

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION (CAO) NO. 359 OF 2021
IN FAMILY COURT APPEAL NO. 42 OF 2018 (D)

(Dr. Dhiraj s/o Ramshankarji Gupta, Nagpur Vs. Dr. Radhika (Dr. Reshma T. Inamdar),
Nagpur)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri J.M. Gandhi, Advocate for the appellant.
Shri A.A. Naik, Advocate for the applicant/
respondent.

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CORAM : A.S. CHANDURKAR &
PUSHPA V. GANEDIWALA, JJ.
JUNE 19, 2021.

Heard.

2. This is an application filed on behalf of the applicant – mother seeking custody of her child, by name Raajveer, in terms of access and visitation rights granted by this Court vide judgment and decree dated 26/07/2018.

3. We have heard Shri Gandhi, learned counsel for the appellant - father, and Shri Naik, learned counsel for the applicant/ respondent - mother.

4. It is not disputed that despite the final judgment and decree dated 26/07/2018, this Court, from time to time, passed certain orders with regard

to the custody and access of the child, depending upon the situation.

5. It is worthwhile to mention here that both the parties are Doctor, by profession, and the applicant – mother is staying at the United Kingdom, and occasionally visits India. The applicant – mother, vide the aforesaid judgment and decree, has been given the right to take the child to the United Kingdom twice a year during vacations, and that during her stay in Nagpur, she has been given complete overnight access to her child, subject to the child attending school with a further rider that if the period extends beyond fifteen days at a stretch, the appellant – father be given overnight access to the child on weekend Saturday and telephonic access.

6. It is the grievance of the applicant – mother that the appellant – father has not obeyed the orders passed by this Court from time to time, and therefore, she was required to approach this Court for access to her child.

7. Shri Naik, learned counsel for the applicant – mother, states that the applicant – mother arrived in India on 19/04/2021, and immediately sought custody of the child after her mandatory period of self-isolation was over. The appellant – father refused vide whats app message dated

21/04/2021. The learned counsel further states that considering the grim situation at the relevant time, the applicant – mother thought it prudent to wait for some time and again wrote to the appellant – father on 22/05/2021 reiterating her demands for custody, but the father once again refused by e-mail dated 23/05/2021. The learned counsel strenuously argued to handover the custody of the child to the applicant – mother in terms of the final judgment and decree dated 26/07/2018.

8. Per contra, the appellant – father, in his reply, states that at the time of passing of the aforesaid judgment and decree, the age of the child was eight years. Now, the child is completing his eleven years on 28/06/2021, and has become quite mature, and has developed his own feeling and wants to live as per his own desire. That the child is not ready to live with the applicant – mother and every time, the appellant – father has to force him to join the applicant – mother and he reluctantly and with heavy heart goes to the applicant – mother, and this particular duration puts him in a stressful situation, which is neither favorable for his physical nor his mental health.

9. Shri Gandhi, learned counsel for the appellant – father, reiterated in his submissions the contents in the reply of the appellant – father.

10. We have considered the submissions advanced on behalf of both the sides and perused the record.

11. It is not disputed that considering the pandemic situation, this Court passed an order on 13/08/2020, when both the parties have arrived at an amicable settlement for a temporary period. Both the parties had consented to the following arrangement :

“ (I) The minor child Raajveer shall be in the custody of the father Dr. Dhiraj Ramshankarji Gupta from 5.00 p.m. on Friday in every week and shall return the child by 5.00 p.m. on every Monday.

(II) The Respondent – Dr. Radhika, mother of the child shall have the custody of the minor child Raajveer from 5.00 p.m. on Monday till 5.00 p.m. on Friday in every week.

(III) The handing over and taking over of the minor child Raajveer shall be in presence of the Registrar (Administration) of this Court in her chamber. The mode which was earlier adopted for this purpose shall continue to operate.

(IV) The parties shall scrupulously follow the conditions and any breach shall be

seriously viewed to cancel the visitation rights.

(V) Neither the appellant-husband nor the respondent-wife shall move the child out of the jurisdiction of this Court without prior permission of this Court.”

12. Undisputedly, the pandemic situation is still continuing. It is informed by the learned counsel for the applicant – mother that she would be staying in Nagpur till 30/07/2021. It is also informed that since last ten months, she has no physical access to her child.

13. We refrain from going into the rival submissions, and considering the order passed by this Court on 13/08/2020 which was passed with the consent of both the parties during pandemic situation, in our considered view, the arrangements, made in the said order, with some modification/s, would be most convenient and beneficial to the child. We pass the following order :

ORDER

(i) The appellant – father shall handover the custody of the child to the applicant – mother on 19/06/2021 at 5:00 pm.

(ii) The child shall be in the custody of the applicant – mother till next Friday, i.e., 25/06/2021 up to 5:00 pm. Thereafter, the arrangement, as formulated in the order dated 13/08/2020, would follow.

(iii) The handing over and taking over of the child shall be in presence of the Registrar (Administration) of this Court in his chamber. The mode which was earlier adopted for this purpose shall continue to operate.

(iv) The appellant – father, after handing over the custody of the child to the applicant – mother, shall immediately leave the Court premises.

(v) The next birthday of the child is on 28/06/2021, i.e., on Monday. As per the arrangement, the child would be in the custody of the appellant – father till 5:00 pm, and thereafter, the custody shall be handed over to the applicant – mother in the presence of the Registrar (Administration) of this Court.

(vi) During this period, both the applicant – mother and the appellant – father would have telephonic access to the child as per the convenience and mood of the child.

14. The aforesaid order shall operate for a temporary period, i.e., till the applicant – mother stays in Nagpur.

15. The parties are at liberty to approach this Court for modification, if the fact situation so demands.

16. The Civil Application stands disposed of accordingly.

(JUDGE)

(JUDGE)

Sumit