

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

**INTERIM APPLICATION NO. 1911 OF 2019
IN
FAMILY COURT APPEAL NO. 77 OF 2018**

Bhalchandra D. Korgaonkar ...Applicant

Versus

Chitra V. Shirsat ...Respondent

IN THE MATTER BETWEEN

Chitra V. Shirsat ...Appellant

Vesrus

Bhalchandra D.Korgaonkar ...Respondent

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Mr.Bhalchandra D. Korgaonkar- Applicant / original Respondent present.

Mr.Amrut M. Vernekar a/w. Mr. Suraj S. Ghogare for the Respondent/ Original Appellant.

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**CORAM : R.D. DHANUKA &
VG.BISHT, JJ.**

DATE : 8th April, 2021

P.C.:

1. By this interim application, the applicant (original respondent) in the Family Court Appeal prays for an order against the respondent

-wife to hand over interim custody of minor son Balkrishna, pending Appeal against the judgment dated 30th November, 2017 passed by the Family Court.

2. The applicant, who appears in person, has invited our attention to the decree dated 30th November, 2017 passed by the Family Court thereby dissolving the marriage of applicant with respondent and holding that the applicant is entitled for permanent custody of minor son Balkrishna after appeal period is over. He strongly placed reliance on the observations made by the Family Court in the said order dated 30th November, 2017 and, more particularly, paragraph No. 55 observing that the Family Court had interviewed the son in chamber and found that he was quite intelligent and was able to understand the facts and circumstances in which he was placed. He could apprehend matters and visualize his own well-being. He seemed to have no complaint against his father. He explicitly stated before the Family Court that he was inclined to go with his father and did not want to continue with the mother and would like to stay with his father as father had helped him in his studies and solved his problems whereas mother used to ignore his difficulties.

3. It is clear that inspite of the said order passed by the Family Court, the respondent wife has not handed over the custody of child to the applicant.

4. The applicant invited our attention to the various averments made in support of the interim application and would submit that the said child has become 13 years old now and is a teenager. As per his interaction with his child, child was not comfortable with respondent-wife. The respondent and her mother tormented the child by calling him “son of snake” and asked him to get out of the house for carrying his expensive smartphone -watch during his access.

5. Mr. Vernekar, learned Counsel for the respondent, on the other hand, would submit that the said decree passed by the Family Court has been stayed by this Court in Civil Application No. 122 of 2018 filed by respondent -wife in Family Court Appeal No. 77 of 2018. While granting stay to the impugned decree passed by the Family Court, this Court, after interviewing the child, in paragraph No.2 of

the order dated 14th June, 2018 recorded that the child has been staying with his mother since birth and has not been separated from his mother since that time. He is currently staying with his mother and studying in a school near his resident. He has been in this school since nursery. He also has friends in that school. The child has been staying with his mother as well as grand-parents from his mother's side. After interviewing the child, this Court do not think that it would be in the interest of the child to uproot him from his present environment and hand over permanent custody to the applicant-husband. This Court has accordingly stayed the decree passed by the Family Court vide order dated 14th June, 2018.

6. A perusal of the said order further indicates that this Court has already provided the right of access to the minor child on every 1st and 3rd weekend making it clear that the applicant will be entitled to take the child from the child's house at 9.00 a.m. on Saturday morning and return him back by 1.00 p.m. on Sunday. In paragraph 6 of the said order dated 14th June, 2018, it is recorded that the applicant-husband shall be entitled to take the child every first 1/3rd of each of the vacations of the child, provided he handover his

passport to the respondent -wife which shall be returned to him simultaneously on the applicant handing over the child to the respondent -wife.

7. The learned Counsel for the respondent also invited our attention to the order dated 2nd May, 2019 passed by a Division Bench of this Court in Civil Application No. 122 of 2019 filed by the applicant-husband *inter alia* praying for holding of custody of minor child during the pendency of this appeal. This Court recorded the detailed reasons and took cognizance of the said order dated 14th June, 2018 passed by earlier Bench.

8. This Court held that after detailed exercise and a conscious decision, this Court maintained the custody of the mother over the child on various grounds. Nothing has happened since passing of the said order as to permit this Court to reconsider the entire issue. This Court also took cognizance of the fact that the said Civil Application did not disclose any ground for reviewing the situation.

9. A perusal of the record indicates that the applicant is in habit of filing application against the respondent -wife one after another.

10. At this stage, the applicant invited our attention to the order dated 14th June, 2018 passed by a Division Bench of this Court in Civil Application No. 122 of 2018 and would submit that visiting rights provided by this Court in the said order during vacation of the child has also not been complied with by respondent -wife. He submits that school vacation of the child will start from 10th April, 2021.

11. Mr.Vernekar, learned Counsel for the respondent, has invited our attention to paragraph No.4 of the said order dated 10th December, 2020 and would submit that because of of COVID-19 situation, it was not possible for the respondent -wife to provide access of the child to the applicant. This Court has recorded the statement made by respondent -wife that she has no objection if the applicant comes at the respondent's place and have access inside the building compound on every Saturday and Sunday for 2-3 hours

without taking the child outside. The applicant submitted that he was ready to go and meet his son with prior appointment with the respondent's wife on Saturday and Sunday. This Court permitted the said interim arrangement.

12. We make it clear that the applicant is entitled to take the child in terms of paragraph No.6 of the order dated 14th June, 2018 passed by this Court on the conditions set out therein during the school vacation of the said child. The respondent -wife is directed to comply with that part of the order without fail.

13. We do not find change in circumstances for warranting any modification of the earlier order passed by this Court.

14. For the reasons recorded aforesaid, we are not inclined to grant any relief as prayed in interim application.

15. Interim Application is accordingly dismissed with aforesaid direction. There shall be no order as to costs.

16. Place the Contempt Petition No. 288 of 2019, Family Court Appeal No. 101 of 2018 and Interim Application (St.) No. 8387 of 2021 on board on 28th April, 2021.

(V.G.BISHT, J.)

(R.D.DHANUKA, J.)