

IN THE COURT OF DISTRICT JUDGE, PUNE AT PUNE.

CIVIL SUIT NO. 10/2017

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

FURTHER ORDER BELOW EXH. 43

Today, the defendant has put in appearance in response to the notice issued by this Court as per order dated 22.12.2017. It was passed below Exh.43. Exh.43 was moved by the plaintiff/ husband for certain urgent reliefs by taking the matter on board. Defendant has objected to the maintainability of that application before this Court.

2- Pending that issue, question before me is, whether to grant custody of son Marc to the plaintiff/ husband or in the alternative, whether to injunct defendant/wife from returning back to Mumbai along with son Marc. On the basis of e-mail and other documents belonging to the wife, the learned advocate for the plaintiff tried to show, how the wife has not acted as per option 'C' of Para 56(2) of the order passed by the Hon'ble High Court on 22.09.2017.

3- In the precipice dated 19.12.2017 tried to be submitted before the Division Bench on behalf of the wife, she has referred to Bundgarden address. Whereas, in the e-mail dated 30.12.2017 sent by the wife through her advocate to the learned advocate for the plaintiff, she has referred Flat No.4, 2nd floor, C/o Mr. Eruch Sabhawalla at Shivneri Cooperative Housing Society, Survey No.66/6-7, Pune-45, as place of residence selected by her. According to learned advocate for

the plaintiff, the address mentioned in the e-mail of Shivneri Building, cannot be the address mentioned as per 2nd part of Para 'C' of Para 56(2) of the order. According to him, the wife has not accepted to stay with someone else. He tried to emphasis on lack of intention on the part of the wife to obey the order passed by the Hon'ble High Court.

4- Ultimately, he submitted to injunct the wife from going out of Pune. He made that submission on the basis of the contents of that e-mail dated 30.12.2017. Defendant/wife has expressed her desire to return to Mumbai on 02.01.2018 as the School reopens. Whereas, Bishop School, Pune, reopens on 10.01.2018. He also tried to emphasis on absence of bonafide in moving the precipice. According to him, no proper procedure is followed while moving the precipice and as per his knowledge, no matter is listed on 05.01.2018 as mentioned in that precipice. He emphasised that this Court alone can decide the issue of temporary custody as observed by the Hon'ble High Court.

5- As against this, it is submitted on behalf of the defendant that she has got every intention to obey the order of the Hon'ble High Court. Defendant/wife is only worried about the continuance of the academic career of son Marc at Bhishop School. So also, needs some time to make necessary arrangement at Bundgarden residence. According to defendant/wife, the address mentioned in the e-mail at Shivnery society is only the temporary arrangement till the time Bundgarden accommodation will be ready.

CONCLUSION

6- At this stage, I do not think that I can opine on giving custody of son Marc to the plaintiff as prayed in the application. It is true that at one point of time, I was thinking of injuncting defendant/ wife from returning back to Mumbai along with son Marc. This view came in my mind because the order of the Hon'ble High Court needs to be implemented. It is further important that in the precipice dated 19.12.2017, defendant/ wife has clarified about not filing appeal. However, when I looked to the issue from the point of view of son Marc, I formed the opinion even not to injunct the defendant/ wife.

7- I formed this opinion because the concern of the wife about academic year of son March is important. It is but natural for the mother that the son may not lose his academic year. Defendant/ wife has also written a letter dated 14.12.2017 to the Principal of Bishop School, Pune inquiring about the academic year of son Marc. It is also true that Bishop School, Pune have replied vide e-mail dated 18.12.2017 and asking son Marc to join the school when it reopens. Defendant/ wife is emphasizing that there is no clear cut admissions about not losing academic year of son Marc.

8- Ultimately, academic year of son Marc is very important. If I will injunct defendant/ wife from moving out of Pune, she will not be in a position to go back to Mumbai. I think the wife is certainly desirous of seeking clarification of Hon'ble High Court about the issue of academic career. It is true that in the precipice, there is only prayer to reconstitute the bench. However, in Para No.3 of that precipice, the

defendant/ wife has expressed the issues on which she is asking for consideration of the Hon'ble High Court. I have tried to confirm from the learned advocate for the defendant/wife, as to whether, the defendant/wife is having any other issue in her mind, in her attempt to seek that consideration of Hon'ble High Court. The learned advocate for defendant/ wife on taking instructions submitted that his client is only having concern about the issue raised in Para No.3 of the precipice.

9- I am of this opinion that the issue of not losing academic career needs to be confirmed from the Bishop School. I do agree that the school has welcomed the entry of son Marc. But, it is also true that in Para No.4 of that precipice, defendant/ wife has clarified about closing of the school for December vacation and closing of academic year and reopening after summer vacation. There is difference in between that schedule in between the Kapoor School at Bombay and the Bishop School, Pune.

10- It is also true that the Hon'ble High Court has expressed that this Court should take decision about the custody of son Marc. I do not want to abdicate my responsibilities. I think there can be a workable solution rather than passing any order as sought by the plaintiff/ husband. When, he emphasised for joining again in Bishop School, certainly, he must be desirous to extend all cooperation. So, I feel that instead of passing injunction order, certain directions can be given to both the spouses in respect of seeking clarification from the Bishop School. Even they can be directed to meet the Principal

together by fixing the date. If it will happen, there will be less chances of any difference of opinion. At the same time, it can be expected from the defendant/ wife to make the Bundgarden accommodation habitable. At this juncture, I am not inclined to issue any direction about offer shown by the plaintiff/ husband to handover belongings. It can be taken care in future also. Hence, I proceed to pass the following order :-

ORDER

- (a)- Plaintiff and defendant are at liberty to meet the Principal of Bishop School, Pune, after fixing date by interse correspondence by e-mail.
- (b)- Plaintiff and defendant are at liberty to seek clarification by conversation with the Principal about not losing academic career of son Marc in Bishop School.
- (c)- This meeting be fixed in any eventuality prior to 10.01.2018.
- (d)- Extension after 10.01.2018 as sought by the defendant /wife is rejected.
- (e)- Both spouses are at liberty to meet any other concerned representative of Bishop School, Pune.
- (f)- Parties are at liberty to show this order to the representative of Bishop School, Pune.
- (g)- Downloaded copy can be used by the parties.

Place – Pune
Date -01.01.2018

(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	:	01.01.2018
Judgment signed by	:	
P.O. on	:	02.01.2018
Judgment uploaded on	:	02.01.2018

