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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO.16034 OF 2024
IN
WRIT PETITION NO.11569 OF 2023

Shardul Pujari .. Applicant

In the matter between:

Shardul Pujari .. Petitioner

Versus

Revati Pujari & Anr. .. Respondents

Mr.Vaibhav Joglekar a/w Mr.Gaurav Sinha for the
Applicant/Petitioner.

Mr.Shardul Pujari, Petitioner present in person

Mr.S.S.Patwardhan i/b Ms.Mrinal Shelar for the Respondent No.1.

CORAM: FIRDOSH P. POONIWALLA, J.

RESERVED ON: 19th DECEMBER, 2024

PRONOUNCED ON: 3rd JANUARY, 2025

ORDER:

1. This Interim Application has been filed seeking the following substantive reliefs:

“(a) pending the hearing and final disposal of the Civil Writ Petition No. 11569 of 2023 and the Custody Petition D 22 of 2023, this Hon'ble Court be pleased to issue suitable order thereby permitting the Petitioner to take the child back to USA, on such terms and conditions as it may deem fit and proper;

(b) pending the hearing and final disposal of the Civil Writ Petition No. 11569 of 2023 and the Custody Petition D 22 of 2023, this Hon'ble Court be pleased to interview the child in chambers on 20/21.12.2024 to ascertain her wishes as to whether she wants to reside with the father or the mother and direct the Family Court. Nashik to take into account these findings while deciding the issue of interim custody (in the event the issue of jurisdiction is finally decided against the Petitioner);

(c) this Hon'ble Court be pleased to direct the Family Court. Nashik to hear and dispose of the FCMA 25 of 2024 and the unnumbered. Review Application(seeking review and recall of the Order dated 5.8.2024 passed on Exhibit 71 in Custody Petition D 22 of 2023 within a period of 8 weeks from the date of the order passed in the present IA.”

2. The facts, as stated in the Interim Application, are as under:

a. The Petitioner and Respondent No.1 are originally from Nagpur and Nashik respectively. They got married as per Hindu rites and customs in Nashik on 14.11.2011. The Petitioner has been employed with Duck Creek Technologies Ltd., USA since few years.

b. The Petitioner and Respondent No.1 took a conscious decision to settle in USA and give birth to their child in USA so that the child gets

US citizenship. Out of their wedlock a daughter Mihika Shardul Pujari was born on 8.11.2017. Since birth, the child has lived almost all her life in USA, being the permanent place of residence of her parents. During 2019, for pre-schooling, she was admitted in the Light Bridge Academy, USA.

c. In January 2022, the Petitioner's company informed him to temporarily move to their office in United Kingdom (UK) for better prospects and assured him that he would be eventually moved back to USA. The Petitioner informed Respondent No. 1 that all of them would have to temporarily shift to UK and would shift back to USA after some time. Respondent No.1 agreed to the same.

d. Accordingly, the Petitioner and Respondent No.1 obtained UK visas for themselves and their child after completion of all formalities.

e. The said UK visa issued to the Petitioner was valid from 20th May 2022 to 18th August 2022, whereas the validity of the visas issued to the Respondent No.1 and the child was from 18th July 2022 to 16th October 2022 and, as such, they were required to travel to UK on or before 16th October 2022 and collect the Biometric Residence permit which would

thereafter act as the lone immigration document / visa for future stay in UK.

f. Accordingly, the family came to India in June 2022 to spend some time in Nagpur and Nashik and then the Petitioner left for UK and joined his duty on or about 17th June 2022. Thereafter, Respondent No. 1 stopped communication with the Petitioner and did not respond to his calls for inexplicable reasons and also did not come to UK during the said validity period of the UK visa along with the child.

g. The aforesaid led to certain marital discord between the parties. To resolve the said issues, the Petitioner came to India in October / November 2022 and, for a temporary period, took admission for the said child in Ashoka International School at Nashik so that the child would not waste her time.

h. Sometime on 10th November 2022, the father of Respondent No.1 was detected with cancer, and since he would have required attention of the family, it was decided that the child may be taken to Nagpur so that she can stay with the Petitioner's parents. Accordingly, the

Petitioner took the child to Nagpur and admitted the child in School of Scholars at Nagpur. Thereafter, the Petitioner again left for UK.

i. On or about 4th December 2022, Respondent No.1 came to the Petitioner's parents' house at Nagpur and created a ruckus. As a result thereof, the Petitioner's parents handed over the child to the Respondent No. 1 who took the child to her uncle's place at Nagpur. Due to this, the Petitioner came to India in the first week of December 2022 and, thereafter, the Petitioner and his parents, along with the child, went to Nashik to meet the family of the Respondent No.1. The Petitioner's genuine and *bona fide* attempts to reconcile the differences did not meet with a favourable response from Respondent No.1.

j. On 9th December 2022, the Petitioner, along with his parents, visited Respondent No.1 and her father at Nashik. As the Petitioner reached home, the Respondent No.1 took the child Mihika and locked herself along with Mihika in the bedroom. She refused to let Mihika come outside the room. She insisted that the Petitioner should leave immediately. The child was howling but Respondent No.1 refused to budge. The family members of Respondent No.1 requested the Petitioner to leave and assured him that they would soon ensure that Mihika is with him. The Respondent's uncle and aunt from Nagpur

were also present at the house at that time. The Petitioner waited for Respondent No.1 to calm down for the whole day, but Respondent No.1 refused to budge. Finally, in the evening, the Respondent No.1's sister and mother somehow gave the child to the Petitioner. The Petitioner was to stay in India for a short while and wished to spend time with the child, as he was meeting her after a long time. Respondent no.1's family could see her uncontrolled outburst and hence, with their consent and approval, the child travelled back with the Petitioner to Nagpur. Subsequently, the Petitioner and the child, along with his parents, travelled up to London, till the end of December, and, around 25th December 2022, the child was dropped back at Nashik with Respondent no.1's parents. The child is accustomed to staying with the Petitioner and had happily travelled to London and back.

k. The Petitioner thereafter left for London, with an assurance again from the parents of Respondent No.1 that they shall try to reason out with Respondent No.1 and resolve the situation amicably.

l. During the period from December-2022 till April 2023, the Petitioner got very few video calls to speak and interact with Mihika. Respondent No.1 continued to snap all communications with the Petitioner. Eventually, in April 2023, when the Petitioner visited

Nashik to meet the child and also speak to the Respondent No.1 and her family about the future of their relationship, the Petitioner visited Respondent No.1 at her father's place. The Petitioner met the child, who was excited and eager to meet the Petitioner. Respondent No.1's parents handed over child to the Petitioner as the child insisted on accompanying him. The Petitioner left the house of the Respondent No.1, along with the child, with the knowledge and approval of Respondent No.1's parents.

m. Respondent No.1 has falsely claimed that her parents' residential address at Nashik was the permanent address of Respondent No.1 and the child just to bring the custody petition within the jurisdiction of the Family Court, Nashik, when the same did not pass the test laid down under section 9(1) of the Guardians and Wards Act, 1890.

n. The Petitioner had raised the issue regarding the jurisdiction of the Family Court in deciding the custody petition. However, without first deciding the same, the Family Court passed the following orders in the custody petition:

- i) Order dated 15th June 2023 directing the Petitioner to produce the child before the Family Court on the next date to ascertain the issues for deciding the interim custody application.
 - ii) Order dated 1st August 2023 rejecting the Application of the Petitioner seeking permission to produce the child through V.C.
 - iii) Order dated 29th August 2023 rejecting the Application of the Petitioner seeking an order and direction to Respondent No.1 to hand over the child's old passport since she claimed that she did not have the same with her.
- o. The present Writ Petition, in which this Interim Application has been taken out, arises out of the aforesaid orders passed by the Family Court, Nashik in the Custody Petition.
- p. Meanwhile, pursuant to the transfer of the Petitioner from UK to San Diego USA, the Petitioner, along with the child, shifted to the address at San Diego USA mentioned in the cause title of the Interim Application. The Petitioner admitted the child in Hage Elementary School, San Diego, USA which is evident from the undated letter issued by the School. Thereafter, orders dated 9th August 2024, 13th August

2024 and 14th August 2024 passed by this Court in the present Writ Petition led to Suo Moto Contempt Petition No.11 of 2024 being taken out to which the Petitioner has filed an Affidavit in Reply dated 18th September 2024.

q. The Petitioner also filed Review Petition (St.) No.24312 of 2024 seeking review / recall of the orders dated 13th August 2024 and 14th August 2024 passed in the Writ Petition.

r. Thereafter, in compliance of the order dated 11th September 2024 passed in the Contempt Petition and connected proceedings, the Petitioner, along with the child, came from U.S.A. to India on 16th September 2024, and the Petitioner remained present before this Court on 18th September 2024.

s. By another order dated 18th September 2024, this Court appointed Advocate Jayant Dattatraya Jaibhave at Nashik as a Mediator to explore the possibility of settlement between the parties. During the pendency of Mediation, by further common orders dated 18th September 2024, 22nd September 2024, 25th October 2024 and 29th November 2024 passed in the proceedings, certain interim arrangements for temporary custody and video access to the child were

made by consent and it was also directed that until further orders the child should not be taken out of India.

t. Pursuant to the order dated 18th September 2024, the parties held meetings with the Mediator. However, the Mediation did not result in settlement of the dispute between the parties (in fact by a letter dated 16th December 2024, the Mediator has reported that the mediation had failed).

u. On 13th December 2024, in view of the mediation being unsuccessful, the Petitioner sought leave of this Court to take back the Child to USA, on such terms and conditions, as this Court deemed fit and proper. At that time, the learned counsel for Respondent No.1 raised an objection that such a relief can be granted only on an Interim Application being filed by the Petitioner. Thereafter, by an order dated 13th December 2024, this Court permitted the Petitioner to file the present Interim Application and directed Respondent No.1 to file a Reply if any, on or before 19th December 2024. In the meanwhile, the child has been on extended leave from School since 14th September 2024 as the Petitioner was required to bring her to India pursuant to orders passed by this Court. The child has not attended the School for more than 90 days from 14th September 2024. The Petitioner applied

for leave and the same was granted by the School by letter dated 24th September 2024 issued by the Principal.

v. Further, as the Petitioner and the child could not go back to USA in view of further orders, based on the Petitioner's Application, the Principal of Hage Elementary School issued another letter of support dated 11th October 2024 whereby the School extended the support assuring that the child would be permitted to continue her academic journey upon her return to USA.

3. In these circumstances, the Petitioner has filed the present Interim Application seeking the aforesaid reliefs.

4. Mr.Joglekar, the learned Senior Counsel appearing on behalf of the Petitioner, submitted that the child has been away from her School ecosystem for a substantially long time and it is necessary for her holistic welfare and interest, which is of paramount importance in custody matters, that she resumes her education there at the earliest and be permitted to finish her schooling this year, subject to any reasonable terms and conditions as regards interim access to the Respondent No.1 in India and / or USA. Mr.Joglekar submitted that the child has her full eco system in USA and as she is naturally missing her day-to-day life there, she is anxious to go back.

5. Mr.Joglekar also submitted that the Petitioner had sufficiently demonstrated that he had no intention of flouting the orders of this Court and he is willing to produce the child before the Family Court for the purpose of ascertainment of her wishes as and when required by the Family Court. He submitted that the Petitioner had complied with all the orders of this Court in letter and spirit as regards the interim arrangement as he has not only handed over custody to Respondent no. 1 as per the Orders dated 24th September 2024 and 25th October 2024 but has also provided complete video access as set out in the orders dated 25th October 2024 and 29th November 2024. Mr.Joglekar submitted that the Petitioner never intended to deprive Respondent No. I of any access and, in fact, during the course of the hearing, had agreed to foot the bill of the stay and travel of Respondent No.1 to USA for access to the daughter. He further submitted that the Petitioner continued to give video access to Respondent No.1 to date.

6. Mr.Joglekar further submitted that, in the aforesaid circumstances, there is no reason to believe that, if the child is allowed to leave India with the Petitioner for USA, the child would not be brought back to India as per the orders of this Court and/or any other Court.

7. Mr.Joglekar next submitted that the principles in relation to custody of a minor child are well settled. He submitted that, in determining the question as to who should be given custody of a minor child, the paramount consideration is the "welfare of the child" alone. He submitted that the only consideration of the Court in deciding the question of custody of the child should be welfare and interest of the child.

8. Mr.Joglekar submitted that the Court must give due weightage to the child's ordinary contentment, health, education, intellectual development and favourable surroundings, over and above physical comfort and moral and ethical values.

9. Mr.Joglekar submitted that the child had spent almost all her life in USA and had a healthy ecosystem, health and education. He submitted that, in these circumstances, if the reliefs sought in the present Interim Application are not granted, the child will suffer possible irreparable harm.

10. Mr.Joglekar further submitted that due to the long leave from school, even the education of the child would suffer affecting her performance and her future education. Moreover, the Petitioner was apprehending cancellation of admission of the child by the said school. Mr.Joglekar submitted that the above vital and important factors must be considered by

the Court while adjudicating upon the present Interim Application and this Court must grant leave for taking the child to USA upon such terms and conditions as this Court may deem fit and proper.

11. Mr.Joglekar further submitted that in view of the pendency of the mediation proceedings, the child could not be presented for interview before the Family Court, which is now shortly closing for vacation. He submitted that since the child was going to come to Mumbai, it was in the interest of justice that this Court may interview the child in chambers to ascertain and record the wishes of the child. He submitted that this was without prejudice to the Petitioner's contention that the Family Court did not have jurisdiction to entertain, try and dispose of the Custody Petition since the child was not ordinarily resident within the jurisdiction of the Family Court at Nashik or, for that matter, within the jurisdiction of any of the courts in India. In this regard, reliance is placed on the provisions of Section 9(1) of the Guardians and Wards Act.

12. Mr.Joglekar further submitted that it is an admitted position that the Petitioner and Respondent No.1 had been residing in USA since December 2011 till 4th June 2022 and had decided to shift along with the child only for a temporary period to UK, with the eventual plan to shift back to USA, as and when required by the employers of the Petitioner. He further submitted that

the child is a US citizen by birth and has spent most of her life in USA with her parents. The whole intention of the family was always to reside in USA and the brief stay in UK was for a temporary period. He submitted that the Petitioner and the Respondent No.1 never had any intention to settle in India and, therefore, the same also equally holds good for the child.

13. Further, Mr.Joglekar submitted that the brief stay of the Respondent No.1 and the child in India and the admission of the child in Nashik / Nagpur, would not amount to the child being ordinarily resident at Nashik/Nagpur under the provisions of Section 9(1) of the Guardians and Wards Act. He submitted that, consequently, the Family Court at Nashik does not have jurisdiction to entertain, try and dispose of the said Custody Petition. Mr.Joglekar submitted that the present Writ Petition has been filed without prejudice to the rights and contentions of the Petitioner as regards the jurisdiction of the Family Court. He submitted that, in view of the same, this Court should direct the Family Court, Nashik, to decide FCMA No.25 of 2024 and the unnumbered Review Application.

14. In response, Mr.Patwardhan, the learned counsel appearing on behalf of Respondent No.1, referred to the prayers in the Writ Petition. He submitted that the orders dated 1st August 2023 and 29th August 2023 impugned in the Writ Petition are in respect of production of the child

through video conferencing and to appear in the Family Court. He submitted that now that the child is in India, the Petition is infructuous, and the Petition as well as the present Interim Application should be disposed of.

15. Mr.Patwardhan, further submitted that, even otherwise, status quo as of today should be maintained, and the issue regarding whether the child should leave India should be left to the Family Court, which is seized of the matter.

16. Mr.Patwardhan also referred to the order dated 15th June 2023 passed by the Family Court below Exhibit 7. He pointed out that, in the said order, the Family Court has held that it is essential to have interaction with the child and, accordingly, the Petitioner was directed to produce the child before the Family Court. Mr.Patwardhan submitted that the Family Court has still not interacted with the child and if this order has to be complied with, then, till the Family Court interacts with the child, the child should remain in India. He further submitted that the said order shows that the child was taken away by the Petitioner. He further submitted that it was also important to note that the child was not brought back to India by the Petitioner till orders were passed by this Court to that effect.

17. Mr.Patwardhan further submitted that the Petitioner's case, that Respondent No.1's parents told him to take away the child, is a completely false story.

18. Mr.Patwardhan further submitted that the admission in the schools in UK and USA were without the consent of Respondent No.1. Mr.Patwardhan further submitted that where the child ordinarily resides is a matter of evidence, which can be decided only after evidence is led to that effect.

19. Mr.Patwardhan submitted that it was necessary that the Interim Custody Petition should be decided by the Family Court and, till that time, the child should remain in India.

20. I have given thoughtful consideration to the submissions made by the learned counsel for the parties. It is important to note that, by Orders passed by this Court, the Petitioner has been directed to bring the child Mihika back to India. Further, it is also important to note that the Family Court, Nashik has to decide on the interim custody of the child and, for that purpose, it has to interact with the child.

21. In these circumstances, in my view, the Petitioner cannot be permitted to take the child out of India at present, on any of the grounds submitted by the Petitioner.

22. Further, since the interim custody of the child has to be decided by the Family Court, it is imperative that the Family Court, and not this Court, interacts with the child.

23. For these reasons, I am of the view that prayers (a) and (b) of the Interim Application cannot be granted.

24. However, in my view, it is in the interest of justice and to balance the equities, that the Interim Custody Petition and all the objections raised by the Petitioner in that regard be decided expeditiously. For that purpose, in my view, the relief sought in prayer clause (c) of the Interim Application will have to be granted.

25. Further, since the Family Court is seized of the matter and has to interact with the child in deciding the Interim Custody Petition, it would be fair, and in the interest of justice, that the Family Court decides as to when the child can leave India.

26. For the aforesaid reasons, I pass the following order:

- a. Prayers (a) and (b) of the Interim Application are hereby rejected.
- b. Prayer (c) of the Interim Application is granted.
- c. The Petitioner is at liberty to make an Application to the Family Court for permitting the Petitioner to take the child out of India.
- d. If such an Application is made by the Petitioner before the Family Court, the Family Court to decide the said Application within a period of four weeks from the filing of the said Application.
- f. Interim Application is disposed of in the aforesaid terms.
- g. No order as to costs.

[FIRDOSH P. POONTWALLA, J.]