

SAP

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

**CIVIL WRIT PETITION NO. 7315 OF 2022**

Chirag Arora ... Petitioner  
**V/s.**  
Sheetal Vasant Thakur ... Respondent

Ms. Rebecca Gonsalvez a/w. Aditi Prabhu and Priyam  
Amin for Petitioner.

Mr. Rakesh K. Agrawal a/w. P. A. Bhise for the  
Respondent.

**CORAM : AMIT BORKAR, J.**

**DATED : JANUARY 7, 2023**

**PC.:**

**1.** The challenge in this Petition is to the order dated 28<sup>th</sup> April, 2022 passed by the learned Judge, Family Court No.4, Pune in P.D. No.3 of 2021 rejecting Application below Exhibit-45.

**2.** The Petitioner is the husband who had filed Application seeking following prayer:

“(a) Appoint an independent Psychiatric expert specializing in Child Psychology to evaluate the Applicant’s daughter, her current living situation and both parents towards reestablishing connect of the Applicant with his daughter.”

**3.** Learned Judge, Family Court rejected the Application mainly on the following grounds:

a) Earlier Application seeking visitation rights has been rejected.

B) There are no change in the circumstances after the order

dated 10th February, 2021.

c) Allowing the Application under result in exposing the child to the accused which would be hazardous.

4. In so far as the first reason is concerned, on perusal of the order dated 10th February, 2021, it appears that the said Application was filed by the wife for continuation of custody of daughter. The Family Court by the said order protected the custody of the child with the wife. The order further directs that the husband to co-operate with wife for obtaining visa/OCI card/extension for further stay of child in India.

5. Considering the relief prayed in the Application below Exhibit 45, in my opinion, the said reason is not germane to the controversy involved between the parties, i.e., appointment of independent medical person to evaluate the child.

6. The second reason mentioned is exposing the child to the accused would be hazardous. Considering the prayer quoted above, the apprehension expressed in the order is misplaced. As the result of allowing Application would not permit the husband to have contact with the child. It is for the Family Court to consider such a request at an appropriate stage and on an appropriate request being made by the husband on its own merit.

7. Perusal of the impugned order, it appears that the Family Court has considered the Application as if the result of allowing such Application would amount to grant of access to the husband. In my opinion, the right of husband to file such Application in the light of controversy pending between the parties and the statutory

rights conferred on the parties under various legislations including the right to seek custody of child, such an Application may amount precursor of the right of husband to seek custody / visitation right of child, but that needs to be decided by the Court only after such a request is made by the husband and the relevant material is placed before the Court for adjudication of such right of the husband.

**8.** The denial of right of the husband based on prohibition condition under Section 23(3) of the Protection of Children from Sexual Offences Act, 2012 is also misplaced as in the facts of the case the statement of the child has already been recorded and the request for appointment of expert medical person has been made. In the absence of contact of petitioner with the child, apprehension expressed at this stage is of no consequence.

**9.** Therefore, in my opinion, considering limited relief sought by the petitioner and fact of adverse report of Psychologist Dr. Mridula Apte appointed by wife, who is providing therapeutic treatment, would not denude the power of the Court to appoint independent expert to evaluate the child in the context of right of custody involved between the parties.

**10.** Therefore, in my opinion, the petitioner has made out a case for grant of relief for appointment of an independent expert specialized in child psychology to evaluate their daughter. Hence, following order:

- a) For the reasons stated above, the Application below Exhibit 45 in P. D.No.3 of 2021 is allowed in the terms of

prayer clause (A).

b) It is directed that the Family Court shall appoint independent ***panel of experts*** specialized in child psychology at Jalgaon preferably from the panel of such experts at ***District Court Jalgaon*** or any other independent child ***psychologist/s*** or ***medical expert/s*** in that field at the discretion of the Family Court.

c) The independent medical expert appointed by the Family Court is at liberty, if he/she thinks necessary, to hold meeting with husband and wife. The husband and wife shall co-operate with such expert.

**11.** The writ petition is disposed of in the above terms. No costs.

**(AMIT BORKAR, J.)**

**Note:** This order is modified as per order dated 27 April 2023 passed in IA/4119/2023. Corrections in clause (b) of paragraph 10 are shown in bold and italicize.