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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 8647 OF 2025
IN
WRIT PETITION NO. 6252 OF 2025
WITH
WRIT PETITION NO. 6253 OF 2025
WITH
INTERIM APPLICATION NO. 8327 OF 2025
WITH
INTERIM APPLICATION NO. 7716 OF 2025
IN
WRIT PETITION NO. 6253 OF 2025**

Vaishnavi Caim Sambuddha ... Applicant/Petitioner

VS.

Mr. Alok Nath Sambuddha and Anr ... Respondents

Mr. Shiv Shankar Banerjee (through VC) i/b.Vidhya Iyengar and Saloni Arpatil i/b. Vidhya Iyengar and Associates, for Applicant/Petitioner.

Mr. Naveen Sharma, Ms. Bhagyashree Birajdar for Respondent.

CORAM : GAURI GODSE, J.

DATED : 10th JUNE 2025

ORDER:

1. These petitions are urgently circulated on behalf of the mother of a girl child aged 9 years. The grievance of the mother is that the father forcibly took the child away on 7th May 2025 with the help of the police. She therefore requests that urgent orders be

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passed to hand over the child to the mother.

2. Learned counsel for the father was granted time to take instructions on whether the father would readily hand over the child to the mother, and the petitions were kept back for some time. Learned counsel for the father on instructions submits that the father is ready to hand over the child to the mother only after the counselling sessions take place, as the vacation court has already appointed a mediator. He further denies the allegations of the mother that the child was forcibly taken away.

3. This is an unfortunate case where in the quarrel between the husband and wife, the girl child of 9 years old is suffering. I find it necessary to record that serious allegations of child sexual abuse are made against the father by the mother of the child. I do not find it appropriate to decide the veracity of the allegations at this stage. Even if the allegations are false, the child will suffer in quarrels between husband and wife. However, if there is even a remote possibility of there being any truth in the allegations made by the mother against the father, the child will suffer irreparable loss. Therefore, this court has to take all possible steps to protect the child and consider the child's welfare. It is a well-settled legal

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principle that the paramount interest of the child is to be the only consideration while passing orders concerning a minor child.

4. It is also necessary to record a few facts with regard to the dispute between the parties. In Writ Petition No. 6252 of 2025, the order dated 19th November 2024 passed by the district court is challenged. By the said order, the husband is held entitled to temporary custody of the child and the mother was directed to hand over custody of the child to the husband for a period of two weeks from the date of the order, i.e. 19th November 2024. Initially, the appeal was preferred before this court. The mother had preferred SLP before the Hon'ble Apex Court, as there was no stay granted to the impugned order. The SLP was disposed of on 16th December 2024. The Hon'ble Apex Court directed that the father could exercise his visitation rights to meet the minor child between 12:00 noon and 6:00 pm on the 2nd and 4th Saturdays of every month in Mumbai city. The Hon'ble Supreme Court directed that the arrangement shall continue during the pendency of the appeal before this court.

5. Thereafter, by order dated 4th April 2025, the appeal was listed for final disposal on 2nd May 2025. Since the Hon'ble Apex

Court already issued the directions regarding visitation rights, no further directions were issued so far as interim relief is concerned. In the meantime, the father filed a fresh application in the District Court, and a fresh order was passed by the District Court on 10th April 2025. By the said order, the father was granted overnight access commencing summer vacation from 11th April 2025 till 4th May 2025 and directed him to secure the presence of the child on 5th May 2025 before the District Court. Various other directions were issued regarding police protection. At this stage, I refrain from recording any observations on the insensitive directions issued by the District Court in the order dated 10th April 2025. Hence, the mother filed a fresh Appeal from Order No. 258 of 2025. In view of the order passed by the Hon'ble Apex Court regarding visitation rights, this court, by order dated 25th April 2025, granted a stay to the implementation of the order dated 10th April 2025 granting overnight access to the father. Both the appeals were directed to be listed on 2nd May 2025.

6. The father approached the Hon'ble Apex Court challenging the order dated 25th April 2025. The Hon'ble Apex Court vide order dated 1st May 2025, granted liberty to the father to mention the matter before this court seeking to vacate the interim order or

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expeditious disposal of the appeal. The Hon'ble Apex Court further directed that, in the alternative, interim arrangements be made to exercise visitation rights by the father during summer vacation.

7. In view of the liberty granted by the Hon'ble Apex Court, learned counsel for the father had mentioned the appeals on 2nd May 2025. Hence, both the appeals were taken up out of turn at the end of the board. Learned counsel for the father had raised a preliminary objection regarding the maintainability of the appeals. Hence, this court heard the parties on the maintainability of both the appeals and accepting the preliminary objections raised by the learned counsel for the father, the mother was granted liberty to convert the appeals into writ petitions. Accordingly, the appeals are converted, and both the writ petitions are placed before this court today. At the time of granting liberty to convert the appeals into writ petitions, this court extended the interim order dated 25th April 2025 for a period of one week. In view of the extension of interim relief, the order dated 10th April 2025, remained stayed till 9th May 2025. In the other Appeal from Order No. 850 of 2024, in view of the orders passed by the Hon'ble Apex Court on 16th December 2024, regarding visitation rights, no further directions were issued.

8. Thereafter, on 8th May 2025, the petitions were listed before the regular court. In order dated 8th May 2025, the grievance made on behalf of the mother is recorded in paragraph no.3 for breach of the order passed by this court stating that the father has forcibly taken the custody of the child with the assistance of the police. The father's statement was also recorded disputing the said allegations. This court therefore directed the parties to file affidavit clarifying their position, especially the respondent father was directed to clarify as to how the action of the removal of a minor child from the custody of the petitioner mother is not in breach of the order passed by this court.

9. Accordingly, the father has filed an affidavit dated 15th May 2025. Learned counsel for the father does not dispute that the custody of the child was taken over with the help of police on 7th May 2025. He, however, relies upon the orders passed by the Hon'ble Apex Court on 16th December 2024 and 1st May 2025. He submits that the Hon'ble Apex Court directed that the interim arrangement shall continue only till the disposal of the appeal. He therefore submits that since the appeals were disposed of on 2nd May 2025, the father implemented the order granting custody.

These submissions are completely baseless and prima facie are in

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breach of the order passed by the Hon'ble Apex Court as well as this court.

10. I find it necessary to record that on 2nd May 2025, the mother was permitted to convert both the appeals into writ petitions. This court, in the earlier Appeal from Order No. 850 of 2024, specifically recorded in paragraph 8, that in view of the order passed by the Hon'ble Apex Court on 16th December 2024, no further directions were necessary. The mother was therefore granted time of one week to carry out amendment. It is pertinent to note that the Appeal from Order No. 850 of 2024 was filed to challenge the order granting temporary custody. The said order granted temporary custody of the child to stay with him at his residence till further order or disposal of the main petition. The said order also permitted the father to seek the assistance of the police to implement the order. These directions passed on 19th November 2024, are what is relied upon by the father to contend that, in view of the order dated 2nd May 2025, he has implemented the orders and taken the custody of the child. However, I do not find any substance in these arguments.

11. By order dated 2nd May 2025, the interim order passed by this court on 25th April 2025 was extended by a period of one week to

enable the mother to seek appropriate relief from the court. By order dated 25th April 2025, the execution and implementation of the subsequent order dated 10th April 2025, was stayed till further order. The order passed by the Hon'ble Apex Court on 16th December 2024, granting only visitation rights, therefore was to be continued to operate during the pendency of the writ petitions, as the appeals were permitted to be converted into writ petitions. In view of the conversion of the appeals into writ petitions, the directions issued by the Hon'ble Apex Court on 16th December 2024 would obviously continue to operate during the pendency of the writ petitions. Thus, in either of the situations, there was no reason for the father to take over custody of the minor child for implementing the order dated 19th November 2024. Equally, there was no reason for the police to intervene without seeking any clarification from this court. In view of the order passed on 2nd May 2025 in both the appeals, it was expected that the father should have sought clarification from this court before implementing the order dated 19th November 2024. Hence, I am convinced that prima facie the father, i.e. Alok Nath Sambuddha, has committed willful and deliberate breach of the order dated 2nd May 2025 passed by this court in Appeal from Order No. 850 of 2024 and Appeal from Order No. 258 of 2025 read with

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order dated 16th December 2024 passed by the Hon'ble Apex Court.

12. Hence, issue a suo motu notice of contempt to the Respondent, Alok Nath Sambuddha, in terms of Rule 9 of Contempt of Courts (Bombay High Court) Rules, 1994. The contempt notice is made returnable on 14th July 2025. To be listed 'first on board'.

13. In view of the aforesaid peculiar facts and circumstances and the manner in which the custody of a minor girl child is forcibly taken over by the father, I find it appropriate to pass the following order.

I) To secure the custody of the child and hand it over to the mother, the respondent, Alok Nath Sambuddha, is therefore directed to hand over the custody of the minor girl child to the mother, latest by tomorrow, i.e., 11th June 2025, evening at 6:00 pm, by handing over the child to the mother at her residential address mentioned in the petition.

II) In the event the father fails to comply with these directions, appropriate orders shall be passed by this court.

14. List these petitions for recording compliance and issuing

further directions on 12th June 2025 at 11:00 am.

15. It is expected that learned counsel for the father shall telephonically intimate this order to the respondent father for necessary compliance.

16. Learned counsel for the father seeks a stay of this order. Considering the aforesaid peculiar facts and circumstances of the case and considering the welfare of the minor child, the prayer for stay of this order is rejected.

17. At this stage, learned counsel for the mother submits that the father has filed a fresh application dated 10th June 2025, before the District Court at Panvel, seeking directions to prohibit the mother from removal of the minor child's custody from the father without the permission of this court. Considering the manner in which the earlier orders are passed by the District Court and the manner in which the custody of a minor child is taken away from the mother, it is clarified that if the District Court proceeds to hear any fresh interim application in the pending proceedings, the learned District Judge shall take a note of the directions issued from time to time by this Court and the directions issued by the Hon'ble Apex Court".

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(GAURI GODSE, J.)