

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

**CIVIL APPLICATION NO.96 OF 2019
IN
FAMILY COURT APPEAL NO.113 OF 2018**

Dr. Nidhi Pandey ... Applicant

Versus

Mr. Deepak Shivanand Pandey ... Respondent

.....

- Ms. Jai A. Vaidya for Applicant.
- Mr. Sunip Sen i/b Hafeezur Rahman for Respondent.

CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.
RESERVED ON : 24 APRIL, 2019
PRONOUNCED ON : 02 MAY, 2019

P.C. :

1. This is an application filed by the Applicant for staying the order dated 20/12/2018 passed in Family Court Appeal No.113/18 along with Family Court Appeal No.127/18 and also for modification of the same. Apart from this, the Applicant has sought some other directions. The Applicant has sought production of CCTV footage captured on 02/03/2019, of the

waiting area of the Children's Complex of Family Court and has sought further direction for restraining the Respondent from following the child or threatening him.

2. This Application is a part of bitter fight between the Applicant and the Respondent. The Family Court Appeals were filed by both the parties for different purposes challenging the same Judgment and Order dated 03/05/2018 passed by the learned Judge Family Court at Bandra, in Civil Miscellaneous Application No.1/16.

3. The marriage which was solemnized between the Applicant and the Respondent was dissolved by a decree of divorce by mutual consent under section 13B of the Hindu Marriage Act, 1955. However, the dispute did not end there and the fight for custody and access of their son continued even thereafter. Their son was born on 04/10/2003 and today he is about 16 years of age. By the order impugned in these Appeals, the learned Judge, Family Court, Mumbai, had modified the

Consent Terms dated 07/02/2009 regarding the access given to the Respondent to meet his son. It was directed that the Respondent was entitled to have access to his son in Children's Complex of the Family Court at Bandra once every month, i.e. first working Saturday of every month from 3 to 5 p.m. in presence of mother or her representative. There were other directions issued. But the main bone of contention was regarding his access. Both the parties challenged this part of the order vide these two Family Court Appeals.

4. When these Family Court Appeals were listed before this Court on 16/07/2018, the matter was referred to Dr.Harish Shetty, who was expected to interact with the parties including their son. The Minutes of Order signed by both the parties were taken on record.
5. Dr.Harish Shetty has submitted his confidential report in the Court after interacting with the parties and their son. When the matter was again listed before this Court on

20/12/2018, after hearing both the sides and after perusing the report submitted by Dr.Harish Shetty, this Court (Coram : K.K. Tated and N.M. Jamdar, JJ.) passed a detailed order considering the submissions of the parties. The Respondent was given access to his son in the premises of Children's Complex at Family Court Bandra, on first working Saturday of every month from 3 to 5 p.m. commencing from the month of January, 2019 for six months. This was the main direction. Apart from this, other consequential directions for facilitating operation of this direction were also passed.

6. Following the order dated 20/12/2018; on 05/01/2019 and 16/02/2019, the Respondent met his son. However, on the third occasion i.e. on 02/03/2019 at the time of access, some issues arose and therefore the Applicant has filed this application. It is the contention of the Applicant that on 02/03/2019 the Respondent insisted on checking and inspecting their son's bag. It is also the case of the Applicant that the Respondent uttered a few words which deeply hurt their son.

According to the Applicant, the Respondent passed some discouraging remarks regarding their son's academic progress and intelligence, due to which, their son was demoralized. According to the Applicant, he was deeply hurt and he refused to meet the Respondent after that. In this background, the Applicant is seeking modification of the order dated 20/12/2018.

7. The Respondent has filed his affidavit-in-reply contesting the claim of the Applicant. It is his case that he is concerned about his son's welfare and he is desirous to see that his son attains full potential and education in school and extra-curricular activities. The Respondent described the circumstances in which the access took place on 05/01/2019 and 16/02/2019. Insofar as the access dated 02/03/2019 is concerned, it is important because the Applicant has raised a few issues regarding the events of that day. The Respondent has presented his own version. He has mentioned in the affidavit that he had observed sudden change in the behaviour of his son and

therefore he became apprehensive and thought that the Applicant might have inserted some recording device in his bag. Because of this belief he requested his son to keep the bag at some distance and he requested the Counsellor to check the bag for any recording instrument. It is his case that his son happily showed bag to the Counsellor and the access was not bitter as described by the Applicant. He has referred to some interaction with his son.

8. We have heard the learned Counsel for both the parties Ms.Jai Vaidya appearing for the Applicant submitted that because of the events which took place on 02/03/2019, the child was traumatized and absolutely refused to meet the Respondent after that. She submitted that taking search of his son was not warranted and has left a deep scar on the child's psyche. She submitted that future meetings between the father and son pursuant to the order dated 20/12/2018 would be detrimental to the interest and welfare of the child. She therefore submitted that the order dated 20/12/2018 needs to be modified.

9. As against the contentions of the Applicant, the learned Counsel Mr. Sunip Sen for the Respondent submitted that the allegations and in particular the reference to the incident dated 02/03/2019, are not true. The Respondent was sincerely making efforts to develop a bond with his son, but the Applicant was raising obstacles in the process. He submitted that since his son is staying with the Applicant, it is but obvious that the Applicant has tutored his son. His son is under pressure and not freely expressing his desire because of tutoring. He submitted that in any case, the son has entered a delicate age and he needs guidance and assurance of his father.

10. We have considered the rival submissions. We have perused the report given by Dr. Harish Shetty. We have interviewed the child in our chamber. We found that the child was quite intelligent. He had brought various certificates earned by him in different subjects. He is taking education in a reputed school. We found him to be mature enough to understand the situation and form his own opinion. We also found him to be a

sensitive boy. During our interaction, he clearly expressed his strong displeasure about the events that took place on 02/03/2019. Even on earlier occasions he was reluctant to meet the Respondent, but from 02/03/2019 he developed strong unwillingness to meet the Respondent. He repeatedly requested us not to force him to meet the Respondent.

11. Giving prime importance to the welfare of the child and his desire, we are inclined to modify the order dated 20/12/2018. In our view it is absolutely necessary that some time is allowed to pass as a “cooling off period” before the Respondent is allowed to meet the child. In our considered opinion, it would be detrimental to the child if he is forced to meet the Respondent against his wish in immediate future. Such period of denial of access will help the boy to get over his hurt and resentment. This in turn will be in the interest of the Respondent as well, because after the time gap, the Respondent would be in a better position to interact with his son, if such hurt received by the son is diluted to some extent. In this view of

the matter, modifying the order dated 20/12/2018, we clarify that, it is not necessary for the Applicant to provide access of their son to the Respondent for the remaining period mentioned in the order dated 20/12/2018. The Respondent is at liberty to make an Application for access to his son during pendency of these Appeals after 31/08/2019. In view of these directions, it is not necessary to consider other prayers made by the Applicant. The application is disposed of in the aforesaid terms.

(SARANG V. KOTWAL, J.)

(AKIL KURESHI, J.)