

AGK

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

WRIT PETITION NO.2868 OF 2023

Digitally
signed by
ATUL
GANESH
KULKARNI
Date:
2023.09.15
17:10:42
+0530

Sumit Milap Bhansali

... Petitioner

V/s.

Kavita Mohan Bhandari

... Respondent

Mr. Abhijit Sarwate with Ms. Hardev K. Aidhen and Mr. Ajinkya Udane for the petitioner.

Ms. Seema Sarnaik & Ms. Sangeeta Salvi for the respondent.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 15, 2023

P.C.:

1. By the impugned order, the Family Court has rejected request of father for modification of the consent terms to the extent of increased access to the child aged ten years. It appears that the petitioner filed an application for modification of consent decree. Consent decree grants access to the Family Court six times in a year: five times physical access and once by video conferencing/skype.

2. In the application for modification of the consent terms, *inter alia* interim relief of granting access to the father more than the access granted in consent terms is prayed for. Two applications were filed before the Family Court: one seeking access during

Christmas vacation; and in the second application, the petitioner prayed for various reliefs from paragraphs 39(b) to 39(y) along with Annexure-A. The Trial Court by order dated 19 May 2023 considers prayer for grant of interim relief regarding access/visitation rights of the child. The Trial Court accepts the position of law that order of custody of minor child is temporary in nature and can be modified if there is change in circumstance but holds that unless and until petitioner proves change in circumstance that it will be in the interest of child to modify or vary the consent terms, relief sought by the petitioner cannot be granted at interim stage.

3. On perusal of the order, it appears that the Trial Court has made some wide observations regarding nature of interim relief which can be passed by the Family Court while considering application for modification of terms relating to custody/access/visitation of the child.

4. It is well settled proposition of law that order relating to custody of child are not final but are interlocutory in nature, subject to change in circumstance requiring change of custody of the child. However, the question which arises for consideration in the present writ petition is as to whether during pendency of the application for modification of the consent terms in relation to access of the child, whether the Court has power to grant access to either of the parent.

5. It needs to be noted that in relation to the matters dealing with custody/access of the child, welfare of the child is the only consideration. Such matters are not strictly governed by either

pleadings or provisions of substantive laws. If the Court feels that certain orders are necessary to protect welfare of the child or certain orders are required to be passed in the interest of child, the Court is not powerless to pass such orders irrespective of the fact that such powers are expressly conferred on the Family Court, or not. The grant of final relief or interim relief as interpreted in relation to statutory rights of parties may not carry same context in relation to matters governing custody/access of child. No exhaustive parameters can be laid down which may govern exercise of such discretion by the Family Court. However, based on relevant material if the Family Court comes to the conclusion that even during pendency of application for modification of consent terms, it is in the interest of child that access of either of the parent need to be increased, the Court is not powerless to grant such relief.

6. In the facts of the present case, it appears that the child is of eleven years. At this age the child has attained sufficient understanding. Therefore, in my opinion, it would be in the interest of child that wish of the child is ascertained and a specialist, i.e. Child Psychologist interviews the child to ascertain his wish and based on interaction with such child along with parents, the Psychologist shall submit his report to the Family Court. Based on such report, the Family Court should arrive at conclusion as to whether it is in the interest of child that the access is to be increased in addition to the access granted in the consent terms.

7. Therefore, in my opinion, the Family Court shall appoint a

Child Psychologist within one week from today and the Child Psychologist shall interview the child along with parents within four weeks from the date of passing of order of the Family Court and submit its report within two weeks thereafter. The Family Court shall thereafter within four weeks decide as to whether based on report of Child Psychologist, a case is made out for increase of access as sought by the petitioner.

8. With this clarification, the writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)