

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.5421 OF 2019

Shantanu Dhananjay Pashankar	]	Petitioner
Vs.		
Pooja Shantanu Pashankar	]	Respondent

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Mr. Pradeep J. Thorat, Advocate for the Petitioner.

Ms. Dhavani Jain a/w Mr. Rampal Singh Kohli i/b C.K. Legal, Advocate for Respondent.

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CORAM : R.G. KETKAR, J.

DATE : 2nd MAY, 2019.

P.C.

Heard Mr. Thorat, learned Counsel for the petitioner and Ms. Jain, learned Counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 16th April, 2019 passed by the Principal Judge, Family Court No.1, Pune below Exhibits 106 and 121 in P.A. No.424 of 2018. By that order, the learned trial Judge partly allowed the application Exhibit 106 filed by the petitioner/father for giving access to the daughter Saloni for half period of Summer holidays/Vacation. The learned trial Judge gave access of 20 days of daughter Saloni to the petitioner on every day from 10.00 a.m to 5.00 p.m in Summer Vacation/Holidays during the period from 21st April, 2019 to 30th April, 2019 and from 22nd May, 2019 to 31st May, 2019. The learned trial Judge also issued other directions.

3. Rule. Ms. Jain waives service. Having regard to the nature of the controversy raised in this Petition, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. In support of this Petition, Mr. Thorat submitted that only reason given by the learned trial Judge for denying overnight access is that younger sister of the petitioner is a working woman and it is difficult for her to take full care of Saloni during the night hours. There is no other female member in the house of the petitioner. The learned trial Judge, therefore, thought it appropriate to give access of daughter Saloni in the day time from 10.00 a.m to 5.00 p.m for the period of 20 days from 21st April, 2019 to 30th April, 2019 and from 22nd May, 2019 to 31st May, 2019. He invited my attention to the affidavit dated 30th April, 2019 filed by the petitioner to contend that his sister Sharyu Dhananjay Pashankar will take leave for some days and during the entire period of stay of his daughter will come home early and will be available with his daughter throughout the night time. His sister will not be available only between 6th May, 2019 and 13th May, 2019. The overnight access may be granted to the petitioner from 3rd May, 2019 to 6th May, 2019 and from 14th May, 2019 to 31st May, 2019.

5. Mr. Thorat further submitted that the petitioner had paid entire arrears of ad-hoc maintenance @ Rs.1,00,000/- per month to the respondent as also paid society maintenance charges on 1st May, 2019. On the other hand, Mr. Kohli and Ms. Jain strenuously opposed the contention. Mr. Kohli submitted that the respondent has no objection in case the petitioner resides at Western Hills, A2-201, Survey No.45/1 and 2, 46/1 and 2 besides Bela Casa, Pashan-Sus Road, Sus Village, near Mohan Nagar Co-operative Housing Society, Pune 411 021 so that the petitioner can have overnight access as per the impugned order. He further submitted that the respondent is ready and

willing to give undertaking that she will not file any complaint against the petitioner during his stay at Pashan-Sus Road premises.

6. Ms. Jain further submitted that the respondent has filed application before the trial Court on 15th April, 2019 seeking permission to take daughter Saloni abroad between 11th May, 2019 and 19th May, 2019 and the said application is still pending. Even the tickets have been booked. She submitted that appropriate direction may be issued to the learned trial Judge to dispose of the said application. She further submitted that in paragraph 1 of the affidavit, it is stated that his sister Sharyu is working as Deputy Manager in an IT Company named WNS and her office is at Vimannagar Pune. Her office timing is between 2.30 p.m and 10.30 p.m. She submitted that in fact, Office timing of Sharyu is from 1.30 p.m to 3.a.m, next date. She further submitted that the learned trial Judge was justified in denying overnight access on the ground that there is no female member in the family of the petitioner. She, therefore, submitted that no case is made out for interfering with the impugned order.

7. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. For the reasons recorded in paragraph 11, the learned trial Judge has denied overnight access. Paragraph 11 reads thus;

“Admittedly, the petitioner and respondent are the parents of daughter Saloni who is in the custody of mother – the respondent. It is also admitted fact that access of daughter Saloni on every Saturday from 11.00 a.m to 05.00 p.m has been granted to the petitioner. There is no dispute that summer vacation/holidays to the school of daughter Saloni started from 13/04/2019 and ends on 02/06/2019. The petitioner being the father of the Saloni, has

right to enjoy her company. Saloni also needs love and affection of her father along with her mother. So, I am of the opinion to grant access of Saloni to the petitioner in summer vacation/holidays. It appears that the younger sister of petitioner is a working woman and it is difficult for her to take full care of Saloni during the night hours. There is no other female members in the house of the petitioner. So, I am of the opinion that the access of Saloni should be given in day time from 10.00 a.m to 05.00 p.m for the period of 20 days from 21/4/2019 to 30/04/2019 and from 22/05/2019 to 31/05/2019”.

8. In paragraphs 12 to 14, the learned trial Judge noted that the petitioner has not paid ad-hoc maintenance to the respondent @ Rs.1,00,000/- per month. Thus, on these two grounds, the learned trial Judge rejected the prayer of overnight access.

9. A perusal of the affidavit dated 30th April, 2019 of the petitioner shows that the petitioner's sister Sharyu is working as Deputy Manager in an IT Company named WNS and her office is at Vimannagar Pune. Her office timing is between 2.30 p.m and 10.30 p.m. In paragraph 2, it is stated that his sister will take leave for some days and during the entire period of stay of his daughter Saloni, she will come home early and will be available with his daughter throughout the night time. It is, therefore, necessary to ensure that his sister returns from Office by 7.00 p.m and shall be available with daughter Saloni throughout the night time. The petitioner has also paid ad-hoc maintenance and society maintenance charges on 1st May, 2019 as also cleared arrears of maintenance @ Rs.1,00,000/- per month payable to the respondent. It is not in dispute that Saloni is in the custody of the respondent. It is also not in dispute that she is having summer vacation from 12th April, 2019 to 12th June, 2019.

The petitioner has sought overnight access of daughter Saloni for half of the Summer Vacation during the holidays.

10. Being a father, it is but natural for the petitioner to claim overnight access of the daughter. It is also necessary for proper psychological and physical development of the child to have access of both the parents. Mr. Thorat submitted that in case, the child feels uncomfortable during access with the petitioner, he will return the child to the respondent.

11. Mr. Kohli and Ms. Jain submitted that sister of the petitioner is working on a night shift and there is no other female family member in the family of the petitioner. Daughter Saloni has a hard time adjusting lifestyle of the petitioner and his sister. It was further submitted that the respondent has no objection if the petitioner comes to reside at Pashan Sus Road premises. On the other hand, Mr. Thorat submitted that several complaints are filed by the respondent against the petitioner. Mr. Kohli submitted that the respondent undertakes not to file complaints against the petitioner during his stay at Pashan Sus road premises. In view of allegations and counter allegations, it is not desirable to accede to the suggestion made on behalf of the respondent.

12. As the petitioner has complied the requirements expected by the learned trial Judge by ensuring that his sister Sharyu will remain with daughter Saloni during night time, I am of the opinion that it will be in the interest of the child to give overnight access to the petitioner from 20th May, 2019 to 3rd June, 2019 i.e for 15 days subject to the respondent giving undertaking that in case the trial Court allows her to travel abroad alongwith daughter Saloni on 9th May, 2019 that she will return to India on 19th May, 2019 and will hand over daughter to the petitioner. In case, she does not return by 19th May, 2019 as also does not hand over daughter Saloni to the

petitioner for availing overnight access, she will hand over custody of daughter Saloni to the petitioner for availing overnight access. During this period, the respondent will have access of daughter Saloni through video conferencing.

13. In view of the aforesaid observations, Rule is made absolute with no order as to costs in the following terms;

- [1] Application Exhibit 106 is allowed in terms of prayer clause (a).
- [2] The petitioner is given access of daughter Saloni from 20th May, 2019 to 3rd June, 2019 including overnight access being half of the Vacation during Summer holidays.
- [3] Impugned order is modified accordingly.

[R.G. KETKAR, J.]