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IN THE HIGH COURT OF BOMBAY AT GOA
MISC. CIVIL APPLICATION NO. 1708 OF 2021(FILING)
IN
WRIT PETITION NO. 219 OF 2021.

AMEY DILIP SARDESSAI, ... Applicant.

Versus

GAYATRI AMEY SARDESSAI ... Respondent.

Ms. Asha Desai, Advocate *for the Applicant.*

Mr. Shridhar Kamat, Advocate for the respondent.

CORAM: MANISH PITALE, J.

DATED: 27th September, 2021.

P.C.:

1. This petition was filed on 6.4.2021, for a direction to the Court of Civil Judge, Senior Division at Panaji to hear an interim application for visitation rights, week end custody and other reliefs moved on behalf of the petitioner. The said application was moved before the aforesaid Court for the reason that there is matrimonial discord between the parties and the minor child born on 10.6.2020, is with the respondent. The petitioner is the husband and respondent is the wife and they are presently living separately in the backdrop of the matrimonial discord.

2. In this petition, an interim prayer for grant of visitation rights of the child was also made. During the course of hearing of this petition, on 26.4.2021, this Court passed the following Order: -

*In response to the query made by the Court
and in compliance with the last order, the*

parties hereto agree that the respondent shall bring the child to her parental place, which is at St. Anthony wado at Guirim, Bardez, Goa on every Sunday, Wednesday and Friday at 4:00 p.m. The petitioner along with his parents can attend the said place for having access to the child and can spend time upto 6:00 p.m.

- 2. In the aforesaid background as the parties agree to the aforesaid solution as submitted before the Court, the matter is adjourned to 06.05.2021 for reporting further compliance in the matter.*
- 3. Needless to observe that both the parties agree that they shall not expose the child to any crowded place considering the pandemic situation.*

3. It appears that thereafter the aforesaid arrangement continued till, on a particular day an incident is alleged to have taken place where there was a difference of opinion and scuffle between the father of the respondent and the petitioner. In this backdrop, the petitioner has moved Misc. Civil Application no.1708 of 2021(Filing) with a prayer for restraining the father of the respondent from accompanying the minor child during visitation at the parental place indicated in the order dated 26.4.2021.

4. Affidavits in reply, rejoinder and sur rejoinder have been filed and, as is common in such cases, allegations and counter allegations have been made by the rival parties against each other.

5. This Court is informed that during the pendency of this Writ Petition, by an order dated 8.9.2021, the aforesaid

application filed by the petitioner for visitation rights and week end custody itself has been decided. The application has been dismissed by the said Court and it is made clear in the order that the parties shall continue with the arrangement regarding visitation as agreed before this Court.

6. The learned Counsel appearing for the petitioner submitted that in view of the unfortunate incident that took place on a particular day of visitation, it was imperative that the father of the respondent be restrained from being present at the time of visitation of the petitioner at the parental place, in terms of the order dated 26.4.2021 passed by this Court. It is pointed out that that the very order specifically states that the respondent agreed to bring the child to the parental place on the appointed days and at specific time for the petitioner to enjoy visitation rights. It was submitted that the order be suitably modified to permit the child to be taken to the house of the petitioner so that his parents could also enjoy the visitation rights. The petitioner would undertake to return the child to the respondent after visitation rights were enjoyed on particular days as directed by this Court. It was further submitted that the petitioner has already filed an appeal against the said order dated 8.9.2021, passed by the Court dismissing the application for visitation rights and week end custody and that a direction may be given for the appeal to be decided expeditiously.

7. On the other hand, Mr. S. Kamat, learned Counsel appearing for the respondent submitted that a perusal of the order dated 26.4.2021, would show that it was on agreement of the parties that the said arrangement was made. It was submitted that the allegations made against the father of the respondent were

baseless. As regards the request made on behalf of the petitioner to take the child to his house during the time of visitation, it was vehemently opposed on behalf of the respondent. It was also submitted that since the purpose for which the Writ Petition was filed was already satisfied, in the sense that the application of the petitioner for visitation rights stood disposed of by order dated 8.9.2021, strictly speaking the Writ Petition was rendered infructuous. On this basis, it was submitted that the Writ Petition may be dismissed, as the District Court would decide the appeal filed by the petitioner against the order dated 8.9.2021, passed by the aforesaid Court dismissing his application.

8. On a pointed query put to the learned counsel appearing for the respondent as to whether there was any objection on the part of the respondent if the duration of the visitation rights was extended by this Court, while days of visitation were maintained as per order dated 26.4.2021, the learned counsel appearing for the respondent stated that he would leave it to this Court.

9. As regards the request made on behalf of the petitioner for taking the child to his house during visitation, in view of the vehement opposition of the respondent to the said request and since the order dated 26.4.2021, making aforesaid arrangement for visitation rights was passed on the parties agreeing to such an arrangement, as recorded in paragraph 2 of the said order, this Court is not inclined to grant the request sought by the petitioner. There is no dispute about the fact that the application for visitation rights and week end custody filed by the petitioner has been decided by order dated 8.9.2021. The Writ Petition was itself filed for a direction to decide the said application. Since the application has been dismissed, the petitioner has already filed the

said appeal before the District Court at Panaji. It is significant that the said Court while dismissing the application of the petitioner has clarified that in so far as the visitation rights are concerned, the arrangement agreed between the parties before this Court would continue to operate.

10. This Court has considered the contents of the application filed on behalf of the petitioner for restraining the father of the respondent to accompany the child. This Court refrains from dealing with the allegations and counter allegations made by the parties against each other. At the same time, it would be in the interest of the parties that an appropriate direction is given to the District Court to dispose of the appeal at the earliest. Additionally, this Court is of the opinion that the time period of visitation rights granted to the petitioner by order dated 26.4.2021 can be increased by one hour, in the interest of justice.

11. In view of the above, the Writ Petition is disposed of with the following directions: -

ORDER

- (a) Arrangement of visitation recorded in the order dated 26.4.2021 shall continue to operate during the pendency of the appeal filed by the petitioner before the District Court against the order dated 8.9.2021 passed by the Civil Judge, Senior Division, Panaji in Civil Misc. Application (P) No. 72 of 2020/A, with the following modification.

- (b) The said arrangement is modified only to the extent that instead of the time period for the visitation rights being 4.00 p.m. to 6.p.m, the time period shall now be from 4.00 p.m. to 7.00p.m.
- (c) The District Court is directed to decide Misc. Civil Appeal No.50/2021, as expeditiously as possible and in any case within a period of three months from today.

12. Writ Petition is disposed of in above terms and all pending applications stand disposed of.

MANISH PITALE, J.

VINITA VIKAS NAIK Digitally signed by VINITA VIKAS NAIK
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