

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

CIVIL WRIT PETITION NO. 640 OF 2022

Pinky Raindoll Patil

..Petitioner

Versus

Rubina Bernard Patil & Anr.

..Respondents

**WITH
INTERIM APPLICATION NO. 3301 OF 2023
IN
CIVIL WRIT PETITION NO. 640 OF 2022**

Mr. Mithilesh G. Rajbhar a/w. Amita M. Rajbhar for Petitioner.

Ms. Priyanka Dable a/w. Bhushan Ahire for Respondent Nos.1 & 2.

CORAM : SARANG V. KOTWAL, J.

DATE : 3 APRIL 2023

PC :

1. This petition is filed by the natural mother of the two daughters aged 9 years 6 months and 2 years 6 months respectively, against the Respondents who are the paternal grandmother and paternal aunt of the Petitioner's daughters.

2. The Petitioner has filed proceeding under the Guardians and Wards Act 1890 r/w. Section 151 of the C.P.C. The Petitioner had filed an application below Exhibit-5 in the Civil M.A.No.217 of

2021 pending before the District Judge-9, Thane for interim custody of her minor daughters who are in custody of the present Respondents. Vide the impugned order dated 24/11/2021, following order was passed.

- “1) Applicant is allowed to meet both the minor children on every Sunday from 8.00a.m. to 8.00p.m. and she may take children from the respondents and return back them accordingly.
- 2) On other days the applicant is at liberty to visit her matrimonial home to meet her children for reasonable time and spent time with her children.
- 3) Respondents shall not restrain the applicant from coming to her matrimonial home and shall not create any hurdle or shall not create any unusual atmosphere during said period.
- 4) Said arrangement shall be continued till further order.
- 5) In changed circumstances, the Court will make appropriate modification in the order.”

3. Learned counsel for the Petitioner submitted that, now the matter is posted for cross-examination of the Respondents' witness. He has preferred the present writ petition for setting aside

the above order dated 24/11/2021.

4. The Petitioner has preferred an interim application in the present writ petition i.e. I.A.No.3301 of 2023 wherein she has prayed for custody of her minor daughters for 25 days in the summer vacation and she also wants keys of a cupboard to take her educational certificates.

5. Heard Shri. Mithilesh Rajbhar, learned counsel for the Petitioner and Ms. Priyanka Dable, learned counsel for the Respondents.

6. Learned counsel for the Respondents fairly stated that the Respondents shall handover the educational certificates of the Petitioner within a period of two weeks from today. The statement is recorded and accepted as undertaking to the Court. Therefore, that prayer in the Interim Application does not survive any more. The Petitioner has not insisted for keys of a cupboard at this stage. So far as, custody of daughters for 25 days is concerned, since the proceedings are still pending before the Trial Court, at this stage, I am not inclined to grant that relief. Instead, the interim

arrangement made in the impugned order dated 24/11/2021 can be modified to a certain extent, so that, the Petitioner has access for more number of days to her daughters. Therefore, instead of every Sunday, the Petitioner can be permitted to have access on every Saturday and Sunday. By way of interim measures this arrangement is acceptable to the Petitioner. Hence, the direction to that effect can be issued.

7. Learned counsel for the Petitioner submitted that the Trial Court be directed to conclude the proceedings within a period of three months from today. This request is also reasonable. Learned counsel for the Petitioner submits that the Trial Court taking up the matter is heavily burdened and the matter is not proceeding before that Court. In that case, learned Principal District Judge can be directed to consider transferring of this matter to the Court who can decide that matter within a period of three months from today. Both learned counsel, for the Petitioner, as well as, for the Respondents are ready to accept this arrangement.

8. Hence, the following order:

O R D E R

- i) The order dated 24/11/2021 passed by learned District Judge-9, Thane, in Civil M.A.No.217 of 2021 is modified.
- ii) The Petitioner herein is allowed to meet her both minor daughters on every Saturday and Sunday from 8.00a.m. to 8.00p.m. She may take her daughters from the Respondents and return them back accordingly.
- iii) The rest of the conditions mentioned in the impugned order in Clauses 2 to 5 are retained as they are.
- iv) Learned Principal District Judge, Thane shall consider transferring these proceedings to the learned Judge who can decide this matter expeditiously, considering the pendency before

the learned Judge taking up these matters.

- v) The proceeding in Civil M.A.No.217 of 2021 pending on the file of District Judge-9, Thane be concluded within a period of three months from today.
- vi) The Respondents shall handover educational certificates of the Petitioner within two weeks from today.
- vii) With these directions, the Writ Petition, as well as, the Interim Application are disposed of.

(SARANG V. KOTWAL, J.)