

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6294 OF 2024

Shital Sanjay Bhosale

.. Petitioner

Versus

Shakuntala Pandurang Bhosale

.. Respondent

.....

- Mr. Abhijit P. Kulkarni a/w Ms. Sweta Shah for Petitioner
- Mr. Vaibhav R. Gaikwad a/w Mr. Atharva R.B. for Respondent

.....

CORAM : MILIND N. JADHAV, J.

DATE : MAY 10, 2024

P. C.:

1. Heard Mr. Kulkarni, learned Advocate for Petitioner and Mr. Gaikwad, learned Advocate for Respondent.

2. Present Writ Petition impugns the order dated 28.11.2023 rejecting the Application filed by Petitioner seeking substantive right and permission to meet her two children i.e. son and daughter aged 15 years and 12 years respectively. Praecipe was moved by Mr. Kulkarni on 19.04.2024 for urgent orders in view of the ensuing summer vacation. Due to paucity of time the matter could not be taken up for hearing on 03.05.2024. Hence it was once again mentioned by Mr. Kulkarni for urgent listing to consider the Petitioner's request as she being the biological mother of her two children and their custody having been granted by the learned Trial Court to their grandmother. Though certain submissions were made on that date and which are

delineated in that order passed by me, on the basis of those submissions and the fact that the school vacations of the children being on the anvil, I agreed to the request made by Mr. Kulkarni to interact with the two children since they being teenagers as also the parties and hence, called them for interaction in the Chamber on 09.05.2024.

3. On 09.05.2024, I interacted with the parties and their Advocates as also with the two children separately. The interaction and the hearing lasted for almost three hours in my chamber after Court hours. After that at the request made by both the learned Advocates, I kept the matter today for passing ad-interim / interim order. This was solely in view of the fact that today being the last date before the ensuing summer vacation of the Court and in view of the fact that I have interacted with the parties and more specifically with the two children, I acceded to the request made by both the learned Advocates to place on record certain observations and findings pursuant to the interaction which would enure to the benefit of this Court to pass appropriate orders while deciding the Petition.

4. Both the children appeared extremely confident in their independent conversations with me. What I find on interaction with the two children was that both of them had an inherent anxiety and apprehension about disruption in their education / studies because of

the turn of events and this was the first issue which was voiced by both of them separately to me. I need not delineate the facts since the facts are already in the pleadings and this I would do so with a specific purpose. What I found was the fact that in so far as the living condition of both children are concerned, they had no complaint or issue. At some point of time during the interaction, some of the issues which were stated by them appeared to be such that they were aware of the facts pertaining to the demise of their father as also the role played by the Petitioner (their biological mother) which were voiced by them. This particular thought of the children was something which was unexpected and certainly it was too mature a thought for the fragile minds of these two children to have been spoken before me. I have no doubt in my mind that this thought process was in view of the deep animosity still persisting in the minds of the family members i.e. grandmother who has custody of the two children as also the uncle of the children who is the only son of the grandmother now. Be that as it may, animosity will require some time to erode. The larger question before the Court in such a matter would be to consider the Application of the Petitioner (biological mother) of the two children seeking visitation rights. There is a reference to the custody order in the impugned order and therefore undoubtedly an impression may be formed in view of certain facts pertaining to the demise of the father

of the children which may be lurking in the minds of the children but the larger question still remains unanswered and that is voiced by Mr. Kulkarni. Equally I have also heard Mr. Gaikwad, learned Advocate appearing for the grandmother. It needs to be stated that a deep rooted animosity exists in the mind of the grand mother which I found on interaction with her. Before passing the order today, I also interacted with both the learned Advocates and shared what transpired after interacting with the parties and stated that a considered approach will have to be taken in the present case rather than a robust defence of preventing the biological mother from meeting her two children. This is only because one needs to be understand the facts at present, which essentially would relate back to the issue of custody of both children. Hence I propose to only address the anxiety and apprehension expressed by them relating to the fear in their mind about disruption of their education. The Petitioner mother is well educated. The daughter has in categorical terms informed me that she has a grave apprehension that she would be removed from the English medium school in which she is presently studying and put into a Marathi medium school which she would never like to study. I must say here that the conversation of this 12 year old girl was in English language and her vocabulary and confidence will put to shame many educated persons. She also appeared to be supremely confident

about her present and also her future plans but extremely convulated with respect to the immediate past about the demise of her father in unusual circumstances when she was barely 7 years old. I put this question to both the learned Advocates in respect of the apprehension expressed by the daughter and both the learned Advocates after taking instructions from their respective clients have immediately stepped forward to inform the Court that at no point of time, the daughter shall ever be removed from the English Medium School where she is presently studying and this assurance has been given to me not only by the grandmother who had communicated with me independently yesterday but also by Mr. Kulkarni who has in fact went a step ahead and would submit that Petitioner is ready and willing to take entire burden of her education expenses.

5. The son has gone into 10th standard. He is taking education in Harkesh Panhala Public School, Panhala which is a reputed boarding school and at present the grandmother and the uncle are covering the education expenses and other expenses. The son is also found to be extremely confident but once again just like his younger sister has a little apprehension about his future education. Hence I have impressed upon both the learned Advocates that before the present Petition is heard on its own merits, in view of the serious facts which are involved, it would be appropriate to address the apprehension

expressed by both the children with respect to their education. It is pertinent to note that within a few years, both the children will become major and thereafter would be able to take up their independent decisions and would look after themselves being guided by their guardians. Though the law relating to custody of children is well settled, it is seen that in view of the Petitioner being arraigned as accused and was even arrested, the custody of both the children is given to the grandmother. Though the Petitioner is now enlarged on bail, but in the interregnum she may lose the best years of her life to see her own children growing up in front of her eyes. All these are questions to be answered especially when in the present case, a girl child is a minor of 12 years of age and therefore such case cannot be decided solely on the basis of interpretation of the legal and statutory provisions as they require a humane approach and is required to be solved with a human touch. Therefore I have impressed upon both the learned Advocates that the Court cannot solely be guided by any statute nor by any rules or procedure or precedent since the facts in the present case will themselves determine the outcome of the issue. No doubt welfare and well being of both the children in the present case would be of paramount consideration and while doing so, it is expected that absolute due weightage is to be given to the children's day to day comfort, their contentment, their health, their education,

their intellectual development and their overall basic physical comfort and merely ethical values cannot be invoked. The aforesaid issues will have to be addressed by both the parties in the present case since these issues are absolutely essential. I say this because both children according to me at present are not that old to form an independent judgment and therefore this Court will have to take an active role to ensure their absolute welfare. At the same time, concern of the Petitioner being their biological mother cannot be ignored by this Court. The amplitude of the provisions of Article 21 are so wide rather such wide that putting an embargo on the meeting of the biological mother with her own two children who have lived with the Petitioner upto their age of 10 years and 7 years cannot be ignored by this Court. The apathy of the biological mother can only be understood by the mother who is undergoing this trauma. Though in the present case, I must also place on record that during the interaction the children did express their reluctance to meet their mother who is the Petitioner, however since I interacted with them on several issues, I am clearly of the opinion that their impression as conveyed to me was a clear case of parental syndrome considering their custody with their grandmother and the deep rooted animosity existing between them with respect to the demise of their father in the minds of the grandmother and their uncle as also the other relatives who interact

with the children. One of the decision given by Mr. Kulkarni also touches on that aspect. Mr. Kulkarni would submit that since the Petitioner mother had been kept away rather not having interacted and seen her own children for the past four years, she is anxious to take a step forward and meet them. Feelings of a biological mother in such a case cannot be simply ignored in view of the order of custody passed by the learned District Court. Though the District Court order gives a reason with respect to the Petitioner having been arraigned as an accused in the demise of the father, the Court will have to adopt a humane approach. Both the learned Advocates have informed me that there shall be no disruption in the education received by both the children and therefore recording so, I am certain that as time passes by, this Court will consider the grievance of the parties. In that view of the matter and considering the Application of the Petitioner to have an interaction with the children, I interacted with the parties and therefore on receiving the assurance from the parties that the education of both the children will not be disturbed, I have no doubt in my mind that if that be so, hearing of the present Petition can be deferred to a future date.

6. Mr. Kulkarni would submit that in view of the ensuing summer vacation and the fact that the son of the Petitioner would return back to his boarding school, some directions be passed in respect of

visitation rights. However after having the interaction yesterday with the Petitioner, two children, grandmother and the uncle of the two children along with their Advocates in my chamber for quite sometime, I am not inclined to pass specific directions for visitation rights immediately. I would like to impress upon the Petitioner to make an Application seeking visitation right for few hours in the right manner and direction whether it can be in the Court premises or before the counselor or any relative within the family and if such an Application is made by the Petitioner, the Court shall consider the same appropriately.

7. With the above directions, Writ Petition is placed for hearing on 25.06.2024 giving leave and liberty to the Petitioner to approach the Vacation Court if the need so arises.

8. I would like to express my appreciation to the joint efforts put by both the learned Advocates considering the sensitive nature of the present matter as also the facts in the present case during the time of interaction as also at the time of passing of this order.

9. Needless to state that if any Application is filed in the interregnum before the next date seeking temporary visitation rights, the same shall be considered on its own merits after hearing both the sides.

10. Stand over to 20th June, 2024.

Amberkar

[MILIND N. JADHAV, J.]

RAVINDRA
MOHAN
AMBERKAR

Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date:
2024.05.10
21:45:29 +0530