



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.13822 OF 2023
IN
INTERIM APPLICATION NO.1015 OF 2022
IN
CIVIL MISCELLANEOUS APPLICATION NO.112 OF 2021

Mrs. Shvetali Agrawal ... Applicant
Vs.
Mr. Devendranath Agrawal ... Respondent

Mr.Abhijeet A. Desai with Mr.Karan Gajra i/by M/s Desai Legal, Advocates for the Applicant.
Mr.Anand Mishra i/by Mr.A.M. Saraogi, Advocates for the Respondent.
Ms.R.M.Shinde, AGP for assistance.

CORAM : ABHAY AHUJA, J.
DATE : 29 AUGUST, 2023.

PC. :

1. This Interim Application has been preferred by the Applicant-wife pursuant to liberty granted by the Hon'ble Supreme Court by order dated 23rd May, 2023 in S.L.P No.11420 of 2023 which was filed impugning order dated 17th March, 2023 in Interim Application No.1015 of 2022 filed by the Respondent-husband in the Civil Miscellaneous Application filed before this court.

2. On 17th March, 2023 in Interim Application No.1015 of 2022 filed in the

Civil Miscellaneous Application, this court had continued the interim arrangement which was made by order dated 14th December, 2022 in respect of access of two children of the Applicant and Respondent and directed the arrangement to continue to operate till the Custody Petition is decided by the competent court. Earlier on 14th December, 2022, this court while considering Interim Application No.1015 of 2022 in the Miscellaneous Application had granted access to the Respondent in terms of paragraph No.6 of the said order which is reproduced as under:-

“6. Considering the submissions of both learned counsel, applicant is permitted to meet two minor children at Inorbit Mall at Vashi between 4 P.M. to 6 P.M. alongwith his father and mother i.e. grand parents of minor children. Applicant shall not cause any harm or intimidate to the minor children. This arrangement is done till the next date.”

3. Mr.Abhijeet A. Desai, learned counsel for the Interim Applicant-wife would submit that pursuant to the order dated 14th December, 2022, the Applicant in Interim application No.1015 of 2022 viz. the husband and the father of the two children was permitted to meet the two minor children today aged 13 and 9 years at Inorbit Mall at Vashi between 4.00 p.m. to 6.00 p.m. every alternate Sunday alongwith the husband's father and mother i.e. the grand-parents of the minor children. This court had also directed that the Applicant-husband shall not cause any harm or intimidate the minor children. These arrangements as mentioned earlier was directed by the order dated 17th

March, 2023 to continue to operate till the Custody Petition was decided by the competent court. Mr. Abhijeet A. Desai, learned counsel for the Interim Applicant wife, who is present in the court, submits that however, during the last access given to the husband, he had failed to have regard to the direction of this court not to intimidate the minor children. Learned counsel seeks to tender across the Bar, photographs which he submits, contain intimidating gestures by the husband and fearful looks on the faces of the children. Ofcourse these submissions are vehemently denied by the learned counsel for the husband. Learned counsel for the Applicant-wife would submit that it is in these circumstances that the present application pursuant to liberty granted by the Hon'ble Supreme Court has come to be filed for modification of the order dated 17th March, 2023 granting access to the husband till the disposal of the Custody Petition which has been expedited.

4. Mr. Anand Mishra, learned counsel for the Respondent-husband would submit that he has filed a reply to the Interim Application denying the averments, submissions and allegations and vehemently opposes the Interim Application. Learned counsel for the husband would submit that prayer clause (b) of the said application in fact seeks a cancellation of the interim order dated 17th March, 2023 and not a modification of the same as was permitted by the Hon'ble Supreme Court. Learned Counsel would submit that therefore, the said application is bad-in-law and deserves to be dismissed. Learned counsel however

submits that considering the visitation rights granted by this court as an interim measure till the disposal of the Custody Petition in order to facilitate without prejudice interim settlement till the disposal of the pending matters, he would impress upon his client to abide by the direction of this court to keep in mind that he shall not cause any harm or intimidate the minor children, although according to him his client has never harmed or intimidated the children.

5. Mr.Abhijeet A. Desai, learned counsel for the Applicant would submit that if the interim access granted by this court is supervised by a neutral person/agency that would aid and assist in abiding by the direction of this court. Learned counsel for the Respondent-husband suggests that access be arranged at Family Court, Vashi instead of Inorbit Mall. Mr.Abhijeet A. Desai, learned counsel for the Applicant resists this suggestion stating that that would not be a congenial place considering the age of the children.

6. In order to resolve this controversy, the learned Associate and the learned Sheristedar of this Court were requested to call for the learned APP/AGP to assist the Court in identifying a neutral person/officer to supervise the access by the father in Vashi-Belapur area.

7. Mrs. Rupali Shinde, learned AGP has kindly attended this Court and

would submit that the new court complex in Sector-15, CBD Belapur has a Child Care Room on the 6th floor of the said court complex, next to the Court of Civil Judge, Senior Division which is managed by a warden for facilitating such access/meeting and this Court could consider the said place as a venue for grant of access to the father. Mr. Anand Mishra, learned Counsel for the Respondent husband readily accepts this suggestion. Mr. Abhijit Desai, learned Counsel for the Applicant wife after taking instructions from the applicant is also agreeable to this suggestion but submits that this Court direct that the applicant should not intimidate the children during the access.

8. I have heard the learned counsel and the learned AGP at some length and also given my anxious consideration to the plight of the children and the suggestion of the learned AGP.

9. Accordingly, with the consent of the learned counsel for the parties, the following order is passed:-

(i) Let the order dated 14th December, 2022 which has merged with the order dated 17th March, 2023 be modified in the following manner:-

(a) Learned counsel on instructions have agreed that commencing from 3rd September, 2023, the Child Care Room on the 6th floor, next to the Court of Civil Judge, Senior Division of the New Court complex in Section 15, CBD,

Belapur be the venue where Applicant can meet the two minor children alongwith his father and mother i.e. grand parents of the minor children on every alternate Sunday between 4.00 p.m. to 6.00 p.m. under the supervision of the warden of the Special Women Cell. Applicant shall not cause any harm or intimidate to the minor children.

(b) This arrangement shall continue till the Custody Petition is decided by the competent court.

(ii) The orders dated 14th December, 2022 and 17th March, 2023 stand modified in the above terms.

10. The application stands disposed as above.

11. Let the Registry intimate the Learned Civil Judge, Senior Division, 6th floor, New Court complex in Section 15, CBD, Belapur, Navi Mumbai 400 064 of this order.

12. This court appreciates the assistance rendered by learned AGP Ms. Rupali Shinde.

(ABHAY AHUJA, J.)