

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 15214 OF 2024
IN
APPEAL FROM ORDER NO. 850 OF 2024

Vaishnavi Caim Sambuddha

... Applicant

Versus

Alok Nath Sambuddha

...Respondent

Mr. Sunil Gosavi for the Applicant.

Mr. Naveen Sharma for Respondent.

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CORAM : M.M. SATHAYE, J.
DATE : 29th NOVEMBER 2024

P.C. :

1. Heard learned counsel for the Applicant-wife and learned counsel for the Respondent-husband. This is an application for interim stay to impugned Order.

2. The learned counsel for the Applicant has pressed the matter for urgent ad-interim or interim relief. Hence, following order is necessitated. Learned counsel for the Respondent handed over a compilation of documents. The same is taken on record of appeal.

3. By the impugned order dated 19.11.2024 passed below Exh.44 in C.M.A.No. 90/23, the learned District Judge-2, Panvel-Raigad has exercised power under Section 45 of the Guardians and Wards Act, 1890 ('the said Act' for short) on an application made in that behalf by the Respondent / Husband. The Respondent had also invoked provision

of Section 151 of the Code of Civil Procedure, 1908.

4. I have perused the impugned order. The dispute is about custody of a child namely Alvi who is stated to be 6½ years old daughter. The main petition filed by the Respondent-husband is for custody of child under provision of the said Act.

5. Perusal of the impugned order shows that during pendency of the main application, a request was made for regular and vacation access below Exh.5 which was partly allowed under order dated 01.03.2024, allowing visitation right to Respondent-husband. It appears that this order of visitation right was not complied, due to willful breach thereof by the Appellant wife and police aid was required to be ordered. Even after such order of police aid, it is seen from the record the same could not be implemented because of the obstacles put by the Applicant-wife. Therefore, Respondent husband had moved another application vide under Exh. 30 for detaining the Applicant wife in prison. The Court took a lenient view and by order dated 23.08.2024, issued direction to produce the child before the Court for passing further orders.

6. Thereafter, it appears that during hearing before Diwali vacation, parties have filed joint pursis below Exh.43 for temporary custody of the child for the first week with the wife and next week with the husband. Material was produced before the Court, *inter alia* in the form of exchange of text messages and it was noted that the arrangement agreed during vacation was not complied with by the Applicant wife and the Respondent husband was not allowed access or temporary custody during vacation. The impugned order further records

that for more than 1 year as on date, the wife is avoiding access of the child to the husband.

7. It is noted by the learned Trial Judge that the conduct of the wife is stubborn and trying to frustrate the orders of the Court. Unfortunately, it is also seen that the dispute between the parties has gone to such an extent that the wife has filed complaint against husband alleging inappropriate touch to the child - their own daughter under Protection of Children from Sexual Offences Act, 2012. The Court has recorded that even if the wife apprehended improper touch or molestation of the child at the hands of the husband, she has still chosen to enter into Consent Terms for Diwali vacation access. This reflects poorly, in my opinion, on the Applicant wife's conduct.

8. The Trial Judge has observed that Applicant-wife has indulged into intentional lapses to comply the order of the Court and she is misusing both, the law and the child, as a tool against husband. It is further recorded that the Court has noticed that the child is willing to go to the Respondent father and she is comfortable with him.

9. In the aforesaid background recorded by the Court, the impugned order is considered fit to be passed, in the interest and welfare of the child.

10. In the backdrop of aforesaid circumstances, the impugned order directs that the Respondent-husband is entitled for 'temporary custody' of the child and such temporary custody is directed to be given to Respondent husband. The prayer of the husband to detain the wife in civil prison is kept in abeyance. The Applicant-wife is given liberty to

apply for visitation right and access of the child and she is also granted liberty to apply for video calling, which application will be decided in accordance with law.

11. In light of what has been narrated above, I do not see any reason to grant interim stay to the impugned order. The Interim Application is accordingly rejected.

(M.M. SATHAYE, J.)