

**ORDER BELOW EXH.234 IN CIVIL SUIT NO. 10/2017**

1- The present application is filed by the defendant (mother) against the plaintiff (father), who was her husband. Marc, aged 10 years and 9 months, is the son of the parties and studying in 6<sup>th</sup> standard. This suit is for grant of decree of divorce under Section 32 (dd) & 32(g) of the Parsi Marriage and Divorce Act, 1936. The defendant has also filed Civil Suit No.30/2019 against the present plaintiff for dissolution of their marriage under Section 32(dd) of the Parsi Marriage and Divorce Act, 1936, for the custody of the minor son Marc and for permanent alimony. By order dated 19.03.2021, the divorce decree is passed with the consent of both the parties pursuant to the consent terms agreed before the Judge Mediator, and now the suits are limited to the extent of reliefs of custody of the child and maintenance. Pursuant to the interim arrangement agreed between the parties, presently son Marc is with the father. The parties have also made interim arrangement before the learned Judge Mediator by way of consent terms on record with report at Exh.230.

2- The mother has come up with the present application contending that, the father has changed the various classes which son Marc was attending for years together and has prayed for directions to put the child back in the tuition classes that the child was attending while he was with the mother and also for the directions to continue the child's online remedial classes with Ms. Diya of 'Maharashtra Dyslexia Association'. There are other prayers bearing Para No.13 (c) to (g) which are to be considered at later stage. Presently, the application is limited to prayer No.(a) and (b) in respect of tuition classes and online remedial classes. The father has contested the application

by filing his reply at Exh.238, denying the contentions made by the mother in the application.

3- Heard the learned advocate for the mother and the learned advocate for the father.

4- There is no dispute on the point that, vide Exh.125 and Exh.126 in Civil Suit No.10/2017, both the sides suggested names of three Child Therapists for evaluation of their child Marc, who according to the parties is a 'Dyslexic' (having leaning difficulties). The order of my learned predecessor brother Judge dated 17.06.2019 passed below the said exhibits show that, the parties agreed that the child be referred to Dr. Bindu Patni of KEM Hospital, Pune, for evaluation of the child and give the report, whether he requires Therapy, considering his condition and vide purshis dated 15<sup>th</sup> July, 2019, the mother placed on record the report dated 6<sup>th</sup> July, 2019 of Mrs. Bindu Patni, Clinical Psychologist, wherein, it is opined as under -

- *Opinion of developmental pediatrician and management of his attention deficit disorder.*
- *Individualized remedial teaching for improving his reading skills, reading comprehension and written expression under a special educator.*
- *He will benefit from occupational therapy to improve his fine motor skills and handwriting.*
- *He may continue in a mainstream school with appropriate support and accommodations. He should continue to get individualized help at school with extra time to write exam or provision of a writer. He will perform better in a quiet distraction free environment with closer supervision. He will need help reading the question paper. He may be given soft marking for his spelling errors.*

- *He needs sympathetic handling with positive reinforcement and a supportive environment without pressure to perform well in academic as well as non academic areas.*

5- Admittedly the child is taking education in Bishops School (ICSE) at Pune. When the child was with the mother, i.e. prior to the interim arrangement, the mother had put the child to the online remedial classes with Ms. Diya of 'Maharashtra Dyslexia Association'. Now, the father has discontinued the said online remedial classes of the child and have put him to another online remedial classes, run by 'Chetana Counselling Centre', Pune. According to the mother, continuity and discipline in education is the primary requirement for a dyslexic child and the child needs to be disciplined and the parents have to be firm with such a child to ensure that the child follows instructions also at school and said child cannot be given a freeway like, what the father has been doing. It is her contention that the child, given his dyslexia, is reluctant to follow a regime and is also reluctant to study and attend his remedial classes which were presently going online and which were recommended by Dr. Bindu Patni were absolutely essential for his special needs. On the other hand, it is the contention of the father that the child has repeatedly expressed since many years a deep dislike for teaching and the treatment he has received at 'Maharashtra Dyslexia Association', which is controlled by the mother's family. It is further contention of the father that, though the mother is aware of this fact, she keep forcing the child for creating reasons to force the child back to the 'Maharashtra Dyslexia Association', at Mumbai. According to father, the school where the child is taking his mainstream education also runs a two decade old, renowned program for student's

special learning requirements, called 'Sparkles', and the said program is conducted by the highly reputed, Pune based child counseling center named 'Chetana' and the child is now well settled into it on his own wishes and is happy to attend the classes at Chetana.

6- By order dated 23.04.2021, the father and the mother were asked to place on record the details of the activities undertaken by 'Maharashtra Dyslexia Association', where the child was earlier enrolled and the details of the activities undertaken by 'Sparkles' and 'Chetana Counselling Center', where the child is presently attending the classes. Accordingly, the report from the 'Maharashtra Dyslexia Association' is placed on record with Exh.244 and the report from 'Sparkles' and 'Chetana Counselling Center' is placed on record with Exh.245.

7- The report from 'Maharashtra Dyslexia Association' show that the child was enrolled with them for online program for providing '*FEUERSTEIN INSTRUMENTAL ENRICHMENT PROGRAM (BASIC & LEVEL-1)*' (FIE). It is concluded that the child has been in the program for only six months, of which the last two months were very stressful with major shifts happening on the home front. As a result, the progress in the program was affected and opined that the child needs to continue with the FIE program to acknowledge and label his feelings and emotions.

8- The report from 'Chetana Counselling Center' show that from March 2021, the child has started therapy sessions which include program of FIE.

9- The copy of e-mail exchanged between the mother and Dr. Bindu Patni dated 03.12.2020 and 04.12.2020, respectively, is placed on record by the mother along with the list of documents at Exh.243. From the same, it appears that Dr. Bindu Patni suggested to the mother that child Marc continues with all the Therapies advised by her including remedial teaching as a long term process and recommended to continue with 'Maharashtra Dyslexia Association', which is providing online therapy and also noted that 'Chetana Counselling Center' at Pune is well established and she do not think that she remember specifically recommending it in the past, as was mentioned by the father and if Marc is not attending there, she would suggest not changing the current therapy which were already in place.

10- The mother has placed on record the copy of directions issued by the Hon'ble Bombay High Court in Writ Petition No. 1744 of 2005 dated 20<sup>th</sup> July, 2006 giving directions to all the three Boards viz. SSC, ICSE & CBSE to circulate the Scheme to all the schools to provide the facility to students with learning disabilities of Dyslexia Dysgraphia and /or Dyscalculia. It appears from the papers on record, including the reply filed by the father, the school where the child is taking mainstream education, is running in house program for the students special learning requirement named 'Sparkles'. Admittedly, the online sessions of the child with 'Maharashtra Dyslexic Association', has been discontinued since March 2021 and the child is now enrolled with 'Chetana Counselling Center'. In the light of the consent terms agreed between the parties on 22.01.2021, the father ought to have contacted the mother before discontinuing the online remedial classes

of the child with 'Maharashtra Dyslexic Association', however, the same appears to have not been done. The father appears to have taken the said decision unilaterally.

11- The learned advocate for the father has placed reliance on the Rights of Persons with Disabilities Act, 2016 and the Rules framed under the said Act. He pointed towards Section 4 (Women and Children with Disabilities), Section 5 (Community Life), Section 6 (Protection from Cruelty and inhuman treatment), Section 7 (Protection from abuse, violence and exploitation), of the said Act. The said Sections provides that all the children with disabilities shall have right of equal basis to freely express their views on all the matters affecting them and provide them appropriate support keeping in view their age and disability and the persons with disabilities are not obliged to live in any particular living arrangement and shall not be subject of any research without his or her free and informed consent obtained through accessible modes, means and formats of communication. As seen from the averments made in Para No.3 and 4 of the application at Exh.234 filed by the mother and the contents of Para 'h' of Para No.3 of the reply at Exh.238 filed by the father, the child did not like to attend his remedial classes. According to the father, the child is happily attending the classes at 'Chetana Counselling Center' which also provides the required activities, for the child like Marc. It is needless to state that the welfare of the child is of paramount consideration. When the child is comfortable with the remedial classes of which he is presently undertaking with 'Chetana Counselling Center' directing to discontinue the same and to continue with 'Maharashtra Dyslexic Association' would be against the wish of the child. As referred earlier, there is opinion of

Dr. Bindu Patni suggesting sympathetic handling of the child with positive reinforcement. Going back to the e-mail of Dr. Bindu Patni sent to the mother, it shows that the said 'Chetana Counselling Center' in Pune, is well established and if he (the child) is not attending there, she suggested not to change the current therapies which were in place. This clearly goes to show that the said Dr. Bindu Patni also endorsed the 'Chetana Counselling Center' as suitable for the child for the therapies. Under such circumstances, it would not be appropriate to grant prayer clause (b) of the application. However, the father shall get the monthly report from 'Chetana Counselling Center' about the child Marc and provide the same to the mother for her perusal.

12- As regards para (a) in respect of tuition classes of the child is concerned, the father is expected to adhere to the consent terms agreed before the learned Mediator Judge.

Hence, the following order :

**ORDER**

- (i) As regards Prayer (a), the father to adhere to the consent terms agreed before the learned Mediator Judge, in respect of the child.
- (ii) Prayer - (b) stands declined.
- (iii) Prayer clauses (c) to (g) are kept open, for the submissions of the parties, at appropriate time.
- (iv) The matter is adjourned to 08.06.2021.

**Place- Pune**  
**Date - 29-04.2021**

**(Neeraj P. Dhote)**  
**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 : Anil Tawale  
Stenographer (Grade-1)

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

Date : 29.04.2021  
Judgment signed by P.O. on : 03.05.2021  
Judgment uploaded on : 03.05.2021