

CASE NO.:
Appeal (civil) 5088-5097 of 2007

PETITIONER:
Mohan Kumar Rayana

RESPONDENT:
Komal Mohan Rayana

DATE OF JUDGMENT: 01/11/2007

BENCH:
C.K.THAKKER & ALTAMAS KABIR

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NOS.5088-5097 OF 2007
(Arising out of S.L.P.(C) Nos.15167-15176 of 2007)

Altamas Kabir, J.

1. Leave granted.

2 Since both the parties to the special leave petitions are before us, Notice of the Appeals is waived on behalf of the respondent, Komal Mohan Rayana.

3 The appeals arise out of circumstances wherein owing to disputes and differences between a married couple, the child born of the wedlock has become the object of a tussle for custody between the two parents.

4. The subject matter of these appeals are four orders passed by the Bombay High Court on 12th July 2007, 19th July 2007, 27th July 2007 and 6th August 2007 in two appeals from a petition No.D-65/2005 before the Family Court. In order to appreciate the circumstances in which these orders came to be passed, it will be necessary to state a few facts leading to the commencement of the proceedings before the Family Court.

5. Admittedly, the appellant herein, who is the husband of the respondent, married the respondent on 2nd March 2002. A daughter was born to them and she was named Anisha. Initially there were no disputes as such between the parties but after the daughter's birth, the atmosphere in the marital home began to change. We shall not go into the causes as alleged by the respondent since such allegations are not relevant for our purpose, but we can only observe that one of the reasons given by the respondent for the changed circumstances was the change in behaviour of the appellant towards her, on account of addiction to alcohol in the company of his friends.

6. In any event, there appears to have been some marital discord, which resulted in the respondent leaving the matrimonial house in July 2004 with her minor daughter and seeking shelter with her parents at Bandra. According to the respondent, during the said period she continued to send Anisha to the Kinder Campus School at Chembur, the area where the appellant was residing and permitted him on occasions to keep back Anisha at his residence. The

respondent has alleged that in October 2005, taking advantage of such a situation, the appellant kept Anisha back with him and did not return her to the respondent's custody. This compelled the respondent to meet her daughter in the school campus, but since this arrangement did not also work out, in the last week of November 2005, she approached the Chembur police and with their help got back the custody of her daughter. A series of allegations were thereafter made that on 30th November, 2005 the appellant, with the help of some of his associates, forcibly removed Anisha from the respondent's custody and made her completely inaccessible to the respondent. It is in such compelling circumstances that she moved the Family Court seeking custody of her minor daughter under Section 6 of the Hindu Minority and Guardianship Act, 1956 read with Ss.7 and 25 of the Guardians & Wards Act, 1890.

7. The appellant herein also filed a Custody Petition, being D-66 of 2005, and both the applications were taken up for hearing together by the learned Family Court. By its judgment dated 2nd February 2007 the Family Court dismissed the appellant's application for custody and allowed the application filed by the respondent by passing the following order :

\023ORDER

The Respondent/Mohankumar Rayana is directed to hand over custody of the minor daughter Anisha to the petitioner/mother Komal Rayana immediately after completion of her final terms of the current academic session 2006-2007.

The Respondent/father shall take all the steps to provide all facilities to the minor daughter to enjoy her extra curricular activities and studies.

After the child Anisha goes to the custody of the mother as ordered above, the Respondent/father would be at liberty and privilege to avail her access every alternate weekends, meet her at school at any time and share 50% of her school vacations, as per mutual arrangement with the petitioner/mother.

The petitioner/mother should in consultation with the Respondent/father decide the question of her further academic education and she should not move the child out of the jurisdiction of the Court without its prior permission and of course after due intimation to the Respondent/father.

The father/respondent shall meet all the expenses for the education, food and clothes etc. of the minor daughter Anisha and the Petitioner/mother of her own accord may contribute to the same for the child and she should not be prohibited by the respondent/father from giving the child Anisha anything for her own comfort and pleasant living. This arrangement for custody is made on the basis of the prior consideration for the welfare of the minor Anisha and in the event of change of

circumstances either of the parents shall be at liberty and privilege to approach this Court for fresh direction on the basis of changed circumstances.

The custody petition D-65/05 moved by the Respondent/father Mohan Kumar Rayana stands dismissed with visitation and access rights as ordered above.\024

8. Aggrieved by the said Judgment and order of the Family Court, the appellant filed Family Court Appeal No. 29/2007 before the Bombay High Court on 23.2.2007 and the same was admitted on 7th March, 2007 and was said to have been peremptorily fixed for final hearing on 26th March, 2007. On 26th March, 2007 the respondent also filed an appeal, being Family Court Appeal No.61/2007, challenging the operation of the judgment of the Family Court dated 2.2.2007 granting access to the appellant to meet Anisha. The said appeal was also admitted on 3rd May, 2007. On the same day, the directions contained in the order of the Family Court dated 2.2.07 regarding access to the appellant to meet Anisha, were modified by the High Court by directing that the minor child would be available to the appellant as and when he was physically present in Bombay at his house. It was also stipulated that whenever the appellant was not available in Bombay the child should remain with the respondent. It was specifically mentioned that the child should not be removed by the appellant out of Bombay for any reason whatsoever, except in the circumstances mentioned in the order.

9. A Special Leave Petition was filed by the appellant against the order of the High Court dated 3.5.07 and the same was disposed of on 18.6.07 with a direction upon the High Court to hear the Family Court appeal expeditiously.

10. Certain circumstances intervened which prompted the Division Bench of the Bombay High Court to modify its order dated 3.5.07 on 12.7.07 by reducing the access granted to the appellant and limited such access only to the day time on the ensuing Saturday and Sunday. The said order passed in the two above-mentioned appeals is one of the orders forming the subject matter of the appeals before us.

11. Subsequently, after interviewing the parties and the minor child, the High Court passed a further order on 19.7.07 directing the appellant and the respondent to visit a psychiatrist with the child and to obtain a report from him. The access granted to the appellant on Saturdays and Sundays from 9 A.M. to 9 P.M. was continued. The said order passed in application No.81/2007 filed by the respondent herein in Family Court Appeal No.61/2007, is one of the other orders which form the subject matter of the present appeals before us.

12. A third order was passed by the Bombay High Court on 27.7.07 directing the appellant and the respondent to seek appointment with a psychiatrist within a week, and he was also directed to submit his report within 2 weeks after the parties were examined. The interim arrangement made earlier was directed to continue. The said order is the third order which is impugned in the present appeals. The

fourth order impugned in these appeals was passed on 6.8.07 in the pending Civil Application No.81/2007, whereby, in view of the intervening circumstances, the High Court passed the following order.

\023IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FAMILY COURT APPEAL NO.61 OF 2007
ALONGWITH
CIVIL APPLICATION NO.81 OF 2007
ALONGWITH
FAMILY COURT APPEAL NO.29 OF 2007

Mr. R.T. Lalwani, Advocate for the applicant/wife
Mr. Kevic Settalwad Advocate i/b D.H. Law & Associates for Respondent/husband

CORAM : J.N. PATEL AND A.S. SAYED, JJ
DATE : AUGUST 6, 2007
P.C. (Per J.N. Patel,J):

Heard. We find from the conduct of the parties that the parties are repeatedly moving this Court in the matter on one pretext or the other. It is highly impossible for the Court to monitor each and everything. This being matrimonial matter relating to access of the child, the Court has issued directions from time to time and it is expected that both the parties shall comply with the directions of this Court and facilitate each other and cooperate with each other in the matter. But it appears that the parties are trying to interpret the order in the manner they want, without being concerned about the welfare of the child, which is of paramount importance. This Court has suggested to the parties to go for counselling and already a psychiatric of J.J. Hospital is appointed for the same. Recent development is represented by the counsel for the parties shows that on the last date of access there was some quarrel between the parties, which lead to hospitalisation of the wife, for injuries suffered by her and she is presently admitted in Lilawati Hospital and likely to be discharged today or tomorrow.

2. In our considered opinion the respondent/wife deserves an opportunity to place her affidavit on record.

3. In view of the recent development as brought to our notice, we are left with no option, but hold all our interim orders/relief to grant access to father, in abeyance till this Court receives report of the psychiatrist. We make it clear that the parties, if fail to cooperate with the Court in resolving the issue, this Court would remove the matter from its board. It is not expected from the parties to resolve their domestic

quarrel in the court and ask the Court to adjudicate each and every issue, whether minor or major, relevant or irrelevant. We hope that the parties would maintain some discipline in observing the orders of the Court and cooperate.

4. Parties are at liberty to mention the matter only after they comply with the orders of this Court and report of the psychiatrist is received. Thereafter this Court proposes to pass the further orders. The matter stands adjourned for 4 weeks. We make it clear that on the mean time we would not entertain any application for interim relief, or for permitting the parties to meet the child, or to take matter on board, which has led this Court to hold all orders passed earlier in abeyance.

(A.A.SAYED,J)
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(J.N. PATEL,J)

13. By the aforesaid order all access to the appellant was kept in abeyance till the Court received the report of the psychiatrist. The main grievance of the appellant is that by the order of 6.8.07 he was completely denied any access to the minor child. He was also aggrieved by the reduction of access time by the other orders as well.

14. Since these appeals have been preferred against the interim orders passed by the Bombay High Court in the two pending Family Court Appeals, learned counsel for the appellant, submitted that in these appeals the only grievance of the appellant was with regard to denial of complete access to his child. He prayed that the visitation rights which had been granted by the Family Court be restored during the pendency of the two appeals in the Bombay High Court.

15. Since we are only called upon to decide the said issue, we are not required to go into any other question relating to the appeals pending before the Bombay High Court. We have met the appellant, the respondent and also the minor child, Anisha, separately, in chamber, to ascertain what each had to say regarding the making of interim arrangements to allow the appellant to have access to Anisha.

16. After having looked through the materials on record and after considering the views of the parties and the minor girl, we are of the view that the appellant should not be denied complete access to his minor child, even if there has been a default in complying with the directions of the High Court and that pending the disposal of the appeals he should be allowed to have access to his minor child, at least to some extent.

17. We, accordingly, dispose of these appeals with the following directions :-

i) Since the welfare of a minor child is involved, the High Court is requested to try and dispose of the pending appeals as expeditiously as

possible, but preferably within three months from the date of communication of this order;

ii) The appellant/father of the minor, will be entitled to have access to Anisha on weekends on Saturdays and Sundays and will be entitled, if the child is willing, to keep her with him on Saturday night. For the said purpose, the appellant shall receive the child from the respondent at 10.00 a.m. on Saturday from her residence at Bandra or from a mutually agreed upon venue and shall return the child to the respondent on Sunday by 2.00 p.m. In the event Anisha is unwilling to stay with the appellant overnight, the appellant will then make her over to the respondent on Saturday itself by 9.00 p.m.; in that case, the appellant will be entitled to take Anisha out on Sunday also between 9.00 a.m. to 5.00 p.m.;

iii) Both the appellant as well as the respondent must co-operate with each other in making the aforesaid arrangements work. The respondent shall not prevent the appellant from having access to Anisha in the manner indicated above. Likewise, once Anisha is handed over to the appellant he too must honour the aforesaid arrangements and not keep Anisha with him beyond the time stipulated. In the event of either of the parties violating the aforesaid arrangement, the other party would be at liberty to pray for appropriate orders before the Bombay High Court in the pending appeals;

iv) The aforesaid arrangement is being made so that the appellant can have access to his minor daughter and also to ensure that the child's education does not suffer in any way during the week.

18. The appeals are, accordingly, disposed of with the aforesaid modifications of the interim orders passed by the High Court and save as aforesaid, all the other interim directions shall continue to remain operative.

19. Since, in terms of our earlier directions, the expenses of the respondent and Anisha for coming from Bombay to Delhi and other litigation expenses is said to have been deposited by the appellant with the Registry of this Court, the respondent shall be entitled to withdraw the same. There shall be no further order as to costs in these appeals.