



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12867 OF 2023

Mrs. Jyoti Prakash Bhatia

...Petitioner.

Versus

Shri. Prakash Ashok Bhatia

...Respondent.

Mr. Shubham Gangam i/b Mr. Sachin Chandan for the Petitioner.

Coram : Sharmila U. Deshmukh, J.

Date : May 9, 2024.

P. C. :

1. Yesterday, this matter was argued at length by learned counsel Mr. Shubham Gangam appearing for the Petitioner and thereafter when this Court was not inclined to entertain the petition, he sought time to take instructions for withdrawal, and therefore, at his request, the matter was kept back in second session. However, in the second session none appeared though the matter was called out. Matter was therefore kept today.

2. Today, submission is sought to be made after the matter was argued yesterday at length, that the advocate on record is not available. Even if that be so, the petition was argued at length by Advocate Mr. Shubham Gangam and has been considered by this Court

and as there are no instructions for withdrawal, the order is being passed today.

3. By this petition, challenge is to the order dated 19th July 2023 passed by the trial Court in Marriage Petition No.986 of 2014 by which the Respondent – father is allowed to meet the child on first Sunday of every month between 11.00 a.m. and 3.00 p.m. at the residence of the Petitioner with prior intimation.

4. An application below Exhibit-41 came to be filed by the Respondent-father in the petition filed under Section 12(1)(b) of the Hindu Marriage Act, 1955 (for short “HM Act”), under Section 26 of the HM Act seeking access of his minor child. The Petitioner herein resisted the application contending that she was driven out of the matrimonial house when she was pregnant and all the expenses of delivery were borne by her parents. It was further contended that the Respondent–husband had never visited child and Petitioner – wife and taking undue advantage is seeking access. It was further contended that the child is only 6 years of age and if the order of access is passed, it may affect the child.

5. The trial Court after hearing both the parties has granted day access of the child for a limited period from 11.00 a.m. to 3.00 p.m.

6. Learned counsel appearing for the Petitioner–wife would submit that grant of interim access is not in the best interest of minor child. He would further submit that since birth, father has not made any effort to meet the child or to take care of his expenses and therefore the order granting access is required to be set aside.

7. Considered the submissions.

8. Even though overnight access of the child was sought, the trial Court has rightly granted day access only for a period of 3 hours which will be a supervised access as the access has been granted at the residence of the Petitioner. Merely because the father has not met the child since birth, his right to meet the child cannot be denied as it is necessary for the proper upbringing of the child that he gets love and affection of both the parents.

9. Even considering that child had not met the Petitioner father and it might take some time for the bond to form, the same cannot be held to disentitle the Respondent–father to access of the child and in my opinion, the supervised access which has been granted cannot be faulted with.

10. As regards the contention that the Respondent – father is not taking care of the expenses of the child it is open for the Petitioner –

mother to file appropriate application in that regard before the trial Court, however the same cannot be a ground for denying the access to the Respondent – father.

11. In the light of above, there is no merit in the petition. Petition stands dismissed.

[Sharmila U. Deshmukh, J.]