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

FAMILY COURT APPEAL NO.11 OF 2024

Payal Sinha

.. Appellant
(Org.Petitioner)

Versus

Prashant Saxena

.. Respondent
(Org.Respondent)

WITH

INTERIM APPLICATION NO.16651 OF 2023

IN

FAMILY COURT APPEAL NO.11 OF 2024

Payal Sinha

.. Applicant

In the matter between:-

Payal Sinha

.. Appellant

Versus

Prashant Saxena

.. Respondent

Mr.Kunal Bhangе i/b Armaity Khushrushahi, Nerissa Almeida, Advocates for the Applicant/Wife.

**CORAM: B. P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.**

DATE : FEBRUARY 22, 2024

P. C.

1. The above Interim Application is filed seeking the following reliefs:-

- "(a) that pending the hearing and final disposal of Family Court Appeal (st) No.29092 of 2023, and the present Interim Application, sole permanent custody of the minor son Aayansh be granted to the Applicant;*
- (b) that pending the hearing and final disposal of Family Court Appeal (st) No.29092 of 2023, and the present Interim Application, the Applicant be granted permission to execute all necessary forms/documents including all form/documents for the purpose of the minor son Aayansh's applicant for immigration to Australia;"*

2. The above Family Court Appeal has been filed by the Appellant-Wife from the judgment and order of the Family Court, Bandra dated 5th April, 2023. Before the Family Court the Appellant-Wife had filed a Petition seeking a divorce under Section 13(1)(ia) and 13(1)(ib) of the Hindu Marriage Act, 1955 and also sought permanent alimony of Rs.75,000/- per month. By the impugned order, the Divorce Petition filed by the Appellant-Wife was partly allowed and she was granted a divorce under Section 13(1)(ia) and 13(1)(ib) of the Hindu

Marriage Act, 1955. No alimony was granted and the impugned judgment is completely silent on the custody of the child. The present Appeal is restricted only to the aspect of the custody of the child. It is in this light that the above Interim Application is filed seeking the reliefs more particularly set out hereinabove.

3. We have heard the learned counsel appearing for the Appellant-Wife. The Respondent-Husband has chosen not to appear though duly served as evidenced by the affidavits of service dated 5/12/2023, 14/12/2023 and 03/01/2024. As far as prayer clause (a) is concerned, that is something that we will consider at the final hearing of the Appeal and cannot be granted at the interim stage. However, as far as prayer clause (b) is concerned, we find that the same deserves to be granted. We say this because it appears that the Appellant-Wife wants to apply for a passport for her child, and the Respondent-Husband, even before the Trial Court did not appear. Because of the non-cooperation of the Respondent-Husband, the child ought not to suffer. In these circumstances, the above Interim Application is allowed in terms of prayer clause (b) reproduced above.

4. It is made clear that for any documents that are to be signed on behalf of the minor son Aayansh, the signature of the Respondent-Husband will not be required and the Appellant-Wife will be entitled to sign any such documents/applications on behalf of her son as a parent/guardian.

5. The Interim Application is disposed of in the aforesaid terms. However, there shall be no order as to costs.

6. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN,J.]

[B. P. COLABAWALLA, J.]