

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

WRIT PETITION NO. 2958 OF 2021

**SNEHA
NITIN
CHAVAN**

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Mahida Rishad Cooper @ Nahida
Mehli Kerawala

..Petitioner

V/s.

Rishad Darayas Cooper

..Respondent

Ms. Shirin Merchant for the Petitioner.

Mr. Sanjay Bhojwani for the Respondent.

CORAM : C.V. BHADANG, J.

RESERVED ON : 15 SEPTEMBER 2021

PRONOUNCED ON : 4 OCTOBER 2021

ORDER

1. The challenge in this petition is to the order dated 29.04.2021 (below Exh. 234) passed by Parsi Matrimonial Court at Pune in Civil Suit No. 10 of 2017. Essentially the challenge is to the rejection of prayer clause (b) of application Exh. 234 by which the Petitioner, who is the mother of the child 'Marc' requires the Respondent-father to continue the child's online remedial classes with Ms. Diya of Maharashtra Dyslexia Association (MDA).

2. The Petitioner and the Respondent were married in the year 2008 and they are blessed with a child 'Marc' born on 17.07.2010. The child suffers from learning disability, namely dyslexia and disgraphia.

3. It appears that the Respondent has filed Civil Suit No. 10 of 2017 for dissolution of marriage under Section 32(dd) and 32(g) of the Parsi Marriage and Divorce Act, 1936. The Petitioner has also filed Civil Suit No. 30 of 2019 for dissolution of marriage under Section 32 (dd) of the said Act and for the custody of the child and for permanent alimony.

4. It appears that the dispute was referred for mediation to a Judge-Mediator and the parties arrived at the Consent Terms on the basis of which by an order dated 19.03.2021, the marriage between the parties has been dissolved by a decree of divorce and the dispute in the suits survives only to the extent of custody of the child and maintenance. Pursuant to the interim arrangement, as agreed between the parties, presently the child is with the Respondent-father.

5. It is a matter of record that vide Application Exhs. 125 and 126 in Civil Suit No. 10 of 2017 both the parties had suggested names of three child Therapists for evaluation of the child. By an order dated 17.06.2019, the child was referred to Dr. Bindu Patni, Clinical Psychiatrist of KEM Hospital, Pune for evaluation and report. The report of Dr. Bindu Patni dated 06.07.2019 has been placed on record. It is undisputed that the child is presently in the custody of the father and is taking his mainstream education in Bishop's School (ICSE) at Pune. Insofar as online remedial classes are concerned, when the child was in the custody of the Petitioner-mother, the child was taking such remedial classes with Ms. Diya of MDA. The Respondent-father has discontinued the said online remedial classes and has put the child in another online classes run by Chetana Counselling Centre, Pune.

6. The Petitioner filed application Exh. 234 seeking following reliefs :

(a) the Plaintiff be directed to put the child back in the tuition classes that the child was attending while with the Defendant mother;

(b) the Plaintiff be directed to continue the child's online remedial classes with Ms.Diya of Maharashtra Dyslexia Association;

(c) this Hon'ble Court may kindly be pleased to appoint a child counselor of the Defendant's choice, in whose presence the Defendant mother

can talk to the child daily at a convenient location for the child for an hour a day, which should happen in the absence of the Plaintiff father;

(d) in the alternative to a convenient location, the Defendant is ready and willing to visit D38 Pinnacle Ridge, Undri, Pune i.e. the house of the Plaintiff to meet the child along with a child counselor daily for about one hour, in the absence of the Plaintiff who may create impediments in the counselling;

(e) the Plaintiff father be directed to bear all the expenses of such counseling and also be directed to pay the arrears of maintenance and pick up and drop the child from such a counseling centre;

(f) the costs of the present application throughout may kindly be awarded in favour of the Defendant;

(g) for any other just and reasonable orders to meet the ends of justice.

7. The Respondent filed a reply and has opposed the application. Insofar as the prayer clause (b) is concerned, according to the Respondent the child was not comfortable with online classes with MDA and since March 2021 is attending the online remedial classes of Chetana Counseling Centre, Pune.

8. The learned Trial Court by the impugned order has directed the Respondent-father to adhere to the Consent Terms agreed before the learned Judge-Mediator in respect of the child. This is insofar as the prayer clause (a) is concerned. The prayer clauses (c) to (g) are kept open for submissions of the parties at appropriate time. The

prayer clause (b) has been declined. The Petitioner is aggrieved by the refusal to grant prayer clause (b).

9. I have heard the learned counsel for the parties. Perused record.

10. It is submitted by the learned counsel for the Petitioner that the Petitioner was earlier undergoing the online remedial classes with Ms. Diya of MDA and Respondent without taking the Petitioner in confidence and without informing the learned Mediator or the Trial Court has changed the remedial classes to the Chetana Counselling Centre, Pune. It is submitted that the same is in breach of the arrangement arrived at between the parties before the Judge-Mediator. It is submitted that the Respondent has changed all the classes and the entire academic schedule of the child, which is not in the interest of the child. The learned counsel has referred to the report of Dr. Bindu Patni and the Consent Terms as well as the exchange of emails dated 04.12.2020. In the submission of the learned counsel, the expert Dr. Bindu Patni has advised not to change the remedial classes/program. Reliance is also placed on the order passed by this Court in *Shantanu Pashankar vs. Pooja Pashankar* (Writ Petition No. 219 of 2019) and the order dated

20.07.2006 in *Vincy D'Silva v/s. St. Mary's School & Ors.*(Writ Petition No. 1744 of 2005).

11. It is submitted that the Trial Court is not right in placing reliance on the Rights of Persons with the Disabilities Act, 2016 and the rules framed thereunder, which in the submission of the learned counsel are not applicable to the child. She, therefore, submitted that the Respondent be directed to restore the child's online remedial classes to MDA.

12. The learned counsel for the Respondent has submitted that the child was not comfortable with the earlier remedial classes and is presently undergoing online remedial classes with Chetana Counselling Centre, Pune since March, 2021. It is submitted that the said classes are part of in house program 'Sparkles' of Bishop's School (ICSE) Pune, where the child is undergoing his mainstream education. It is submitted that thus, it is not in the interest of the child to change the program which is also the opinion of Dr. Bindu Patni.

13. I have carefully considered the rival circumstances and the submissions made. Indisputably the child is presently in the custody

of the Respondent-father and since March 2021 has been undergoing online remedial classes with Chetana Counselling Centre, Pune. The child is taking his mainstream education in Bishop's School (ICSE) at Pune. There is no dispute that when the child was with the mother, he was attending the online remedial classes with Ms. Diya of MDA and since March 2021 has been attending the classes of Chetana Counselling Centre, Pune.

14. It appears that the Trial Court by an order dated 23.04.2021 had asked the parties to place on record the details of the activities under taken by MDA as well as the activities by Sparkles which is an in house program of the school where the child is taking his mainstream education and the Chetana Counselling Centre, Pune. Accordingly, report from MDA was placed on record at Exh. 244 and the report from Sparkles and Chetana Counselling Centre is placed on record at Exh. 245.

15. The learned Trial Court has noticed that the child was earlier enrolled with the online program for providing "Feuerstein Instrumental Enrichment Program (Basic & Level-1)" (FIE). The report indicates that the child had attended the said program only for six months out of which the last two months were very stressful

with major shifts happening on the home front. The Trial Court has further noticed that as a result of the same, the progress in the program was affected and had opined that the child needs to continue with FIE program to acknowledge and label his feelings and emotions.

16. The report from Chetana Counselling Centre, Pune shows that the child is undergoing therapy since March 2021 which includes program of FIE.

17. It can thus, be seen that for close to seven months now the child is undergoing the remedial classes with Chetana Counselling Centre, Pune. I have gone through the exchange of emails dated 04.12.2020. The Respondent claims that Dr. Bindu Patni had recommended the Chetana Counselling Centre and even mentioned names of two persons at the said center namely Dr. Yajyoti Singh and Dr. Shruti Pawar. However, in her reply Dr. Patni although has stated that she does not recollect specifically, having recommended Chetana Counselling Centre, Pune, she had stated that Chetana Counselling Centre is well established. Dr. Patni has concluded by saying that if the child is not attending there, she would suggest not changing current therapies which are in place. It can thus, be seen

that the change in therapy would not be in the interest of the child. It is true that the learned Trial Court has found that Respondent-father has changed the online remedial classes without consent of the Petitioner and it is on this count that the Petitioner claims that there is a breach of the Consent Terms. In my considered view, the question of the breach of Consent Terms, if any, *inter se* between the parties is an independent issue and paramount consideration at this stage would be the interest of the child and his education and rehabilitation. There is nothing on record to show that the program with Sparkles/Chetana Counselling Centre is lacking in any respect to provide appropriate training to the child. Considering the fact that the child is undergoing the said program from March 2021, I do not find that the same deserves to be changed.

18. It is difficult to see as to how the order passed in *Shantanu Pashankar* (supra) can come to the aid of the Petitioner. The case clearly turned on its own facts.

19. In *Vincy D'Silva* (supra), the Division Bench of this Court has accepted and approved a scheme to provide facilities to students with learning disabilities of Dyslexia, Dysgraphia and/or Dyscalculia.

The issue in the present petition is about the change of the online classes of the child.

20. The impugned order in my considered view adequately takes into account the interest of the child and does not suffer from any infirmity.

21. The Writ Petition is accordingly dismissed.

C.V. BHADANG, J.