

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 388 OF 2019

IN

SECOND APPEAL NO. 75 OF 2018

ROXANN SHARMA.,

... Applicant

Versus

ARUN SHARMA.,

... Respondent

Adv. Maria Caroline Collasso for the Applicant.

Adv. Ryan Da Piedade Menezes for the Respondent.

Coram:- C. V. BHADANG, J.

Date:- 15th April 2019

P.C.:

This is application to permit the applicant to leave the State of Goa and travel to Mumbai for a period of 15 days in order to deal with the termination of the lease of the flat, to dispose off her personal belongings and to celebrate the birthday of her son which falls on 18/4/2019.

2. The application is opposed on behalf of the respondent. It is contended that this is yet another attempt to deprive the respondent from his visitation rights.

3. I have heard Ms. Collasso, the learned counsel for the applicant and Mr. Menezes, the learned counsel for the

respondent.

4. In the past, the applicant has been permeated to travel to Mumbai. Presently, the permission to travel to Mumbai has been sought on the ground that the applicant wants to terminate the lease of the flat at Mumbai and dispose of her personal belonging and also to celebrate the birthday of the child, which falls on 18/4/2019.

5. Presently the respondent is granted visitation rights on every Tuesday, Thursday and Saturday. During the course of the arguments at bar, it transpired that the sister and brother-in-law of the respondent have come down to Goa. The learned counsel for the respondent in the alternative submitted that the respondent may be given an overnight custody of the child, so that he can spend some quality time with his father i.e the respondent and the close family members.

6. The learned counsel for the applicant, although opposed the request for an overnight custody, submitted that the visitation rights may be granted for an extended period during the course of the day. It is submitted that the child is not comfortable in the company of the respondent and thus it would not be in the interest of the child.

7. I have given my anxious consideration to the rival circumstances and the submissions made. As noticed earlier, this Court in the past has permitted the petitioner to travel to Mumbai along with the child. In a dispute of the present nature, really it is not the individual rights of the parties which take precedence, but what is of paramount importance is the welfare of the child. The individual right of the applicant to travel to Mumbai, for personal reasons and the right of the respondent for visitation, have to be considered and could be enforced only in the context of the paramount consideration as to the welfare of the child. It transpires that even on the previous dates, when permission was granted to the applicant to travel to Mumbai the visitation was given for some extended period during the course of the day. In a dispute of the present nature, the Court on taking into consideration the overall circumstances is required to take a reasonable and a pragmatic view of the matter in order to balance all the conflicting considerations.

8. Having bestowed my anxious consideration to the circumstances and the submissions made, I find that the applicant can be granted permission to leave the State of Goa and to travel to Mumbai from 22/4/2019 to 2/5/2019 subject to the following conditions:

(i) The overnight custody of the child shall be handed over to the

respondent (after the usual visitation hours), during the night intervening between 16th and 17th April, 2019.

(ii) The custody of the child shall be returned to the applicant at 9.a.m. on 17th April, 2019.

(iii) On 18/4/2019, the parties will abide by the usual visitation hours granted to the respondent.

(iv) On 20/4/2019, the respondent shall be permitted to exercise his visitation rights from 3p.m. to 8.30pm.

(v) Subject to the compliance with the aforesaid conditions, the applicant is permitted to leave Goa for visiting Mumbai, from 22/4/2019 to 2/5/2019.

9. The Civil application is disposed of in the aforesaid terms.

C. V. BHADANG, J.

ap/-