

ORDER BELOW EXH. 214 IN CIVIL SUIT NO. 10/2017

1- This is the application for urgent interview and custody of the minor child Marc, on the following grounds :

- (A) Marc pleading to meet the Hon'ble Judge Uncle to stay with his father,
- (B) Defendant again withholding medical emergency of Marc,
- (C) Defendant violating access orders subjecting Marc to parental alienation (child abuse).

It is the contention of the applicant/father that during phone access with the child Marc, the child told him that he want to stay with him and want to meet the Judge Uncle to ask to stay with the father. It is contended that on 08.11.2020 when he arrived for access with the child Marc, he noticed large dressing just above his left eye and child told him that he got hurt after falling and banging his head against a door while riding a toy scooter late at night. It is contended that the said medical emergency was withheld by the defendant from him. It is further contended that from 5 months, there was no physical access of the plaintiff/father with the child and as per order dated 11.08.2020, only one hour per week physical access is granted. It is contended that during the said one hour physical access, the defendant/mother remains present nearby, disturbing the child Marc. It is contended that on 30.08.2020, the defendant/mother created ugly dispute forcibly entering into the car. It is contended that even though the Covid situation has been relaxed in Pune many weeks ago and the defendant/mother allows the maid in her home regularly, she refuses to comply with prior access order. It is contended that the defendant/mother has since years repeatedly resisted and disturbed access of the visitation right, in violation of the Hon'ble High Court

(2)

order dated 22.09.2017 and other orders passed by this Court. It is contended that the defendant's parental alienation 'child abuse' is causing Marc emotional trauma against his wishes, irreversibly damaging the child's fragile psyche since he was 6. The following prayers are made in the application :

- (a) *This Hon'ble Court may be pleased to urgently interview Marc and handover his custody to the Plaintiff, forthwith.*
- (b) *Pending adjudication of this application, this Hon'ble Court may be pleased to pass an order for regular access to resume per prior orders, as the Covid crisis in Pune has relaxed.*
- (c) *Any other just and equitable orders in the interest of justice may please be passed.*

2- The said application is resisted by the defendant, by filing her say at Exh.216. The contentions in the application are denied. It is contended that at the time of filing of suit, the plaintiff did not feel it necessary to claim the interim custody of the child and all that he wanted was to restrain the defendant from going out of Pune. It is contended that the plaintiff reiterating that the custody of the child should be a joint custody and was not insisting on a sole custody. It is contended that pursuant to the previous arrangement during mediation, the plaintiff and defendant are already sharing 50% of the vacations of the school. It is contended that on 6th October 2019, the child returned from his weekend access with the plaintiff/father, at 6.00 p.m. and the defendant noticed that the child had a big burn mark on his inner thigh. It is contended that the child is a hyper active child and the plaintiff ought to pay attention to the child which obviously he had not. There are may other contentions given in detail resisting the application. It is

(3)

contended that the child is in the care and custody of the mother since his birth who is taking utmost good care and the child has been following a pattern of studies with the mother, especially, the fact that the child is suffering from dyslexia and disgraphia and the mother has qualifications in early childhood education and understands the special needs of the child. With all these contentions, it is prayed that the application may be dismissed with costs and any other just and reasonable orders to meet the ends of justice, be passed.

3- The plaintiff filed counter reply at Exh. 218 denying all the contentions raised by the defendant in her said reply.

4- Considering the request made in the application for urgent interview, the interaction with the child Marc was arranged through Video Conferencing from the place where he is presently residing i.e. defendant/mother's house, on 02.12.2020. During the V.C. appearance, child Marc expressed his desire to meet his father and to stay/live with his father for the whole life.

5- Both the sides were heard through their respective advocates. The learned advocate for the plaintiff submitted that when the child has expressed his desire to meet his father and to stay with him for the whole life, nothing remains and the custody of the child Marc be immediately handed over to the plaintiff from the defendant. He submits that the child's welfare is the only aspect which is required to be seen. In support of his submission, he relied on the Judgment in the case of *"Lekha Vs. P. Anil Kumar, dated 21.11.2006, in Appeal (Civil) 5131 of 2006"* wherein the question of custody of the child was

(4)

involved. In the said case, the trial Court, after considering the evidence on record and interviewing the child, came to the conclusion that for the welfare of the child, the custody should be given to the mother and dismissed the original petition of the respondent-father filed under the Guardians and Wards Act, holding that he is not entitled for the custody of the child. It is observed that the general view that the Courts have taken is that the interest and welfare of the child is paramount.

He further relied on the Judgment of the Hon'ble Bombay High Court in Writ Petition No. 14526 of 2018 in the case of “Prasad Vilas Kulkarni Vs. Gauri Prasad Kulkarni” dated 31.01.2019”, wherein, the exception was taken to the order passed by the Family Court, Kolhapur, rejecting the application of the petitioner for interim custody of his son. In the said Judgment, it is observed that the welfare of the child lies in his shifting to Pune so as to pursue his hobbies and the custody of the child was given to the petitioner. The wife had given no objection if the son wants to shift to Pune for study.

6- It is submitted by the learned advocate for the defendant that expression of the child to meet his father and to reside with him for the whole life, is the result of tutoring by the plaintiff. It is submitted that the plaintiff keeps on telling the child that his mother is bad and he should reside with him. It is submitted that the child requires counseling since he is suffering from dyslexia and disgraphia. She cited the Judgment of the Hon'ble Delhi High Court, in the case of “Col. Ramneesh Pal Singh Vs. Sugandhi Aggrwal, dated 29.04.2020” wherein it is observed that parental love is the only love that is truly selfless, unconditional and forgiving. Several Judgments on the aspect

(5)

of child custody, are referred in the above Judgment. In the said case, the petitioner was directed to handover the custody of the children to the respondent immediately on the opening of the schools for admission once the lockdown that has been declared because of COVID-19 pandemic is lifted.

Learned counsel for the defendant further relied on the Judgment in the case of “Vinodchandra Gajanan Deokar Vs. Anupama Vinodchandra – MANU/MH/0037/1993” wherein the access of the minor child was stayed until the payment of maintenance to the wife.

It is clear from the above Judgments relied upon by the parties that, the welfare of the child is the paramount factor and it is the settled position under the Law.

7- Coming to the case in hand, following are the undisputed facts :

- (i) Civil Suit No. 10/2017 is filed by the husband/father against the wife/mother, for a decree of dissolution of marriage, Or a decree for divorce, separation and custody of minor son Marc and other reliefs.
- (ii) The wife/mother has filed Civil Suit No. 30/2019 against the husband/father, for a decree of dissolution of marriage and sole custody of minor son Marc and other reliefs.
- (iii) The issues are framed in both the said suits.
- (iv) The evidence affidavit is filed by the husband/father in Civil Suit No. 10/2017.

(6)

- (v) There are previous orders in the said litigations in respect of access of child Marc by the father/husband.
- (vi) The present custody of the child Marc is with the mother/defendant.

8- Before the lockdown started pursuant to COVID-19 pandemic, in the month of March 2020, the access by the father/husband for the child Marc was going on pursuant to the mutual consent entered between the parties and orders passed by my learned Predecessor brother Judges. Unfortunately, due to closer of the school due to lockdown, the said physical access by the father with the child, had stopped. During the pandemic, the access of the child Marc was allowed through Video Conferencing for one hour, everyday, by order dated 16.06.2020. Thereafter, the parties agreed for access of the child by the father/husband in the premises of Devi Chamber, where the mother/wife is residing with the child, once a week for one hour in addition to the virtual access, by order dated 11.08.2020.

9- Undisputedly, at the time of interaction with the child by the Court on the video conferencing, the child suomotu expressed his wish to meet his father and to stay/live with him for the whole life. It is needless to state that the child Marc appeared to be a smart young boy. Whether the said voluntary wish expressed by the child Marc was out of tutoring by the father/husband or due to long period of time as he could not stay with his father, is the matter of investigation and evidence. No final conclusion can be drawn at this stage. Both the parties i.e. father and mother have prayed for the custody of the child Marc, in their respective suits and in both the suits, the issue regarding

(7)

custody, is framed. It is needless to state that the said issue will have to be decided and answered after taking into consideration the evidence which would be laid by the parties on the said issue and thereafter the issue of the custody, will be appropriately answered, by keeping in view the overall welfare of the child. The welfare of the child is required to be assessed on various aspects which can only be properly considered on assessing the evidence laid by the parties to the suits, on the issue of custody. Therefore, the prayer made in the application by the plaintiff/father for custody of the child, cannot be accepted at this stage only on the basis of interaction. Thus, in my humble view, the Judgment relied by learned advocate for the father/husband is not of any assistance at this stage.

11- It is matter of record that pursuant to the order dated 27.04.2018 passed by my learned Predecessor Judge, below Exh.76, the custody of the child Marc was given to the plaintiff/father in the summer vacation from 14.05.2018 upto 04.06.2018. Thereafter, the parties were referred for mediation. The parties mutually agreed for access of the child Marc by the plaintiff/father for week-days, weekends, exam-days and vacations. The same are on record with the report of the Mediator dated 30.10.2018 at Exh.70.

12- Admittedly, both the parties reside in the city of Pune. Undisputedly, due to the lockdown pursuant to COVID-19 pandemic, the child could not stay/live with the father/husband for sufficient period, except one hour physical access within the premises where the mother/wife resides, with effect from 11.08.2020. Pursuant to the above referred order by my learned Predecessor, dated 27.04.2018, the

(8)

child Marc had spent some days of summer vacation with his father. However, due to the Covid pandemic, the child Marc is deprived of staying/living with his father for the substantial long period as the summer vacation of the school fall during the lockdown period. Admittedly, during this period, child Marc was with the mother/defendant. It is not that the child Marc was not allowed to step out of the house during these time, as seen from the averrments in the reply by the mother/ defendant that he was taken to Doctor for his injury and check-up. Admittedly, the process of unlock is nearing its end and except the schools, almost all the activities have started. In these circumstances, in my considered view, the child Marc can be permitted to stay with his father during the ensuing winter vacation, with appropriate directions to the father/plaintiff to take all the necessary care of the child Marc in the light of the pandemic situation. On asking the learned advocate for the defendant/wife, she submits that the winter vacation for the school of the child Marc is from 16.12.2020 to 10.01.2021. Hence, I pass the following order :

ORDER

1. The defendant/mother to handover the custody of the child Marc to the plaintiff/father, on 16.12.2020 at 11.00 a.m. till 09.01.2021 at 11.00 a.m.
2. The plaintiff/father shall take every care of child Marc on every aspect and give attention to all his requirements.
3. The plaintiff/father shall take all necessary care of the child Marc which is required for prevention of Covid-19.
4. The plaintiff/father shall ensure that the occupational therapy of the child Marc is properly and timely attended and is not missed in any case.

(9)

5. The plaintiff/father shall make all the arrangements for child Marc for completing his school work/activities, during the winter vacation, if any.
6. The plaintiff/father shall arrange for telephonic/video conferencing interaction of child Marc with the defendant/mother, everyday between 9.00 p.m. to 10.00 p.m. during the period of vacation.
7. The plaintiff/father to hand over the custody of child Marc to the defendant/mother on 09.01.2021, at 11.00 a.m.
8. The plaintiff/father shall stay with the child Marc in his residence during the above referred period of vacation. In case of plaintiff/father going out of Pune City for any reasons, the plaintiff/father shall inform the defendant/mother about the same well in advance, by e-mail.
9. The application stands disposed of accordingly.

Place : Pune

Date :- 07/12/2020

(Neeraj P. Dhote)

**Principal District and Sessions Judge,
Pune.**

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

Name of Steno :- Mrs. S. S. Yengul
Stenographer (Grade-1)

Court Name :- Shri. Neeraj P. Dhote
Principal District & Sessions Judge,
Pune.

Date :- 07.12.2020
Date of Sign :- 08.12.2020
Date of PDF :- 08.12.2020.