

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8366 OF 2022**

Sheetal Nilesh Dahanukar .. Petitioner
Versus
Nilesh Purshottam Dahanukar .. Respondent

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Mr. Mohammad Abdi for the Petitioner.

Mr. Nitin V. Gangal a/w Namita M. Mestry, P Shukla and Ashok Kadam for the Respondent.

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**CORAM: BHARATI DANGRE, J.
DATED : 14th JULY, 2022**

P.C:-

1. By an order dated 24/07/2021, the Family Court, Nashik, passed an order on an application filed by the petitioner husband praying for interim access, in the main petition filed for appointing him as a guardian and claiming the custody of the minor daughter, aged 9 years.

The application was partly allowed and the wife was directed to provide access to the husband, as per the convenience of the daughter through a video call, and further physical weekend access was also granted on every Saturday and Sunday including one over night stay.

2 With this arrangement in place, the petitioner wife

relocated herself along with the child to Thane in the month of June, 2022. The learned Counsel offers an explanation that on 24/04/2022, when the mother went to pick up the child from the School as a normal routine, the child was not being found and she was picked up by her mother-in-law and was taken to the court, since she was to be interviewed before the Family Court.

This gave rise to a feeling of apprehension in her mind about safety of her daughter and since her parents residing in Dahanu which is approximately 140 Km from Thane in the interest of the child, since better School facilities would be available in Thane, she moved to Thane in June, 2022 and has even secure admission for the child in a School in Thane.

3. The aforesaid event led to filing of an application by the respondent husband, seeking a direction of shifting the interim custody to him and bringing her back to Nashik, since she was a student of Royal Oak International Montessori School in Nashik and was deeply involved in extra curriculum activities. The application was contested and the petitioner wife offered a justification about her decision to relocate the child.

4 The Court recorded that the petitioner husband had already filed an application, seeking a restrain order against the respondent to relocate the child and the said application was pending for reply and, before it could be adjudicated upon, the mother had relocated the daughter from Nashik to Thane. By making excessive reference to child access and custody guidelines, formulated by this court, the Family Court arrived at the conclusion that there is a breach of guidelines nos.

16, 17 and 24. In case, if any party is intending to relocate, which would impact the visitation rights agreement, there is an embargo imposed to take an unilateral decision and clause 17 of the said guidelines, contemplates a notice expressing the intention to relocate. As far as the change in the school is concerned, the custodial parent, is not entitled to change the School of the child, without written consent or agreement of the other parent.

In short, while the custody petition is being contested and access is granted to either party, relocation cannot be an unilateral decision, since according to the parental guidelines, both parents shall be equally responsible for care and welfare of the child and are also entitled to equally share the love and affection to the child.

5. On perusal of the impugned order, I find no illegality of infirmity as learned Judge has recorded that the relocation was without following the guidelines. The impugned order deserves a confirmation.

6. However, if the petitioner is desirous of relocating the child for whatsoever reasons, which exist in her favour, she is at liberty to seek appropriate direction from the Family Court by moving an appropriate application, keeping in mind the parenting/access guidelines.

7. The petitioner has also argued that the child is already admitted in a school in Thane and, therefore, it would be disturbing her academic career.

I am not ready to accept the said argument since merely a period of one month has expired since the academic year has began, and in any case, the child is uprooted from her regular arena of Nashik city, where she was residing from her birth. The petitioner shall relocate the child within a period of 1 week and permit her to continue in the erstwhile School in Nashik, since the fees of the said school for the academic year is already paid.

8. Upholding the impugned order, the writ petition is dismissed.

(SMT. BHARATI DANGRE, J.)