

IN THE COURT OF DISTRICT JUDGE, PUNE AT PUNE.

CIVIL SUIT NO. 10/2017

<i>Rishad Darayas Cooper</i>	..	<i>Plaintiff</i>
<i>Vs.</i>		
<i>Nahida Rishad Cooper</i>	..	<i>Defendant</i>

ORDER BELOW EXH.75

There is payer to extend duration of the order 29.01.2018 passed below Exh.1. As such, the issue is very simple. But, when both the learned advocates argued at length, I realized that the issue is not so simple, as initially understood. The learned advocate Bhojwani argued in support of the application, whereas, the learned advocate Smt. Merchant argued thereby opposing the extension.

2- On behalf of the defendant/wife, number of issues were raised thereby opposing extension. It includes lack of proper prayer in Exh.20 and practical difficulties faced by the wife, if extension is ordered. It is also brought to my notice that the wife could not succeed in getting her application decided from this Court. She has asked for permission to travel out of Pune for limited duration. For few days, I was on leave and the wife could not succeed in getting any order from the in charge Court.

3- It is also submitted that the wife is residing at Devi Chamber alone with son Marc and it is but natural for the wife to go out of Pune for a several reasons including to attend functions, to meet near relatives etc. There is also emphasis on certain observations made by the Hon'ble High Court, in the first order and in the Division Bench order.

4- Learned advocate Bhojwani brought to my notice prayer made in the main petition about injunction and also prayer made by way of Exh.5. There is also emphasis on certain observations made by the Hon'ble High Court thereby deprecating the conduct of the wife. There is emphasis that these findings have not been challenged.

CONCLUSION

5- It is true that in Exh.1 as well as in Exh.5, there is prayer to injunct the wife from taking Marc out of Pune. Whereas, in Exh.20, there is prayer to injunct the wife from withdrawing Marc from Bishop School at Pune. For consideration of todays issue before me, I think that there is prayer vide Exh.5 to injunct the defendant/wife from moving Marc out of Pune is sufficient. I do not find any technical hitch.

6- It is true that apart from the injunction application of the husband, the wife has also asked for certain injunctions against husband vide Exh.15. In all there are four prayers – (a) to (d). The Hon'ble High Court in both the Judgments have referred these prayers. Predominantly, these prayers on behalf of wife pertains to the stay at Pinnacle Ridge Building, belonging to the mother of the husband. Even the Hon'ble High Court while giving options to the wife has considered stay at Clover -Pinnacle building as one of the option. Wife has not chosen that but she has chosen to stay at Devi Chamber.

7- It is true that the Hon'ble High Court in First Order in Para No.49 has considered the consent given by the husband, alternatively thereby accepting the prayer (a) and (b) of Exh.15 and prayer (c) conditionally. If the wife is restrained from moving out of Pune along with son Marc, he is not having any objection, if he is restrained as prayed in Clause (c) of Exh.15. While passing final directions, the Hon'ble High Court has considered these submissions vis-a-vis, a stay at Raj Nest and the stay at Clover Pinnacle Ridge Building only.

8- It is also true that the Hon'ble High Court in its first and

second order have explicitly made it clear that the observations are temporary subject to evidence to be lead by the parties. It is also true that this Court has to decide Exh.5, Exh.15, Exh. 20 and Exh. 25 as observed in Para No.27 of the second order. Yet all these applications have not been argued. This Court could not take up those applications for hearing because there are new and new applications on every date. Today, it is the turn of plaintiff/ husband. He filed new application claiming visitation rights pending decision on temporary custody. Defendant/wife has to file reply to it. Pending that, the husband is asking for certain visitation rights.

9- I have got deligate duty to perform. When the main interim applications have yet to be argued, still, I am requited to make certain observations. Even though, it may be true that the observations in two orders passed by the Hon'ble High Court are tentative in nature, still, till the time, main injunction applications are argued and decided, those orders are very much relevant. So, on one hand while deciding issue of extension, I have to see that the apprehension of the husband pertaining to son Marc should not remain unanswered and at the same time, I have to see what inconvenience will be caused to the wife, if the extension is ordered. Prior to deciding the merits of the

matter, the observations of the Hon'ble High Court gives more weightage to my mind. So, I am inclined to extend the order. But, I am not inclined to extend it unconditionally.

10- I am doing so because one attempt made by the wife to travel to Mumbai on 23.02.2018 and 26.02.2018, goes in vain. My leave and the in charge Court not taking of the matter, are some of the reasons for not getting any orders on Exh.66. The Court has to see that its own order should not cause great inconvenience to the party. So, in my order itself, I am giving option to the defendant/wife to give respect to the sentiments of the husband/plaintiff also. If she has to go out of Pune for any reason (*including attending functions, to meet relatives etc.*), I think she should also permit the plaintiff/husband to have access to son Marc. There is already application filed today only to give custody/ access to son Marc. I think, if the wife has to seek second option, then, she should be put the terms also. So, I am compelled to observe that if the wife has to go out of Pune, she should give access to the plaintiff/husband on one day earlier to leaving Pune. Access to the plaintiff in such eventuality will be for three hours after son Marc will leave the School. After that, plaintiff has to handover back son Marc to defendant.

11- There is also need to extend the injunction against the plaintiff and defendant from printing and publishing any matter pertaining to this suit. I think that injunction can be continued till disposal of Exh.54 (application by wife to conduct inquiry under Section 43 of the Parsi Marriage Act). Hence, I pass the following order :-

ORDER

- (1) Defendant is injuncted from shifting Marc out of Pune City without taking permission of the Court, till next date.
- (2) In the alternative, if wife wants to take Marc out of Pune, for any reason, she is permitted to take Marc out of Pune, subject to following conditions :-
 - (a) Defendant/wife should give access to the plaintiff about son Marc for three hours, after Marc will leave the School.
 - (b) This access should be given one day earlier, if defendant intends to move out of Pune.
 - (c) Defendant/wife is directed to inform the plaintiff about her intention seven days in advance in writing, in any mode.
 - (d) If the situation does not permit giving seven days advance notice, in that eventuality, defendant/wife will not get that liberty.
 - (e) Plaintiff/ husband is directed to give back the custody of Marc on completion of three hours to the defendant/wife.

Place – Pune
Date -28.02.2018

(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 : A.G. Tawale (Steno H.G.)
Court Name : Principal District Judge,Pune.

Date : 28.02.2018
Judgment signed by P.O. on : 01.03.2018
Judgment uploaded on : 01.03.2018

