

IN THE COURT OF DISTRICT JUDGE, PUNE AT PUNE.

CIVIL SUIT NO. 10/2017

Rishad Darayas Cooper .. Plaintiff
Vs.
Nahida Rishad Cooper .. Defendant

ORDER BELOW EXH. 43

Heard learned Advocate Shri Bhojwani for the plaintiff/ husband. Apart from this suit, there is also Parsi Suit filed by the present defendant/ wife before the Hon'ble High Court. The Hon'ble High Court rejected the notice of motion moved by the wife therein as per order dated 22.09.2017. With the assistance of the learned advocate, I have read the directions part. Broadly there are two directions. First the wife has been given three options. She has been directed to stay in either of the three places along with son Marc. Secondly, direction is given to the wife to handover the custody to the husband if she is not willing to exercise any of these three options. Injunction sought against the husband in that notice of motion was not granted.

2- Now, husband wants custody of his son from the wife in view of not exercising any of the options. Earlier to that wife also failed before the Division Bench. The said Judgment was delivered on 06.12.2017. The said order was stayed for two weeks. The said period has expired.

3- While seeking certain directions for reconstitution of the

Bench Preceipe attempted to be filed by the wife through her advocate dated 19.12.2017, was not successful.

4- With the assistance of the learned Advocate, I have tried to read both these Judgments. There are observations about the conduct of the wife while dealing with son Marc. Earlier Son Marc was taking education in Bishop School, Pune. It is about to be reopened after Christmas Vacation.

5- The learned advocate on behalf of the husband earnestly made request at least to grant prayer clause (iii) of the application and then to decide the issue of custody after appearance of the wife. After going through the documents, there are three options came to my mind.

- (i)- One is to issue notice to this application to the wife,
- (ii)- Second is to allow prayer clause (iii) and to make application returnable on certain date and
- (iii)- Third is to give direction to the wife to comply with the directions of the Hon'ble High Court as confirmed by the Division Bench.

6- I am inclined to accept third option. I am not inclined to grant relief in terms of prayer clause (iii). Reasons are, this Court has also experienced difficulties faced in implementing the order and

particularly when it is ex parte order. At the same time, I feel it necessary to give directions to the respondent/ wife not to move Marc out of Bombay (except for Pune) because this Court has also experienced attempts made by the custodian in defending custody orders.

7- Second is, two weeks time granted by the Divisional Bench has expired recently. We do not know what steps the wife has taken in moving to the Hon'ble Supreme Court. At the same time, I am not inclined only to issue notice to the wife. But I think it proper to issue directions to the wife, so that, it can be brought to her notice about the compliance of the directions by the Hon'ble High Court. It can be brought to her notice that if she fails to abide those directions, this Court will be compelled to consider the present request. Hence, I intend to pass the following order :-

ORDER

- (I)- Issue notice of this application to the respondent, returnable on 1st January 2018.
- (ii)- Respondent / wife is directed to comply with the directions and particularly the option given in Para No.56(2) of the order dated 22.09.2017 till 1st January 2018.
- (iii)- It be also informed to her that in case of her failure, this court will be compelled to decide application.

- (iv)- Respondent /wife is further directed not to take Marc outside Bombay (except for complying the directions given by the Hon'ble High Court), without intimation to the husband/applicant, by E-mail or by letter. This direction is given by presuming that respondent/ wife has not taken out Marc out of Bombay.
- (v)- The applicant is permitted to serve this order by private service on the respondent /wife and /or their Advocate by RPAD or by Courier.
- (vi)- Applicant to serve copy of this order downloaded through District Court website on the respondent/ wife.

Place – Pune
Date -22.12.2017

(S. M. Modak)
Principal District Judge, Pune.

I affirm that the contents of this P.D.F.,file order /judgment are same word for word as per original Judgment.

Name of Steno	:	Shri A.G. Tawale (Steno H.G.)
Court Name	:	Principal District Judge,Pune.
Date	:	22.12.2017.
Judgment signed by		
P.O. on	:	26.12.2017.
Judgment uploaded on	:	26.12.2017.

