

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

**CIVIL APPLICATION NO.236 OF 2019
IN
FAMILY COURT APPEAL NO.166 OF 2015**

Mr.Shailendra Dilip Raste Applicant

versus

Mrs.Supriya Shailendra Raste Respondent

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- Mr.Shailendra Dilip Raste, Applicant in person.
- Mr.Sudhir S. Hardikar, Advocate for Respondent.

**CORAM : K. K. TATED &
SARANG V. KOTWAL, JJ.
DATE : 13th MARCH, 2020.**

P.C. :

1. This application is preferred by the Applicant with prayer clause 9(i), which reads thus;

“To modify the order dated 25/4/2019 & remove remark “We cannot ride rough-shod over child’s wishes & send him to spend the time with his father screaming & kicking” as there is no evidence nor the opponent

party had written such thing in any of her petitions made to high court, till date.”

2. This order was passed by this Court (Coram: A.A. Kureshi & Sarang. V. Kotwal, JJ.) after interview with the child in chamber. Paragraph No.11 of the said order reads thus;

“Whatever be the reasons, during our extended talk with the son, we could discern very clear discomfort in the boy in spending any extended time with his father. It is undoubtedly true that coming from the custody of the mother, he may even be influenced by her feelings, emotions and bitterness towards the husband. However, the child is aged about 12 to 13 years. His maturity is proportionate to his age. He was confident and was able to process his thoughts and give answers to all our questions. We cannot ride rough-shod over his wishes and send him to spend time with his father screaming and kicking. We would still not give up attempt atleast to limited extent, reuniting the father and son. In any case, such matters are not for contempt proceedings.”

3. The observations in this paragraph No.11 of the said order are only made to highlight the fact that the child cannot be forced to act against its wishes and in that context this sentence was mentioned in that order. Beyond that this particular sentence “*We cannot ride rough-shod over his wishes and send him to spend time with his father screaming and kicking*”, is not supposed to convey anything further and it literally did not mean that the child was screaming and kicking. It was only a way of expression. Therefore neither of the parties should make capital out of this. Hence the prayer clause 9(i) is explained to that extent. As far as other prayer 9(ii) and (iii) are concerned, learned Counsel for the wife has made a statement before this Court that the wife has no objection if the child willingly goes with the father as per order dated 25/04/2019 passed in Family Court Appeal No.166/15 with Civil Application No.283/15 with Contempt Petition No.78/19 and which was modified in Civil Application No.236/19 in Civil Application No.283/15 in Family Court Appeal No.166/15 on 11/10/2019. This statement is accepted.

4. Liberty is granted to the Applicant to take out fresh application for increase in timing of access. If such application is filed, it shall be decided on its own merits.
5. In view of this nothing further survives in this application at this stage and the application is accordingly disposed of.

(SARANG V. KOTWAL, J.)

(K.K.TATED, J.)