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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 5431 OF 2020

IN

CIVIL APPLICATION NO. 12668 OF 2019

IN

FAMILY COURT APPEAL NO. 74 OF 2019

Neha Karthik Naik @
Neha Rajendra Bhandari

APPLICANT

VERSUS

Karthik Shankarappa Naik and Another

RESPONDENTS

.....
Mr. S.P.Brahme h/f Mr. Mukul S. Kulkarni, Advocate for applicant
Ms. Jai Vaidya h/f Mr. Abid Shaikh, Advocate for respondent No.1
.....

[CORAM : SUNIL P. DESHMUKH AND
R. G. AVACHAT, JJ.]

DATE : 14th SEPTEMBER, 2020

ORDER :

1. Present civil application has been moved by wife who was petitioner in Hindu Marriage Petition No. A-459 of 2014, praying to vacate interim relief under clause (b) of Civil Application No. 12668 of 2020 granted by this court on 3rd of January, 2020. Husband - respondent in the Hindu Marriage Petition is in family court appeal before this court bearing No. 74 of 2019, against decree of divorce passed on 26th July, 2019.

2. Notice had been issued to wife on 18th October, 2019, in

family court appeal as well as civil application No. 12668 of 2019.

3. While issuing notice in civil application No. 12668 of 2019, order, staying effect and operation of the decree of divorce dated 26th July, 2019, had also been passed.

4. After hearing learned advocates for the parties, it emerges that husband has moved proceedings bearing M. J. Petition No. 32 of 2019 filed in November, 2019 seeking various reliefs, *inter alia*, access to the child.

5. It had been submitted on behalf of the husband, on 3rd January, 2020, that attempt to serve the wife on the address before the family court had been in vain and her parents had intimated that she is no longer residing on the given address and were reluctant to give her whereabouts. As such, it was urged to let the husband serve the wife through alternate modes.

6. It had further been submitted on behalf of the husband that wife is highly educated and qualified and has been serving in a multi national company and her brother is settled in the United States of America (the USA) and that there is every possibility that she may leave India to avoid further legal proceedings. As apprehension had been expressed and service

could not be effected on the wife, unwary of aforesaid proceedings by husband, the court had been persuaded to grant prayer clause "b" as well with prayer clause "a" of civil application No. 12668 of 2019, continuing the relief already granted.

7. Prayers clauses (a) and (b) are to the following effect -

"a) That this Hon'ble Court be pleased to restrain the Respondent no. 1 from remarrying during the pendency of the present appeal;

b) That this Hon'ble Court be pleased to restrain the Respondent no. 1 from removing the minor daughter Many from the jurisdiction of this Hon'ble Court without the due permission of this Hon'ble Court;"

8. After hearing learned advocates for the parties, it transpires that after the decree of divorce had been passed by the family court, wife had been to the USA and had come back in June, 2020 and had presented herself along with the child in the court in a petition for *habeas corpus*. While disposing of the *habeas corpus* petition on 3rd July 2020, learned advocate for the husband wanted a relief to see that the husband is permitted to have right of access to the child. Division bench, dealing with the

habeas corpus petition, had considered that so far as exercise of right of access to child is concerned that can be done by appropriate court.

9. While present civil application has been moved, claiming pressing urgency, since presence of wife is stated to be required for educational course in the USA by 30th September, 2020 and that custody and/or visiting rights etc. of parties to the litigation and the reliefs in relation thereto, would be subject matter of proceedings referred to above, it would be appropriate that proceedings taken up by the husband for said purpose may have to be resorted to and prosecuted by the husband.

10. In the circumstances, we deem it appropriate to vacate interim relief granted in terms of prayer clause "b" by this court under order dated 3rd January, 2020 in civil application No. 12668 of 2019. Present civil application is allowed in terms of prayer clause "A".

11. At this juncture, request made on behalf of the husband to continue interim relief in terms of prayer clause "b" further for a week, in the circumstances, would be difficult to be acceded to. It is being clarified, we refrain from dealing with correctness or otherwise of the submissions on either side on merits in respect

of custody, visiting rights, guardianship etc in relation to child, in order not to prejudice and/or have reflection on the proceedings initiated by husband, referred to above.

12. Civil application, accordingly, stands disposed of.

[R. G. AVACHAT]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE