OF 2018

Ms. Nadia Rashid

...Petitioner

Versus

Mr. Shehzad Hemani

...Respondent

Ms.Veena Gowda with Sarah Kapadia, for the Petitioner.

Mr.V.R.Dhond, Senior Counsel with Mr.Vivek Vashi, Farinaz Vakil & Utkarsh Srivastava, for the Respondent.

CORAM : G.S.KULKARNI, J.***DATE : 11th JANUARY, 2018***

P.C. :

1. After having heard the learned Counsel for the parties for some time and after perusing the impugned order dated 18 July 2017 passed below 'Exhibit 19' on an application as made by the respondent-husband, it is quite clear from reading of paragraph 3 that it is an order ex-parte to the petitioner-wife. The order clearly records that though the petitioner/respondent therein opposed the application, the petitioner was absent as also her advocate had withdrawn vakalatnama.

2. By the impugned order, the interim custody of the minor child-daughter Insiya who is three and half years of age is directed to remain with the respondent-husband. Subsequent to passing of this order, the

petitioner who is stated to be in Netherland has moved an application (below 'Exhibit 29') dated 11 October 2017 making the following prayers:-

“a) that the Hon'ble Court be pleased to reject/return the present petition;

b) that the Hon'ble Court be pleased to direct the Petitioner herein to return custody of the minor child Insiya to the Respondent/mother;”

The said application below 'Exhibit 29' is stated to be made under Order VII Rule 10 read with Section 9 and 151 of the Code of Civil Procedure read with Section 9 of the Guardian and Wards Act,1980. It appears that hearing of this application has progressed substantially. However, it appears that for the immediate relief as the petitioner would pray under prayer clause (b), there is some problem which has arisen due to clubbing of prayers (a) and (b). Prayer (a) seeks rejection of the petition filed by the respondent-husband. Prayer (b) is to the effect that the custody of the child be granted in favour of the petitioner-wife, it also would obviously mean that the petitioner-wife is seeking vacating of the ex-parte order dated 18 July 2017 by which the interim custody of the minor daughter was granted to the respondent-husband.

2. Considering the facts and circumstances of the case and the respective contentions of the parties and more particularly the most

significant factor that the girl child being three and half years of age, it is appropriate that pending the decision on prayer clause (a) which raises the larger issue on the jurisdiction and maintainability of the petition, it is imperative that prayer clause (b) which pertains to the custody of the child to be handed over to the petitioner-wife, is required to be decided, without any delay. Considering the peculiar facts of the case, learned Counsel for the parties are agreeable for this course of action.

3. I, therefore, consider it appropriate to dispose of this petition by directing the learned Principal Judge of the Family Court at Bombay to decide the application as filed by the petitioner-wife below 'Exhibit 29' on prayer clause (b) in regard to interim custody of the minor child. This be done within a period of two weeks from today.

4. Needless to observe that all contentions of the parties on merit of the matter are expressly kept open.

5. Petition is disposed of in the above terms. No costs.

6. Parties to act on the authenticated copy of the order.

(G.S.KULKARNI, J.)