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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 850 OF 2024
WITH
APPEAL FROM ORDER NO. 258 OF 2025
WITH
INTERIM APPLICATION NO. 7716 OF 2025**

Vaishnavi Caim Sambuddha ... Appellant/Applicant

vs.

Alok Nath Sambuddha ... Respondent

Mr. Altaf Khan a/w. Ms. Supriya Ghadge for Appellant
Mr. Naveen Sharma for Respondent.

CORAM : GAURI GODSE, J.

DATED : 2nd MAY 2025

ORDER:

APPEAL FROM ORDER NO. 258 OF 2025

1. On 25th April 2025, this appeal was directed to be heard alongwith Appeal from Order No. 850 of 2024. The preliminary objections raised on behalf of the respondent that the appeal is not maintainable was also recorded. Appeal No. 850 of 2024, was already due today. Hence, by order dated 25th April 2025, the present appeal was also directed to be listed alongwith the connected appeal, today and the execution and implementation of the order granting overnight excess was stayed by this court. The order dated 25th April 2025 was challenged by the respondent

before the Hon'ble Apex Court. By order dated 1st May 2025, the Hon'ble Apex Court granted liberty to the respondent to mention the present appeal before this court. Accordingly, this appeal was taken out of turn at the end of the board at 6:30 pm.

2. Learned counsel for the respondent submits that the Hon'ble Apex Court has permitted to raise the issue regarding the maintainability of the appeal. He therefore submits that the issue of maintainability of the appeal be heard today.

3. I have heard learned counsels for the parties on maintainability of this appeal. The impugned order is a common order passed on three applications. Exhibit 88 and 89 are the applications filed by the appellant. Exhibit 88 seeks modification of the order dated 9th January 2024 imposing restriction on the appellant from removing the child from the jurisdiction of the court. Exhibit 89 also seeks modification of order dated 9th January 2024, seeking permission to take the child beyond the jurisdiction of the court. Exhibit-90 was filed by the respondent for overnight access of the child. By the impugned order the learned District Judge has issued various directions. The respondent is granted overnight access. Necessary directions are issued for handing over the child as well as police protection. The conditional directions are also

issued restraining wife from travelling with the child beyond the jurisdiction of the court during the summer vacation. Thus, none of the directions issued by the court would fall under Section 47 of the Guardians and Wards Act, 1890, which provides for filing the appeal before the High Court. The impugned directions issued in the common order are therefore neither appealable under Section 47 of the Guardian and Wards Act nor under Order XLIII of Civil Procedure Code, 1908. Hence, I find substance in the preliminary objections raised on behalf of the respondent that this appeal will not be maintainable.

4. Learned counsel for the appellant seeks leave to convert this appeal into Writ Petition. Leave granted. The appellant is permitted to file the memo of petition as required for filing a writ petition. Considering the urgency in the appeal regarding custody of the minor child and overnight access during vacation, the appellant shall take necessary steps latest within a week from today. The appellant is permitted to carry out necessary amendment and supply memo of petition. After amendment is carried out, office is directed to convert the appeal into writ petition.

5. Learned counsel for the appellant submits that to enable the appellant to seek appropriate interim relief from the writ court, the

interim relief granted by this court on 25th April 2025 be extended at least for a week. Learned counsel for the respondent vehemently opposes the extension of the interim relief. He submits that the appellant has committed a breach of the impugned order and taken away the minor child out of the jurisdiction of the court. Learned counsel for the appellant denies the allegations. The issue involved is regarding custody of the minor child and the parties have made serious allegations against each other. The minor girl child is only around nine years old and is residing with the mother. Considering the sensitivity involved in the allegations made against the respondent, I find it appropriate in the interest of the minor child to extend the interim order passed by this court on 25th April 2025 for one week from today to enable the appellant to seek appropriate interim relief in the writ petition.

APPEAL FROM ORDER NO. 850 OF 2024.

6. Learned counsel for the respondent submits that even this appeal is not maintainable. Learned counsel for the respondent submits that the impugned order in this appeal is passed under Exhibit 44. He submits that though the application was filed under Section 45 of the Guardians and Wards Act, there was a combined prayer made for shifting of custody of the minor child and prayer

under Section 45 for detaining the appellant in civil prison. He however, submits that by the impugned order only first prayer regarding custody of child is granted and second prayer is kept in abeyance. He therefore submits that the impugned order in this appeal would not be appealable under section 47 of the Guardians and Wards Act.

7. I have perused the papers of the appeal. Learned counsel for the respondent is right in submitting that the prayer under Section 45 is kept in abeyance. Only prayer clause (a) of the application is granted. Hence, the directions issued in the impugned order would not fall under Section 47 of the Guardians and Wards Act. The impugned order is not appealable under Order XLIII of the Civil Procedure Code. Learned counsel for the appellant therefore seeks leave to convert this appeal into writ petition. Leave granted. The appellant shall file required memo of petition within a week and carry out the necessary amendment.

8. After the amendment is carried out, office is directed to convert this appeal into writ petition. In this appeal, the Hon'ble Apex Court has already issued directions on 16th December 2024. Hence, no further directions are necessary in this appeal.

(GAURI GODSE, J.)