

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.17967 OF 2024

Samir Christopher Fernandes

...Petitioner

Versus

Sonya Marise Misquitta

...Respondent

Mr. Laxman P. Birajdar a/w Ms. Shilpa Kadam, for the Petitioner.

Mr. Aadesh Konde-Deshmukh, for the Respondent.

CORAM: MADHAV J. JAMDAR, J.

DATED: 8th MAY 2025

P.C.:

1. Heard Mr. Birajdar, learned Counsel appearing for the Petitioner and Mr. Kond-Deshmukh, learned Counsel appearing for the Respondent.

2. The challenge in this Writ Petition is to the order dated 1st May 2024 passed by the learned Judge, Family Court No.2, Pune below Exhibit-56. The impugned order reads as under:-

ORDER

“It appears that the maintenance amount due towards respondent in D.V proceedings. Respondent is claiming access but not discharging his responsibility. Respondent is directed to deposit 50% of arrears amount whatever maintenance amount due towards him show is bonafide. The amount be deposited within three days. After depositing amount as above appropriate order will be passed for access of child matter be kept on 4.6.24.”

Thus, by the impugned order the learned Family Court directed that if arrears of maintenance are paid order will be passed for access of the

child.

3. It is the submission of Mr. Birajdar, learned Counsel appearing for the Petitioner that entire arrears of the maintenance are paid and as per the contention of the Respondent the balance amount is Rs.2,34,140/-.

4. It is the submission of Mr. Konde-Deshmukh, learned Counsel appearing for the Respondent that total amount of maintenance is Rs.6,55,000/-, the Petitioner has paid an amount of Rs.4,20,860/- and therefore the arrears as on April 2025 are Rs.2,34,140/-.

5. The Petitioner has filed affidavit dated 8th April 2025 stating that entire arrears are paid. Mr. Konde-Deshmukh, learned Counsel for the Respondent denies the said contention and submitted that if arrears are paid then the Respondent has no objection for access. Thereafter he submitted that the child be interviewed for ascertaining the wishes of the child.

6. Perusal of the record shows that the marriage between the Petitioner and Respondent took place on 15th November 2014, the child was born on 24th January 2019 and the parties are staying separate since about 2019. Certain arrangement has been arrived at between the parties for the access with mutual consent and accordingly joint pursis was filed on 7th October 2023. Thereafter the Petitioner filed Application for child access during summer vacation on 26th April 2024 and the learned Trial Court has passed the order dated 1st May 2024 as set out

hereinabove directing the Petitioner to pay the maintenance before passing of any order of access.

7. The Supreme Court in the decision of *Yashita v. State of Rajasthan*¹ held that a child, especially a child of tender years, requires the love, affection, company and protection of both parents. It has been held that just because parents are at war with each other, does not mean that the child should be denied the care, affection, love or protection of any one of the two parents. It has been held that even if the custody is given to one parent the other parent must have sufficient visitation rights to ensure that the child keeps in touch with the other parent and does not lose social, physical and psychological contact with any one of the two parents. It has been held that it is only in extreme circumstances that one parent should be denied contact with the child. It has been held that while deciding issues of custody, Court shall clearly define the nature, manner and specifics of the visitation rights.

8. In this case the child is 6 years old. As per the contention of the Petitioner, there are no arrears of maintenance whereas as per contention of the Respondent, the arrears are to the tune of Rs.2,34,140/-. The hearing of the Writ Petition will take some time.

9. However, without prejudice to the rights and contention of both the parties, following order is passed:

¹ 2023 SCC 67

ORDER

1. The Petitioner shall deposit in the account of the Respondent an amount of Rs.1,00,000/- within a period of 10 days i.e. on or before 18th May 2025.
2. As the child is having summer vacation from 1st April 2025 to 31st May 2025, the Respondent-mother is directed to give overnight access to the father of the child from 26th May 2025 to 29th May 2025. The father to collect the child on 26th May 2025 at 11 a.m. from the residence of the Respondent and return back the child to the mother on 29st May 2025 on or before 5 p.m. During the said period of access the Respondent-wife will have unlimited video access with the child.

10. Stand over to **23rd June 2025.**

[MADHAV J. JAMDAR, J.]