

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5601 OF 2024

Poojalaxmi Angad Ghule
Alias Poojalaxmi Atmacharan Shinde **Petitioner**

VERSUS

Angad Mahendra Ghule **Respondent**

Mr.Abhijit Sarwate for the Petitioner.

Ms.Veena Thadani a/w. Mr.Vishal Thadani for the Respondent.

Mrs.Poojalaxmi Angad Ghule, petitioner present in person.

Mr.Angad Mahendra Ghule, respondent present in person.

CORAM: RAJESH S. PATIL, J.

DATE : 9 MAY, 2024

JUDGEMNT :-

RULE. Rule made returnable forthwith. By consent, taken up for final hearing.

2. This writ petition is filed by the wife challenges a common order dated 10 April 2024 passed by the Family Court, Pune on two applications being filed by the husband seeking access of son. By order dated 10 April 2024, the Family Court granted

access of son to respondents/husband, from 10 a.m. to 7 p.m., in summer vacation on every Tuesday, Friday and Sunday.

3. Initially, this matter was moved before me on 12 April, 2024 at 4.30 p.m. on production board in view of the urgency.

On that day, the following order was passed :-

1. The papers are allowed to be produced at 4:30 p.m. in view of urgency.
2. This Writ Petition is filed by the wife challenging the order dated 10 April 2024 passed by the Family Court, Pune, thereby granting access of minor child to the husband on every Sunday in between 10.00 a.m. in the morning to 7.00 p.m. in the evening. So also summer vacation access from 4 May 2024 to 13 June 2024. Only the operative part of the order has been made available , however reasoning of the impugned order is not available as of now. Mr.Sarwate appearing for the Petitioner submits that nobody has filed the Caveat on behalf of the Respondent.
3. Mr.Sarwate is directed to serve a copy of this Petition on the Respondent by all permissible modes of service and file affidavit of service before the next returnable date.
4. Stand over to 19 April 2024. In the meantime, there will be ad-interim relief in terms of prayer clause (c) till next date of hearing. Prayer clause (c) of the Writ Petition reads as under :-

“(c). That pending the determination of the present writ petition stay be granted to the execution, implementation of the operative order dated 10/04/2024 passed in PA 283/2023 below Exhibit 13, 64.”

4. In the meantime, if the reasoned order is available, the Petitioner is granted liberty to enclose the same to the Writ Petition.

4. Since the reasoned order was not available, the same was not annexed to the writ petition by the petitioner-wife. After the reasoned order dated 10 April 2024 was made available, the matter was moved by the respondent-husband before this Court. Hence, this matter has been placed today before me in view of urgency.

5. The marriage between the parties has taken place on 18 December, 2018 and son 'Shaurya' was born on 2 June 2020. However, due to differences between the husband and the wife, they have been living separately from 18 January 2023.

6. On 1 February 2023, divorce petition has been filed by the wife in the Family Court, Pune, for nullity of marriage and alternatively for dissolution of marriage.

7. Soon thereafter, on 1 April, 2023, application Ex.13 has been filed by the husband seeking access of the son. So also, on

the same day, the wife has preferred an application seeking interim maintenance of Rs.1,50,000/- for herself and Rs.2,00,000/- for son aged 3 years and 10 months. The said application of maintenance is pending. On 6 March 2024 the husband has preferred an application Ex.64 seeking summer vacation access of the minor son Shaurya. In the meanwhile, the access application was decided on 10 April 2024. Being dissatisfied the wife has challenged the summer vacation access, granted to husband.

8. Mr.Sarwate, learned counsel made his submissions on behalf of the petitioner wife:-

(a) He submitted that the Family court Judge in impugned order has not taken into consideration the submissions made on behalf of the wife. He submits that the respondent husband holds a joint wine shop licence in his name along with his father. So also, he is a tax consultant. In spite of this, the respondent

husband as of date is not paying the interim maintenance to the wife and son. He submits that in view of the submissions made by the wife in the divorce petition, the access of such long hours without any supervision should not have been granted to the husband.

(b) He also submitted that in the reply filed to the access application, various issues were raised on behalf of the wife including the issue of excess use of mobile phone, the child been made to drink alcohol and further the points as specifically raised in paragraph no.5, paragraph no.7, paragraph no.8, paragraph no.11 and paragraph no.12. These issues were not considered by the Judge while deciding the husband's application.

(c) Mr.Sarwate submitted that the access can be given but only to the limited period of two and half hours in the presence of wife on Monday's, Wednesday's, Friday's and Saturday's in the evening at

6.30 p.m. to 8.30 p.m. when the child goes for skating class at 'Club Solaris' at Pune.

(d) He submitted that the impugned order should be accordingly modified.

(e) He relied upon the judgment of Single Judge of this Court in the case of **Vinodchandra Deokar v/s. Anupama** reported in ***AIR 1993 Bom 232*** .

9. Ms.Thadani, learned counsel made her submissions on behalf of the respondent husband :-

(a) She submits that the interim application for maintenance has been filed by the wife where exorbitance amount of Rs.3,50,000/- per month has been sought.

(b) She submits that the respondent husband on his own is paying school fees of the son Shaurya, except for the last semester fees which the husband was ready to pay, but the wife went ahead and hurriedly

paid the said amount with ulterior motive.

(c) She submits that her client is ready to pay reasonable amount towards maintenance of the son. She submitted that he will pay Rs.15,000/- per month from May 2024, voluntarily till the Court decides the interim maintenance application.

(d) Ms. Thadani, submitted that she has enclosed with the written statement the photographs where the wife is shown to be consuming alcohol, hookka, which have been enclosed to the written statement but the written statement which has been enclosed to the present writ petition purposefully the photos are not enclosed.

(e). Ms.Thadani submits that the access has been granted by the Family Court after considering that the child will not only meet his father but will also be with the family of the father i.e. the grandparents of

the child at their house.

10. I have heard learned counsel of both the sides and with their assistance, I have considered the documents on record including the impugned order.

11. The Family Court while passing the impugned order has considered both the applications of “access” and has also considered the submissions made. The Court has noted the wife’s submission that she has no issue to grant access of the child to the father, if it is in her presence. The Family Court has also considered that in access matter what has to be taken into consideration is the welfare and well-being of the child. The Family Court has also considered that the petitioner husband is staying with his father and mother, who are the grandparents of the minor son ‘Shaurya’.

12. In the present proceedings there are various allegations made by the parties against each other including the allegation that they have certain vices in life. All the allegations made by

the parties are to be considered in the main petition, which is pending before the Family Court at Pune, from February 2023. At this stage, after going through the reasoning of the impugned order, I am not inclined to interfere with the findings recorded by the Family Court for more than one reason. As I have mentioned that there are allegations made by parties made against each other which have to be proved before the Family Court, Pune. Today what is to be considered is only the order passed in an access application, and whether it is reasonable. The family court has granted access of son to father in summer vacation three days in a week. It is not an overnight access. The husband (who is father of minor son) is staying along with his parents, hence even they would like to spend time with their grand son. Interim maintenance application is pending for hearing. I am hereby directing the Judge of Family Court to expedite the hearing of interim maintenance application. The same be decided within a period of three months, from today.

13. The petitioner husband has volunteered to deposit a sum of

Rs.15,000/- per month from May 2024 towards interim maintenance to son in the intermediate period. I am hereby directing the petitioner to deposit a sum of Rs.25,000/- per month without prejudice to the rights and contentions of both the parties as interim maintenance till the interim arrangement application is decided by the Family Court, Pune, after hearing both the sides. The said amount of Rs.25,000/- should be deposited on the 15th day of each month from May 2024 till the further orders are being passed by the Family Court, Pune on interim maintenance application. The said amount can be withdrawn by the wife.

14. In the judgment of Bombay High Court of Vinodchandra Deokar (supra), the husband who was staying in Jolly Maker Apartment at Cuff Parade, Mumbai had floated the orders passed by Supreme Court, by not paying the maintenance amount though directed by Supreme Court, as condition precedent, till then the husband's custody petition proceedings were stayed. Hence, the facts in the said judgment were quite different from

the present proceedings. As in the present proceedings there is no order passed granting interim maintenance.

15. There are no merits in this writ petition. Writ petition is dismissed. No costs.

16. The hearing of Family Petition No. PA. No. 283 of 2023, is hereby expedited.

17. At this stage, Mr.Sarwate on behalf of the wife seeks stay to the operation of this order.

18. Ms.Thadani submits that the Family Court has granted the vacation access to the husband. She submits that the vacation of the child started from 4 May, 2024 and will end on 15 June, 2024. Therefore, she is opposing the request made by the advocate for the petitioner.

19. The request made by Mr.Sarwate is hereby rejected.

[RAJESH S. PATIL, J.]