

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

**REVIEW PETITION NO. 70 OF 2024
IN
WRIT PETITION NO.5790 OF 2024**

SIDDHESH PARALKAR

..PETITIONER

VS.

PRAJAKTA PARALKAR

..RESPONDENT

AMOL
DILIPRAO
NAWALE

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AMOL DILIPRAO
NAWALE
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Ms. Preeti Walimbe a/w. Ms. Vaishnavi Nagargoje for petitioner.
Mr. Abhijeet D. Sarwate for respondent.

CORAM : RAJESH S. PATIL, J.

DATE : JANUARY 10, 2025.

P.C. :

1. This Review Petition is filed by the husband challenging the order dated 18th April 2024 passed by me in Writ Petition No.5790 of 2024. For ease of reference, the order dated 18th April 2024 is reproduced hereinbelow :-

This petition has been filed by the wife challenging an order dated 11 March, 2024 passed by the Family Court, Pune, thereby rejecting an application of the wife filed for direction to the husband to provide documents for the renewal of the passport of son Tanish.

2. Mr. Sarwate, learned counsel appearing for the petitioner/wife submits that the passport authority has kept the application for renewal of the passport of the son on, hold. He submits that having a passport is a right which cannot be denied in law.

3. Heard. I have gone through the documents on record.

4. The reason for which the Family Court has rejected the

application of the wife is that the petition filed by the wife for divorce is at the evidence stage. The issues were framed on 5 January, 2022. the wife without adducing the evidence, had filed an application seeking directions for payment of amount. Thereafter again similar kind of application was preferred by the wife. On 4 August, 2022, the petitioner filed an affidavit of evidence. Thereafter, an application for child access and payment of arrears of maintenance is filed by both the parties. The Court has therefore held that even though the matter is for evidence, but it cannot proceed with the evidence. Since, applications after applications are made by the petitioner.

5. The Family Court has further observed that on 31 January, 2024 an application was preferred by the wife seeking directions to the husband as regards renewal of the passport of son Tanish. The Court observed that the passport of the son had expired on 15 February, 2021 i.e. three years back. Hence, the Court has rejected the application filed by the wife.

6. The Court according to me has rejected the application of the wife since the application of the wife is not in clear sense seeking which kind of document is required from the husband. And the Family Court had taken into consideration that the petitioner wife was not ready to proceed with the evidence of the matter.

7. According to me, suffice will be the purpose if without prejudice to the rights and contentions of the husband, he is directed to supply the documents as mentioned by the wife in the e-mail dated 3 February, 2024; and the hearing of the Family Court, petition is expedited.

8. The writ petition is disposed of with following directions :-

(i) The hearing of P.A.No. 363 of 2020 is hereby expedited.

(ii) Both the parties would not seek any unnecessary adjournment in the pending P.A.No. 363 of 2020.

(iii) The respondent husband after being communicated of this order, should by e-mail within a span of one week supply copy of his passport along with Aadhar Card to the e-mail I.D. of the petitioner/wife.

(iv) The said e-mail I.D. is on page no. 63 of this petition.

9. Writ petition is disposed of.

10. The parties to act on the authenticated copy of this order.”

2. The Review Petition was filed on 30th April 2024, by the husband. No steps were taken to circulate the Review Petition, neither the directions given in order dated 11th March 2024, are complied with.

3. The only argument on behalf of the husband who has filed the Review Petition, is that no notice was given to the husband in Writ Petition No.5790 of 2024, and the order on 11th March, 2024 was passed without hearing the husband's Advocate.

4. The issue in the present Review Petition is regarding the renewal of the passport of Petitioner and Respondent's son Tanish, who is 14 years of age. The Passport Authorities had sought the documents of Tanish's father. Since there was no cooperation from the father, the application (Exhibit 122) was filed by the wife in the pending divorce proceedings. It is submitted on behalf of the husband that once the passport is issued to minor son Tanish, the wife would take him away from the borders of India, and she will never return back.

5. The Division Bench of this Court in *Miss Yushika Vivek Gedam*

Vs. Union of India & Ors., Writ Petition No. 19042 of 2024, decided on 8th January 2025, dealing with identical facts, wherein the father of the minor daughter had refused to give consent for re-issuance of the passport to daughter who was 16 years of age. The Division Bench of this Court relied upon the judgment of the Supreme Court in *Maneka Gandhi vs. Union of India, 1978 1 SCC 248* and in Paragraphs 22, 23 and 24 held as under:-

22. *It is well-settled that the expression "person liberty" which occurs in Article 21 of the Constitution includes right to travel abroad and no person can be deprived of that right except according to the procedure established in law. It is held that the procedure prescribed by law has to be fair, just and reasonable, not fanciful, oppressive or arbitrary. The right to travel abroad is a facet of fundamental right guaranteed under Article 21 of the Constitution of India (See. Maneka Gandhi vs. Union of India (1978 1 SCC 248)). The petitioner is certainly entitled to such constitutional right guaranteed under Article 21.*

23. *We may also observe that in the contemporary times traveling abroad cannot be considered to be a fanciful affair but has become an essential requirement of modern life. Such need to travel which may be the requirement of a child, a student or an employee, professional or a person from any other strata of the society, has undergone a monumental change. Thus, the right to travel is required to be not only recognized but made more meaningful. This can be achieved and supported by the authorities implementing the provisions of the Passport Act by effectively recognizing such contemporary needs in dealing with passport applications. The present case is an example of a student*

being given an opportunity to undertake a study tour by visiting a foreign country. Any action of the Passport Authority in denying the passport would have severe consequence not only adversely affecting the applicant in a given situation, but it may cause irreparable harm to the prospects of the applicant, for any venture she or he intended to undertake. Thus, a mechanical approach in this regard by the Passport Authority cannot be countenanced.

24. We thus find that such valuable constitutional right of the petitioner cannot be prejudiced much less be taken away, and merely on the ground as contained in the impugned communication dated 18 November, 2024 issued by respondent no. 2. Further Section 6 of the Passport Act, 1967 provides for Refusal of passports, travel documents etc. The ground on which the application of the petitioner is not being processed is in no manner whatsoever recognized by Section 6 of the Passport Act. In the aforesaid circumstances, we find that there is no warrant in law for respondent no. 2 to deny the re-issuance of passport to the petitioner when the declaration in Annexure-C was submitted by the petitioner's mother.

6. While dealing with the Review Petition, one has to consider the law as laid down by the Supreme Court in *Sanjay Kumar Agarwal vs. State Tax Officer (1) & Anr., 2024 (2) SCC 362*.

7. In view of the law as laid down in *Sanjay Kumar Agarwal* (supra) by the Supreme Court and *Miss Yushika Vivek Gedam Vs. Union of India & Ors., (supra)* by the Division Bench of this Court, I find there is no error or mistake apparent on the face of the records. There is no merit in the present Review Petition, the same is

dismissed.

8. If the husband does not cooperate in the renewal of passport of Tanish, the Passport Authorities proceed further without insisting upon the documents of the husband, who is the father of the minor son, Tanish, as held by Division Bench in *Miss Yushika Vivek Gedam Vs. Union of India & Ors.*, (*supra*).

9. On the last occasion, a request was made on behalf of the husband, that the parties will try to reach out for an amicable settlement and in the meantime the husband should be allowed to meet his son Tanish. By mutual consent on 4th January 2025, the husband met his son at Child Care Center, Family Court, Pune. It is submitted on behalf of the wife by Mr. Sarwate that the Mediator Judge was appointed by consent of both the parties. He further submitted that a meeting was fixed by consent on 7th January 2025, at 4.00 p.m. However, on 7th January 2025, the husband did not attend the proceedings and after a while, the advocate on behalf of the husband appeared and requested for granting time as the husband had suddenly fallen ill and he will not be able to attend the proceedings for eight days. He submitted that before passing of order dated 11th March 2024 the husband was served. Ms. Walimbe submitted that her client is

present in Court today, and it is fact that he had fallen ill on 7th January 2025.

10. Ms. Preeti Walimbe, learned counsel appearing for the petitioner also referred to the judgment of the Supreme Court in *Johra and others versus State of Haryana and others, (2019) 2 SCC 324*. In the said judgment, there was an issue where no notice was issued to the respondent and the matter was heard. In the present proceedings, on 11 March 2024, the husband was sent a copy of Petition, as per the Advocate appearing for the wife. There was a limited issue with regard to the renewal of passport to the son. As the Passport Authorities requested for documents of father of son Tanish, the application for re-issuance was not process. The Division Bench of this Court in *Miss Yushika Vivek Gedam* (supra) has already held that if there is no cooperation from the father of the minor for re-issuance of the passport, the Passport Authorities should process the application of the minor without considering the documents of the father.

11. Even though the Review Petition is dismissed, the parties still have the option to reconcile their differences and have liberty to approach the Mediator Judge for settlement. The directions given to order dated 11th March 2024, should be followed by both the parties.

Today's order and order dated 11 March 2024, deals only with the issue of renewal of passport of Tanish.

(RAJESH S. PATIL, J.)