

Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5404 OF 2025

Purvi R. Pugalia

...Petitioner

Versus

Rohit Mohan Pugalia

...Respondent

Mr. Atul Damle, Senior Advocate a/w Kausar Banatwala & Riya Thakkar
i/b Tushar Goradia, for the Petitioner.

Mr. R. T. Lalwani a/w Sadhana Jaykar (Lalwani), J. K. Shah, Namrata
Thakur i/b RJ Law, for the Respondent.

CORAM: MADHAV J. JAMDAR, J.

DATED: 30 APRIL 2025

P.C.:

1. Heard Mr. Atul Damle, learned Senior Counsel appearing for the
Petitioner and Mr. Lalwani, learned Counsel appearing for the
Respondent.

2. The challenge in this Writ Petition filed under Article 227 of the
Constitution of India is to the Order dated 9th April 2025 passed by the
learned Judge, Family Court No.2, Mumbai below Exhibit - 8 in Interim
Application No.13 of 2025 in Petition No. A-1815 of 2024. The
operative part of said Order dated 9th April 2025 reads as under :-

“Order.

1. *The application is allowed as follows.*

2. ***Petitioner is provided weekend physical access with Rhyah in following manner starting from 26.04.2025 till disposal of the main petition. Petitioner shall pick up Rhyah from the residence of respondent at 10.00 a.m. on every 2nd and 4th Saturday and drop him back to the residence of respondent at 6.00 p.m. on the following Sunday.***
3. ***Respondent shall handover the custody of Rhyah for the second half of the Diwali, Christmas and Summer vacation of Rhyah to petitioner. In case these vacations are less than 4 days, this vacation custody shall not be effected. Petitioner shall deliver back the custody of Rhyah to respondent at 6.00 p.m. on the last day of aforesaid vacation at her residence.***
4. ***Petitioner shall be entitled to celebrate the birthday of the daughter on the next day of the said birthday. Petitioner shall also be entitled to custody of the child on his birthday. This birthday custody shall be from 4.00 p.m. to 8.00 p.m. on the aforesaid days. Petitioner shall pick up and drop the daughter to and from the residence of respondent at 4.00 p.m. and 8.00 p.m. respectively on the same day.***
5. ***Petitioner shall have virtual access with the daughter through phone calls/video calls on every Tuesday and Thursday between 7.00 p.m. to 7.30 p.m. starting form 29.04.2025 till disposal of main petition. The respondent shall provide smart phone/tablet with internet connection to the daughter for the purpose of aforesaid virtual access.***
6. ***Parties shall scrupulously observe the above access. Any unjustified disobedience of this access order shall ensue stern adverse action against the defaulting party.***
7. ***Petitioner or his family members shall not communicate anything detrimental to the emotional or psychological health of the daughter during the aforesaid access.***
8. ***The parties are referred to the Marriage Counsellor for the purpose of exploring the possibility of drawing a shared parenting plan regarding Rhyah.”***

(Emphasis added)

3. At the outset, Mr. Atul Damle, learned Senior Counsel, submitted that the challenge is only to Clause Nos.2 and 3 of the impugned Order dated 9th April 2025 and the same is only concerning the overnight access. As far as the day access is concerned, the Petitioner is ready to give unlimited day access even more than what is directed by the impugned Order.

4. As the dispute is concerning overnight access of a girl child of 5 years, to explore the possibility of settlement, Mr. Shanay Shah, learned Counsel of this Court has been appointed as Mediator. Learned Mediator has submitted a Mediation Report dated 29th April 2025. In the said Mediation Report, learned Mediator has stated that both Petitioner and the Respondent are amenable to working the issue of access i.e. full day access, video conference access, etc., however, as far as the issue of overnight access of a minor child is concerned, the parties could not arrive at workable solution. Therefore, Writ Petition is heard on merits.

5. It is the main contention of Mr. Atul Damle, learned Senior Counsel appearing for the Petitioner that the Petitioner is not interested in taking access of the child. He submits that the application is filed only to harass the Respondent as he is aware that Respondent is extremely attached to the child. He submitted that the Petitioner was

forced to change her residence and live in a rented apartment, as the Respondent started threatening the Petitioner. He submitted that the Respondent shouted and yelled at the Respondent and twisted the Respondent's arm due to which the child is very scared of the Petitioner. He therefore submitted that the overnight access be not granted. Mr. Atul Damle, learned Senior Counsel also relied on a written note dated 8th September 2023 of a School Calendar Handbook of the child, wherein it is stated that the child refused to take lunch during break and when the teachers enquired with the child, she told them that her father had told her to cry in the school.

6. On the other hand, Mr. Lalwani, learned Counsel appearing for the Respondent submitted that till May 2023 the Petitioner and Respondent were staying together along with the child. Thereafter, from May 2023 to January 2025 the Petitioner and Respondent started staying in 2 separate flats on the same floor. On the basis of WhatsApp chat, he submitted that, on many occasions during the said period of May 2023 to January 2025 the child was having overnight access with the Respondent. He submitted that in January 2025 the Respondent shifted her residence so that the overnight access of the child will be denied to the Petitioner. Mr. Lalwani, learned Counsel submitted that the adjoining flat is available for residence of the Petitioner when the overnight access is given to the Respondent and therefore even the

Petitioner will also be available, if necessary, for the child. He submitted that, in any case, the Respondent is agreeable for unlimited day access and therefore the objection being taken for overnight access can also be taken for the day access. Therefore, he submitted that there is no substance in the said contention. Mr. Lalwani, learned Counsel also relied on certain decisions of the Supreme Court and the High Court.

7. Perusal of the record shows that the marriage between the Petitioner and the Respondent took place on 8th December 2012 and the child is born on 3rd January 2020. Admittedly the Petitioner and Respondent stayed together from 8th December 2012 till May 2023. After May 2023, they started staying in the separate flats on the same floor. The said arrangement was continued upto January 2025. The material on record shows that during the said period i.e. between May 2023 to January 2025, the child was having overnight access with the Respondent-Father on many occasions. Thus, the said writing dated 8th September 2023 in the School calender Handbook has no relevance. Thereafter, in January 2025 the Petitioner shifted to rented flat.

8. In this background of the matter, it is required to note the decision of the Telangana High Court in *Harsha Tipirneni v. Pooja Tipimeni*¹, and more particularly Paragraph No.26 of the same, which read as under :-

“26. A parent cannot be a guest in the life of their child. If

1 2020 SCC OnLine TS 1594

visitation rights only are granted for limited hours, it may not be sufficient for the child to have comfortable time with the father or mother; whoever may be the case. The wider the gap, the bonds get broken quicker and the child is left confused and ends up believing this. Such acts of any parent in separating a child from the other parent should be nipped in the bud otherwise the separated parent ends up becoming a guest in the life of the child. Overnight custody must be encouraged wherever possible and mere meeting and spending time with the parent for couple of hours in court premises, hotel, theatre, Mall, park etc., under the supervision of other parent or relative will not serve any purpose of visitation as the child will be under psychological pressure and will not be comfortable.”

9. It is also required to note the observations of the Supreme Court in the decision of ***Yashita Shah v. State of Rajasthan & Ors.***² more particularly in Paragraph Nos.17 to 19 which reads as under:-

*“17. It is well settled law by a catena of judgments that while deciding matters of custody of a child, primary and paramount consideration is welfare of the child. If welfare of the child so demands then technical objections cannot come in the way. However, **while deciding the welfare of the child it is not the view of one spouse alone which has to be taken into consideration. The courts should decide the issue of custody only on the basis of what is in the best interest of the child.***

18. The child is the victim in custody battles. In this fight of egos and increasing acrimonious battles and litigations between two spouses, our experience shows that more often than not, the parents who otherwise love their child, present a picture as if the other spouse is a villain and he or she alone is entitled to the custody of the child. The court must therefore be very wary of what is said by each of the spouses.

19. A child, especially a child of tender years requires

² (2020) 3 SCC 67

the love, affection, company, protection of both parents. This is not only the requirement of the child but is his/her basic human right. Just because the 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. A child is not an inanimate object which can be tossed from one parent to the other. Every separation, every re-union may have a traumatic and psychosomatic impact on the child. Therefore, it is to be ensured that the court weighs each and every circumstance very carefully before deciding how and in what manner the custody of the child should be shared between both the parents. 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 is only in extreme circumstances that one parent should be denied contact with the child. Reasons must be assigned if one parent is to be denied any visitation rights or contact with the child. Courts dealing with the custody matters must while deciding issues of custody clearly define the nature, manner and specifics of the visitation rights.”

(Emphasis added)

10. The above observations of the Supreme Court and also of the Telangana High Court are squarely applicable to the present case.

11. It is required to be noted that all the contentions raised by Mr. Atul Damle, learned Senior Counsel on behalf the Petitioner will also equally apply to the unlimited day access offered by the Petitioner. Thus, it is very clear that objection raised by the Petitioner to the overnight access is raised just to deny the same to the Respondent-Husband and there is no merit in the said contention.

12. In fact, the flat which is on the same floor where the Respondent is staying belongs to the mother of the Petitioner and during the hearing it is suggested that the Petitioner can stay there when the overnight access is given to the father and she will have unlimited phone access to the child during said period so that in case of difficulty she can be available. However, the Petitioner is not agreeable for the said arrangement.

13. As held by the Supreme Court in *Yashita Shah* (supra) 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. Courts dealing with the custody matters must while deciding issues of custody clearly define the nature, manner and specifics of the visitation rights.

14. Thus, in the facts and circumstances of this case and on the touchstone of above legal position no case is made out for interference in the impugned Order.

15. Accordingly, Writ Petition is dismissed, however, with no order as to costs.

16. This Court places on record the appreciation of the efforts taken by Mr. Shanay Shah, learned Counsel to mediate the dispute between

the parties.

[MADHAV J. JAMDAR, J.]