

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8884 OF 2025

Zarir Pesi Bharucha,	]	
male, adult, Indian Citizen	]	
Aged about 56 years, having his	]	
address at Flat No. 3, 1 st Floor,	]	
Green Field, 134, M Karve Road,	]	
Oval Maidan, Churchgate, Mumbai	]	
400020 and temporarily staying at	]	
A 92 Paradise Apartments, 44	]	
Nepean Sea Road, Mumbai 400036	]	<u>...Petitioner</u>

Versus

Niloufer Soli Lam,	]	
female, adult, British Citizen	]	
Aged about 50 years, having	]	
her address at Flat No. 3, 1 st	]	
Floor, Green Field, 134, M Karve	]	
Road, Oval Maidan, Churchgate,	]	
Mumbai, 400020	]	<u>...Respondent</u>

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Mr. Simil Purohit, Senior Advocate a/w Mr. Pradeep Thorat
 & Chandrasekhar Haridh i/b. Mr. Bimal Rajsekhar, for the
 Petitioner.

Ms. Firoza Daruwala a/w Mr. Sameer Tapia, Ms. Siddhi
 Doshi and Mr. Rohan Marathe i/b. M/s. ALMT Legal, for the
 Respondent

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CORAM : MANJUSHA DESHPANDE, J.

DATED : 4th JULY, 2025.

ORDER :-

1. In the present Writ Petition, this Court is called upon to pass orders without being hampered by the technicalities of procedure in exercise of its powers under Article 227 of the Constitution of India. The subject matter of the Writ Petition is an interlocutory order passed by the Judge, Family Court, Bandra, Mumbai, in Petition No. B-28 of 2025, vide order dated 30.06.2025, below Exhibit 68.

2. By order dated 30.06.2025, the Respondent, in the Writ Petition, has been granted permission to travel to United Kingdom (“UK”) and Singapore, vide order dated 30.06.2025 on a condition that, the Respondent shall re-deposit the passport within four days of her return to India, in any case, on or before 25.07.2025.

3. The Petitioner is the Husband of Respondent. The Respondent is a British Citizen holding a British Passport. The Petitioner and Respondent, who are Husband and Wife, have two children, who also hold British Passports.

4. According to the Petitioner, the Respondent wrongfully diverted Petitioner's cash and shares from the Petitioner's Charles Schwab Company Demat Account on 07.09.2022, and subsequently, left the matrimonial home taking alongwith her, the British Passports of herself and the minor children. The Petitioner received intimation from the Charles Schwab and Company about the transfer of 4.1 million Dollars from his Schwab Brokerage Account No. 3198 to the sole account of Respondent's Demat/Brokerage Account with Charles Schwab and Company in United States of America ("USA"). No sooner he received information about the transfer of funds from his Charles Schwab Account to Respondent's personal Schwab Demat Account, he filed Interim Application (L) No. 28657 of 2022 in Suit (L) No. 28654 of 2022, before this Court in its Ordinary Original Civil Jurisdiction.

5. This Court passed a consent order appointing a Mediator in the matter to resolve the rival claims of the Plaintiff and Defendant. In the same order, this Court had ordered that, *status quo* shall be maintained insofar as

amount of USD 4,084,063, which the Plaintiff claims was transferred by the Defendant to her own private account. An Interim Application was filed by the Respondent praying for transfer of Petition from this Court to Family Court, Bandra, Mumbai. Initially, the Application was dismissed by the Single Judge Bench of this Court and subsequently, allowed by the Division Bench of this Court in an Appeal. The Petitioner filed a Special Leave Petition (“SLP”) challenging the said order before the Hon’ble Supreme Court of India.

6. During the pendency of the SLP before the Hon’ble Supreme Court, the Respondent filed an Interim Application seeking permission to travel to the UK along with her minor children for Christmas Vacation. The Hon’ble Apex Court granted permission only to the extent of children to travel abroad, vide orders dated 14.12.2023 and 15.12.2023. Once again, the Respondent filed, an Interim Application seeking similar permission to travel abroad with the minor children for Summer Vacation. According to the Petitioner, since the Hon’ble Supreme Court was not inclined to grant permission to the Respondent, she withdrew her prayer and did not

press for the relief, therefore, once again, only the children were allowed to travel abroad.

7. The Supreme Court of India, vide order dated 06.02.2025, transferred the Suit pending in this Court to the Family Court, Bandra, Mumbai, with a direction to give out of turn priority for expeditious disposal of the Suit. After the transfer of Suit to Family Court, the Respondent filed an Interim Application seeking permission to travel to the UK and Singapore between 01.07.2025 and 18.07.2025. The Petitioner opposed the Interim Application by filing Reply Affidavit on 26.06.2025. The Family Court had passed the impugned judgment on 30.06.2025, granting permission to the Respondent to travel abroad by allowing the Interim Application.

8. On the aforementioned background, the Petitioner approached this Court challenging the order granting permission to the Respondent to travel abroad.

9. According to the Petitioner, the Petition filed before the Family Court is for recovery of his assets. Therefore,

considering that, the Respondent is a British National, once she leaves the country, the Courts in India will not have any control over the Respondent. Considering her conduct of leaving her home in the middle of night on 07.09.2022 and transferring the assets from the Petitioner's account to her personal account itself, does not inspire any confidence.

10. It is the contention of Mr. Simil Purohit, learned Senior Counsel appearing for the Petitioner that, this Court, with the consent of parties, had ordered the Passports of Plaintiff, Defendant and Children to be deposited with the Prothonotary and Senior Master of this Court on 08.09.2022. Such a condition was in fact ordered by this Court in order to ensure the recovery of Petitioner's assets, which are in fact, located in a third country, i.e., USA. Since the Supreme Court of India has also declined permission to the Respondent to travel abroad twice on previous occasions, the Judge, Family Court, without taking into consideration the earlier orders passed by the Supreme Court, has recorded erroneous findings regarding grant of permission by the Hon'ble Supreme Court by, observing that, the Respondent

was unable to provide her own travel details due to difficulty in procuring tickets, but submitted the travel details of children and their grandmother to the Court. Hence, they could travel, while the Respondent could not travel. Therefore, it cannot be construed as a denial of permission to the Respondent by the Hon'ble Supreme Court. This, according to the learned Counsel, is an erroneous finding recorded by the Judge, Family Court.

11. The order passed by the Judge, Family Court, is seriously contested by the Petitioner on the ground that, there exists an imminent flight risk; there is every possibility that, the Respondent will not return to India and that would render the Petition for recovery of Petitioner's assets infructuous and unenforceable; as any orders passed by the Indian Courts in respect of misappropriated assets can be enforced only so long as the Respondent remains within the territorial jurisdiction of India. Permitting the Respondent to leave the country will cause irreparable and irretrievable prejudice to the Petitioner and result in grave miscarriage of justice.

12. The Petitioner apprehends that, once she goes beyond jurisdiction of the Courts in India, she is likely to unfreeze the disputed account and withdraw the funds. In spite of raising the aforementioned apprehensions in the reply to the Application by the Respondent, the Family Court has proceeded and passed the impugned order. It is submitted that, the impugned order was passed on 30.06.2025. The Petitioner immediately applied for the Certified Copy, however, he did not receive the same immediately.

13. Considering that, the Respondent had filed tentative flight ticket for travel to UK for 04.07.2025, without waiting for the Certified Copy of the reasoned order, the Petitioner, with the self-certified True Copy of the operative portion of the impugned order, has filed the present Petition in extreme urgency. In such circumstances, the matter was urgently circulated before this Court.

14. While hearing the matter on 02.07.2025, Ms. Firoza Daruwala, learned Counsel appeared for the Respondent and submitted that, pursuant to the order passed by the

Judge, Family Court, on 30.06.2025, the Respondent had already left for UK on 01.07.2025. It is her contention that, since the Petitioner had already taken steps in furtherance of the impugned order and left the country, the challenge to the impugned order would not survive and the Petition has become infructuous.

15. After hearing the parties for some time, the learned Counsel appearing for the Petitioner submitted that, even though the Respondent has already left the country in pursuance of the impugned order, still certain reliefs can be granted to him under Article 227 of the Constitution of India. He would be satisfied even if the Respondent makes a statement before this Court that, she will not file any proceedings for custody of her children or for transfer of the amount of USD 4,084,063, which is frozen by the orders of this Court and also in respect of the Schwab Account, which is already frozen by the orders passed by this Court on 07.09.2022 and further undertakes that, till her return from the UK, she will not take any steps for filing any legal proceedings during her stay in the UK and Singapore, it

would ensure that, the right of the Petitioner would stand protected.

16. Ms. Firoza Daruwala, learned Counsel appearing for the Respondent sought time to take instructions from the Respondent since she had already left India. Since the Respondent had sought time for taking instructions, the matter was directed to be listed on 03.07.2025, for recording the statement of the Respondent. When the matter was listed on 03.07.2025, it was informed by Ms. Firoza Daruwala that, the Respondent has refused to give any such Undertaking.

17. Mr. Simil Purohit, learned Counsel appearing for the Petitioner thereafter, advanced his submissions contending that, this Court in its jurisdiction under Article 227 of the Constitution of India, has vast powers and in exercise of those powers, this Court can certainly mould the relief by directing the Respondent not to file any legal proceedings or take any action in respect of the custody of children and the amount of USD 4,084,063, which was lying in her personal

account and frozen by the order passed by this Court.

18. It is his contention that, in order to protect the interest of the Petitioner and prevent the proceedings filed by him from becoming infructuous, this relief can certainly be granted by this Court by exercising its Power of Superintendence. Since the orders passed by the Judge, Family Court, Bandra, Mumbai, is an erroneous order passed without taking into consideration, the orders passed by the Hon'ble Supreme Court. In fact, by wrongly interpreting the order of the Hon'ble Supreme Court, the Judge, Family Court, has committed an error and such erroneous order, which would defeat the interest of the Petitioner, cannot be allowed to be sustained. Therefore, even though the impugned order has been acted upon, it can certainly be quashed and set aside and the Respondent can be restrained by this Court by passing order restraining her from taking any legal action in respect of :

[i] custody of children;

[ii] the amount of USD 4,084,063, which is transferred by

the Respondent in her own private account; and

[iii] in respect of Schwab Account, which is already frozen by an order passed by this Court on 07.09.2022.

19. Since the Respondent refused to give any such Undertaking, according to the Petitioner, though the impugned order has already been acted upon, however, the powers of the High Court are wide enough to be exercised in appropriate cases, by passing an order in supersession or substitution of the order of subordinate Court as the Court should have made, in the given facts and circumstances. The supervisory jurisdiction of this Court is capable of being exercised *suo motu*, as well. An equitable relief can be granted to the Petitioner in the larger interest.

20 The Petitioner, in support of his submissions, has relied upon a catena of decisions of the Hon'ble Supreme Court to demonstrate that, the powers of the High Court are wide enough for granting relief, which is prayed for by the Petitioner.

21. Reliance has been placed by the Petitioner on the decision of this Court in the case of ***Shantabai Devidasrao Joshi V/s. Baburao Ramdeo Joshi***¹, more particularly, on the judgment of the Hon'ble Supreme Court in ***Abdul Razak through LRs and Others V/s. Mangesh Rajaram Wagle and Others***², which is reproduced in the judgment, while deciding the Writ Petition filed under Article 227 of the Constitution of India, challenging an order passed under Order VI Rules 16 and 17 of the Code of Civil Procedure, 1908 ("CPC"). He is relying on the observations made by the Hon'ble Supreme Court, while analyzing the jurisdiction of the High Court under Article 226 and 227 of the Constitution of India, it is held that, in exercise of supervisory jurisdiction, the High Court may not only give suitable directions so as to guide the subordinate Court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate Court as the Court should have made in the facts and circumstances of the case. According to him, the

1 2025 SCC OnLine Bom 1091

2 (2010) 2 SCC 432

aforesaid observations made by the Hon'ble Supreme Court are squarely applicable to the facts of the present case. Hence, the directions, as prayed by him in his oral submissions, can certainly be issued by moulding the relief.

22. *Per contra*, Ms. Firoza Daruwala, learned Counsel appearing for the Respondent submits that considering that, pursuant to order dated 30.06.2025 passed by the Judge, Family Court, the Respondent had already left for UK and Singapore on 01.07.2025, the prayers made by the Petitioner in the Writ Petition have become infructuous. Therefore, this Writ Petition deserves to be dismissed.

23. While making her submission about the Undertaking sought by the Petitioner from Respondent when the matter was heard by this Court on 02.07.2025, as referred to hereinabove, it is submitted that, the Undertakings sought are in nature of entire Anti-Suit injunction, which is not permissible in a proceeding under Article 227 of the Constitution of India. Such Undertakings seek to restrict and fetter the Respondent's right to litigate within the

framework of law during the period of her travel from 01.07.2025 to 18.07.2025, which is not legally permissible in Writ Jurisdiction under Article 227 of the Constitution of India. It is further submitted that, the Petitioner had not sought for any such Undertaking before the Trial Court. Therefore, such prayer is not capable of being entertained before this Court.

24. Ms. Firoza Daruwala, learned Counsel appearing for the Respondent submits that, the contention of the Petitioner that, the impugned order has failed to correctly appreciate the order passed by the Hon'ble Supreme Court dated 14.12.2023, is baseless and devoid of merit. There is no error apparent in face of record. This Court cannot be called upon to test the legality of the impugned order through the lens of an Appellate Court, since it is a supervisory Court when adjudicating matters under Article 227 of the Constitution of India.

25. It is submitted that, the impugned order is a well-reasoned one and does not suffer from any infirmity or

perversity. The apprehension of the Petitioner that, the Respondent is at flight risk and may unfreeze the Charles Schwab Account and withdraw the funds is unfounded, baseless and speculative, which have been dealt with by the Trial Court. Even for moulding the relief, this Court is required to determine whether the impugned order is unsustainable either on facts or in law.

26. According to her, the Petitioner has not made out any case warranting intervention in the impugned order, and therefore, there is no question of granting or moulding relief.

27. The Respondent has placed reliance on a plethora of judgments of the Hon'ble Supreme Court in support of her submission, which are as follows:

[i] ***Sayed Yakoob V/s. K.S. Radhakrishnan & Ors.***³;

[ii] ***Puri Investments V/s. Young Friends and Co. & Ors.***⁴;

[iii] ***Nagendra Nath Bora & Anr. V/s. The***

³ 1963 SCC OnLine SC 24

⁴ 2022 SCC OnLine SC 283

Commissioner of Hills Division and Appeals, Assam and Ors.⁵;

[iv] *Black Diamond Trackparts Private Limited & Ors. V/s. Black Diamond Motors Private Limited*⁶;

[v] *Estralla Rubber V/s. Dass Estate*⁷; and

[vi] *Radhey Shyam & Anr. V/s. Chhabi Nath*⁸

28. I have given due consideration to the arguments advanced by respective Counsel, perused the impugned order, and the documents placed on record along with the case-laws by the respective parties.

29. It is not in dispute that, the Respondent had filed an Application before the Judge, Family Court, Bandra, Mumbai, seeking permission to travel to the UK and Singapore between 01.07.2025 and 18.07.2025. The Application was filed by the Respondent seeking permission to travel for her professional commitments. The Passport of the Respondent has been deposited with the Registry of this

5 1958 SCC OnLine SC 45

6 2022 SCC OnLine Del 545

7 (2001) 8 SCC 97

8 SCC, 2009 Civil Appeal No. 2548 of 2009

Court pursuant to the orders dated 07.09.2022 and 26.05.2025.

30. The Respondent filed an Application for withdrawal of her UK Passport to travel overseas on 24.06.2025. In her Application, she made a prayer that, she may be permitted to travel to the UK and Singapore between 01.07.2025 and 18.07.2025, with a prayer that, she will re-deposit the passport with the Registrar of the Family Court, Bandra, within four working days upon her return to Mumbai.

31. The Application of the Respondent was opposed by the Petitioner. The Family Court has passed the order after considering the arguments of the respective parties. The objections raised by the Petitioner have been taken into consideration by the Judge, Family Court, while passing the order dated 30.06.2025.

32. The grounds on which the Application was opposed by the Petitioner herein have been dealt with by the Judge of the Family Court and a reasoned order on each of the objections raised by the Petitioner has been passed.

33. As regards the objections of the Petitioner that, the Respondent is at a flight risk and if she is granted permission, she would take an opportunity and transfer the amounts lying in her sole account. She is likely to unfreeze the Charles Schwab Account and withdraw the funds and once she goes beyond the geographical jurisdiction of this country, no Courts in India would have any jurisdiction over her.

34. The Judge, Family Court, has rightly observed that, the Respondent has categorically stated that, she has no intention of remaining abroad permanently. She would not abandon her dependent children and mother, who reside in Mumbai. Both the minor children are pursuing their education in Mumbai and had remained with the Petitioner during Summer Vacation. Therefore, there is no likelihood that, the Respondent would abandon her elderly mother, who resides in Mumbai. Her conduct was also noted by the Court by observing that, Respondent has voluntarily deposited her renewed passport in the Family Court on 26.06.2025. Therefore, the apprehension expressed by the

Petitioner appears to be speculative.

As far as funds lying in her account are concerned, the Judge of the Family Court has observed that, the account continues to remain frozen by virtue of order passed by this Court and there is no material on record to indicate that, the Respondent has made any attempt to circumvent or violate these directions.

35. Upon recording the satisfaction that, the Petitioner is not at flight risk and that, even the amounts which have been transferred by the Respondent from the account of Petitioner were safe and secure, since they remained frozen by virtue of the order of this Court and therefore, there was no possibility of any siphoning of funds by the Respondent.

36. So far as objections regarding the observations made about the interpretation of the order passed by the Hon'ble Supreme Court, while granting permission to the children to travel to the UK are concerned, it was interpreted that, since the travel details were not given to the Supreme Court, she has not pressed her Application for granting permission to

travel.

37. All the objections raised by the Petitioner have been categorically dealt with by the Judge, Family Court, on their own merits and has passed an order granting permission to the Respondent. Hence, claim of the Petitioner that, the Respondent should be restricted from taking any legal action for custody of children or for unfreezing the Charles Schwab Account and withdrawing the funds is concerned, such a prayer is undoubtedly beyond the scope of the powers of this Court. The Petitioner has not made any such prayer in the Writ Petition. Even if such prayer is made by the Petitioner, it could not have been granted by this Court in its Writ Jurisdiction under Article 227 of the Constitution of India.

38. As far as the impugned order is concerned, there is no perversity or infirmity in the order passed by the Judge, Family Court. Each and every objection raised by the Petitioner has been dealt with and a reasoned order has been passed.

39. The oral prayer now made by the Petitioner is not

capable of being granted for the reason that, it is a mere apprehension of the Petitioner and that cannot be a ground for challenge to the impugned order. This Court cannot grant a relief, which is not pleaded by the parties.

40. It is not within the powers of this Court to restrict a person from filing legal proceedings. The powers of this Court under Article 227 are limited. So far as the contention of the Petitioner that, this Court has wide powers under Article 227 of the Constitution of India and therefore, this Court can mould the relief in the Writ Petition by granting the relief prayed for by the Petitioner is concerned, it would be apposite to refer to the judgment of the Hon'ble Supreme Court in the case of ***Mohd. Yunus V/s. Mohd. Mustaqim & Others***⁹, wherein it is observed that, the supervisory jurisdiction conferred on the High Court under Article 227 of the Constitution is limited to overseeing that, an inferior Court or Tribunal functions within the limits of its Authority and is not meant to correct an error, even if apparent on the face of the record. A mere wrong decision, without anything more, is not enough to attract this

⁹ (1983) 4 SCC 566

jurisdiction. Therefore, merely wrong decisions do not attract Article 227 of the Constitution of India.

41. In the present case, the Judge of the Family Court has passed a reasoned order on each and every objection raised by the Petitioner. It is a well-reasoned order, merely because another view is possible. The jurisdiction under Article 227 of the Constitution of India does not permit the Courts to interfere with the orders.

42. In the reported Judgment of ***West Bengal Central School Service Commission & Others V/s. Abdul Halim & Others***,¹⁰ the Hon'ble Apex Court has observed in Paragraph No.30 that, in exercise of powers under Judicial Review, the Court is to see whether the decision impugned is vitiated by an error apparent on the face of law. The test to determine whether the error is self-evident on the face of the record or whether the error requires examination or arguments to establish it. If it is required to be established by a process of reasoning, on points where there may reasonably be two opinions, it cannot be said to be an error

¹⁰ (2019) 18 SCC 39

apparent on the face of the record.

43. In the present case, there is a reasoned order, merely because, another view is possible that, cannot be ground for interference, unless the error is so apparent that it does not require reasoning to establish it.

44. From the various judicial pronouncements on the powers of the High Courts under Article 227 of the Constitution of India, the broader grounds on which such powers can be exercised are as follows:

[i] There is grave miscarriage of justice or a flagrant violation of law.

[ii] Patent error of law which goes to the root of the decision in the matter.

[iii] Perversity.

[iv] Arbitrariness

[v] Unreasonableness, violation of principles of natural justice, lack of jurisdiction and usurpation of powers.

45. In my opinion, none of the conditions, which can be gathered from the various judgments, is attracted in the present case for the exercise of powers under Article 227 of the Constitution of India for causing interference in the order passed by the Family Court, which, as it is, has become infructuous since it has already been acted upon.

46. Therefore, no case for interference is made out and the Writ Petition is dismissed.

[MANJUSHA DESHPANDE, J.]