

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.68 OF 2022
WITH
CONTEMPT PETITION NO.211 OF 2022
WITH
CONTEMPT PETITION NO.175 OF 2022
WITH
CONTEMPT PETITION NO.212 OF 2022
WITH
CONTEMPT PETITION NO.69 OF 2022
WITH
CONTEMPT PETITION NO.70 OF 2022
WITH
CONTEMPT PETITION NO.71 OF 2022
WITH
CONTEMPT PETITION NO.72 OF 2022
WITH
CONTEMPT PETITION NO.73 OF 2022

Mahendra Ramesh Thanai

.. Petitioner

Versus

Namita Krishnakumar Singh

.. Respondent

WITH
CONTEMPT PETITION NO.74 OF 2022

Mahendra Ramesh Thanai

.. Petitioner

Versus

Ms.Hooralain Hussein

.. Respondent

WITH
FAMILY COURT APPEAL NO.21 OF 2021

Mahendra Ramesh Thanai .. Petitioner
Versus
Namita Mahendra Thanai .. Respondent

WITH
FAMILY COURT APPEAL NO.31 OF 2021

Namita Mahendra Thanai .. Petitioner
Versus
Mahendra Ramesh Thanai .. Respondent

WITH
INTERIM APPLICATION NO.2274 OF 2021
IN
FAMILY COURT APPEAL NO.21 OF 2021

Mahendra Ramesh Thanai
Son of Smt.Geeta Thanai .. Petitioner
Versus
Namita Krishnakumar Singh .. Respondent

WITH
INTERIM APPLICATION NO.2484 OF 2021
IN
FAMILY COURT APPEAL NO.21 OF 2021

Mahendra Ramesh Thanai .. Petitioner
Versus
Namita Krishnakumar Singh .. Respondent

WITH
INTERIM APPLICATION NO.2602 OF 2021
IN
FAMILY COURT APPEAL NO.31 OF 2021

Mahendra Ramesh Thanai

Now Namita Krishna Kumar Singh

.. Petitioner

Versus

Mahendra Ramesh Thanai

.. Respondent

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Mr.Manohar V. Shetty a/w. Mr.Shounak Shetety, Mr.Sarvesh Mishra,
Mrs.Deepika Phull and Ms.Namita Ghadge Advocate for the
Mahendra Ramesh Thanai.

Mr.Brijesh Shukla a/w. Ms.Hooralain Hussein, Advocate for Namita
Krishnakumar Singh

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**CORAM : NITIN JAMDAR AND
SHARMILA U. DESHMUKH, JJ.**

DATED : 06 October 2022.

P.C. :

The Appeals are admitted and taken up for final hearing forthwith, in view of the stand taken by the learned counsel for the parties of consensuses on many issues: It is, thus, not necessary to detail the facts of the case.

2 These Appeals arises from the judgment and order dated 25 November, 2020 passed by the Family Court, Bandra, Mumbai in

Petition No.A–2279 of 2019. The Family Court Appeal No.21 of 2021, is filed by the husband challenging the said order. Family Court Appeal No.31 of 2021, is filed by the wife challenging the order.

3 The Appellant–husband filed Petition A–2279 of 2019, in the Family Court, Bandra, Mumbai, seeking divorce under Section 13(1) (ia) of the Hindu Marriage Act and for custody of the boy child Krishang, who is now five years old. The Appellant–wife filed a counter claim seeking permanent accommodation, maintenance and also resisted the claim for custody of the child Krishang. The Family Court Bandra, Mumbai, disposed of the Petition and Counter Claim *vide* judgment and order 25 November 2020. Clauses 1 to 10 of the operative portion of the judgment and order are as follows:

- “1 The Petition is allowed;*
- 2 The counter claim is dismissed.*
- 3 The marriage between Mahendra (petitioner–husband) and Namita (respondent–wife) which was held on 18.04.2008 is hereby dissolved by decree of divorce with effect from the date of decree.*
- 4 The petitioner and respondent shall have shared custody of the child.*
- 5 The child shall reside with the respondent between 4 pm on Thursday until 6 pm on Sunday.*
- 6 The child shall be exclusively with the petitioner between 6 pm on Sunday until 4 pm on the following Thursday of every week.*

- 7 *The child shall not be removed from the custody of the Family Court at Mumbai, without the prior permission of this Court.*
- 8 *Both the parties are directed to see that their conduct shall not affect adversely on child during handing over the custody, as above and even thereafter.*
- 9 *The petitioner is directed to pay Rs.7000/- per month to the respondent towards maintenance of child from filing petition till further order.*
- 10 *The petitioner shall deposit amount of maintenance, as above, in the designated account of the respondent on or before 10th day of each month as per English calendar.”*

4 As regards the grant of Petition for divorce, the learned counsels for the Appellant in both these Appeals have clarified that the decree granting divorce is not challenged in either of the Appeals. What is contested before us is a custody of the child Krishang.

5 As the above orders passed by the Family Court, Bandra, Mumbai would show that the Family Court, Bandra, Mumbai, has granted shared custody, whereby the child will reside with the mother from Thursday to Sunday, and for remaining days the child will be with the father. The learned counsel for the parties have addressed on the merits of the arrangement made by the Family Court, Bandra, Mumbai, Both the learned counsel in their respective Appeals have assailed the impugned order as regard the custody. According to the learned counsel

such a shared custody with the time table set out by the Family Court, Bandra, Mumbai, would not be proper, and would not be in the interest of the welfare of the minor child Krishang. Thus there is a consensus between both the parties that the order passed by the Family Court, Bandra, Mumbai, is not proper and legal. In such an eventuality, the appropriate course of action would be to restore/remand the proceedings to the Family Court, Bandra, Mumbai, on the limited aspect of permanent custody of the child Krishang. Both the learned counsel are agreeable to this course of action.

6 Learned counsel for the Appellant–wife has drawn our attention to the order passed by the Division Bench of this Court dated 14 February 2022, passed in Contempt Petition No.68 of 2022 alongwith connected matters (Coram : A.A. Sayed & Abhay Ahuja, JJ.), wherein the Division Bench has laid down certain time table, by consent. According to the learned counsel for the Appellant–wife since the matter is being remanded back to the Family Court, the said arrangement may continue till disposal, upon remand. We note that the order dated 14 February 2022, which has laid down certain modalities is prefixed directions by the words “By consent”. Though it is sought to be contended by the learned counsel for the Appellant–husband that the consent was given in peculiar circumstances for a limited duration, the fact remains that this was an ad–interim arrangement, by consent. Therefore, according to us, it would be appropriate, that the same is

continued till the matter is decided by the Family Court, Bandra, Mumbai, on remand. Needless to state that the Family Court, Bandra, Mumbai, may arrive at the final conclusion without being influenced by the above mentioned ad-interim arrangement.

7 The learned counsel for the Appellant–husband states that though it is correct that the matter would be decided by the Family Court, Bandra, Mumbai, as regards ensuing Diwali vacation, some arrangement can be made whereby the child Krishang spends longer period at one time with each parent during the Diwali vacation. This suggestion is reasonable and is not opposed. We are informed that the ensuing Diwali vacation starts from 24 October 2022 to 6 November 2022. During this period the child Krishang would stay with each of the parents for half of the period continuously. For the first half of ensuing Diwali vacation, the child Krishang would be with the Appellant–husband and the second half, the child would be with the Appellant–wife.

8 Accordingly, both the Appeals are disposed of by the following order:

- (i) Clauses 4 to 9 of order dated 25 November 2020, passed by Family Court No.6, Mumbai, are quashed and set aside;

- (ii) On the aspect of permanent custody of the child Krishang, the proceedings are restored to the file of Family Court, Bandra, Mumbai;
- (iii) The Family Court Bandra, Mumbai, would decide the issue regarding the permanent custody afresh on its own merits without being influenced by what is stated in this order;
- (iv) Till the Family Court decides the matter, the interim arrangement envisaged under the order dated 14 February 2022 in Contempt Petition No.68 of 2022, will continue to operate;
- (v) Till the Family Court, Bandra Mumbai, decides the matter upon remand, clause 9 i.e. the husband paying the amount of Rs.7,000/-, towards the maintenance of child would continue subject to the outcome of the final order;
- (vi) Rests of the decree passed by the Family Court stands confirmed.

9 The parties will appear before the Family Court on 20 October 2022. Thereupon the Family Court, Bandra, Mumbai,

will set up a time table for disposal of the proceedings. The Family Court will make an endeavour to decide the issue of permanent custody within a period of twelve weeks from the date the parties appear before it, subject to other time bound commitments.,

10 The first half of ensuing Diwali vacation, the child Krishang would be with the Appellant–husband and the second half, the child would be with the Appellant–wife.

11 In light of this order, we are not inclined to proceed further in contempt jurisdiction. The Contempt Petitions are disposed of.

12 All Interim Applications are disposed of accordingly.

SHARMILA U. DESHMUKH, J.

NITIN JAMDAR, J.