

**IN THE COURT OF DISTRICT JUDGE, PUNE AT PUNE.**

**CIVIL SUIT NO. 10/2017**

**(CNR.MHPU01-002588-2017)**

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

**ORDER BELOW EXH.76**

There are various interim applications pending in this matter. I have started hearing arguments of plaintiff on some of them . Vide present application multi-fold reliefs are asked. It includes access for temporary period, exclusive access for temporary period, custody and exclusive access for 50% of the vacation. Considering starting of vacation of Master Marc, this application was pressed before me. Learned advocate Shri. Bhojwani for plaintiff agreed to restrict his prayer for exclusive access during all kinds of vacation. But it will be difficult to consider such request for all kinds of vacation. Reason is we do not know when the vacation will start and end. So, I am considering this request only for this summer vacation. Shri. Bhojwani and Ms. Merchant argued on behalf of plaintiff and defendant respectively. With their assistance, I have gone through relevant record. I have directed defendant to keep Master Marc present in the Court. Accordingly, he had come along

with defendant. So also plaintiff was present. I called all of them. Then, I interacted with Master Marc. Hence, I am passing the order.

2- The following points arise for my determination.

S.No.	Points	Findings
1	Whether plaintiff will be given exclusive access for 50% of the summer vacation which started from 14.04.2018 and ending on 10.06.2018 ?	Not for 50% of the vacation but for three weeks.
2	What order?	As per final order

### REASONS

#### AS TO POINT NO.1 :-

3- Mr. Bhojwani restricted his arguments to only those issues which are relevant for deciding prayer before me. Ultimately, defendant who is having custody of Marc at present has to do elaborate arguments because she is opposing the prayer. But, even Ms. Merchant was kind enough only to focus on issues relevant for this application. So, I am not touching the issues relating to giving permission of custody on merits and giving custody for non compliance of the order passed by the Hon'ble High Court.

4- Plaintiff brought to my notice following orders relating to access passed by the Hon'ble High Court.

- (i)- Order dated 14.08.2017 and dated 01.09.2017 passed in Notice of Motion No. 6 of 2017.
- (ii)- Order dated 11.10.2017 passed by Divisional Bench in Notice of Motion (L) No.1984/2017.

As per first two orders, access was given for two hours on a particular day, whereas, as per Divisional Bench order, exclusive access was given to father from 14.10.2017 to 21.10.2017. It was Diwali vacation.

5- Defendant/mother opposed the prayer on various grounds. It includes not paying attention and not performing duties as father towards Marc, when both were cohabiting together. It includes even not caring to refer Marc during e-mail correspondence made after 17.04.2017. Even there was an attempt to emphasis on the conduct of father in not performing financial obligations towards son Marc.

6- There was also an attempt to point out how the father misused the liberty whenever father has met Marc. In the sense that father has used this liberty to create the evidence against the defendant/wife. The defendant has filed detailed reply to visiting rights/ custody applications. As said above, only those averments are

material which deals with specifically the present restricted prayer during summer vacation. These averments pertain to not performing duties by father towards Marc during cohabitation and subsequent also.

7- To repel this contention, Mr. Bhojwani submitted that these contentions were taken to defeat father's right. Furthermore, they were neither taken at any time before a Single Judge nor before Divisional Bench.

### CONCLUSION

8- I am not going into the issues why these averments were not made earlier. Defendant/wife is at liberty to take all these grounds later on. Material to note that when earlier three orders were passed by the Hon'ble High Court, objection was not taken to such an extent which is now taken before me. I am saying so because earlier pleadings to that effect were not brought to my notice. Even, if it is presumed (*without admitting*) that father has not performed his duties earlier, we cannot deny him the exclusive access. Ultimately, he is father. Secondly, after separate residence, now, he must have realized the importance of love and affection towards son Marc. There may be allegations about not taking care

etc., but allegations are not pointed out to me showing improper behaviour with Marc. I mean to say harassing him mentally and physically. Father has every right to get the company of his own son. I think it will also be in the wider interest of the son. When I interacted with him, what I find is that he is still having love towards him. More than that I want to note important act of Master Marc of hugging plaintiff father. It took place when I have called both the spouses after personal interaction with Master Marc. When all left Master Marc hugged his father. This circumstance is self explanatory.

9- The behaviour about tutoring Marc can be taken care by putting certain conditions. How mother under the pretext of protecting the interest of son can deny love of his own father. Ultimately, child is groomed only when he gets love of both parents. Ultimately, due to matrimonial dispute, child is a sufferer. Till the time, the issue of custody is finally decided, such sort of arrangement needs to be made, when it is warranted. I am inclined to accept the request of plaintiff.

10- Mr. Bhojwani requested for exclusive access from 12.05.2018 till 10.06.2018. Even though, summer vacation started

on 14.04.2018 till the report card will be issued on 27.04.2018. Due to my injunction order, the defendant/wife is unable to move out of Pune. It is very likely that defendant wants to move out of Pune after 27.04.2018. When asked, Mr. Merchant on taking instructions from defendant submitted that defendant wants to go to Mumbai and continue to stay at Mumbai till the end of vacation. Defendant has no plan to go out of Mumbai. Though submitted for supervisory access, I am not in favour of that because ultimately there would not be smooth access. Because it is always for limited duration and subject to supervision. Son Marc will not be in a free atmosphere. I am not inclined to grant exclusive access for the period orally suggested by learned advocate Bhojwani. I think it can be given access for 3 weeks starting from 14<sup>th</sup> May 2018 to 4<sup>th</sup> June 2018. Apart from telephonic conversions, I want to add one more direction about chatting through Internet / swipe when Marc will stay with his father. Furthermore, father/plaintiff should not behave in such a manner so as to compel defendant/wife to make a grievance about tutoring or pressurizing Marc during that stay. In fact, I want to appeal plaintiff to use this opportunity to enjoy stay with son Marc without having any prejudice/ ill-will in his mind towards

defendant/wife, then only, he will enjoy the company. If he used this opportunity to collect the evidence, it will certainly destroy the foundation of father-son relationship. If objectionable material is produced, it will go against the plaintiff/ father in deciding further such requests. When asked orally, Mr. Bhojwani on taking instructions from plaintiff submitted that there is female servant (Nani) to take care of Marc and she is there in the house since beginning. This Court is not aware about the business commitments of the plaintiff/ father. At the most, Court can hope that plaintiff will spend more and more time with son Master Marc so as not to give lonely feeling to him.

11- After coming to this conclusion, I have talked with both the parties and their respective advocates about exact period of this three weeks. But somehow, they could not come to consensus. Even I have given time to them. Plaintiff suggested the period from 19.05.2018 to 09.06.2018 for exclusive access of Master Marc with him, whereas, defendant suggested period of 1<sup>st</sup> May 2018 to 21<sup>st</sup> May 2018 for exclusive access by plaintiff. It is contradicting with each other. So, I have no alternative but to decide the period. It is almost 6.00 P.M. Hence, I have adjourned it to 27.04.2018, as

I am on official tour tomorrow i.e. on 26.04.2018. Hence, the further order is adjourned to 27.04.2018.

12- Today, again I have heard learned Advocate Shri. Sanjay Bhojwani for plaintiff and learned advocate Ms. Merchant for defendant. The anxiety of mother is that she has to prepare son Marc mentally and physically for the next academic year and that is why, she is interested to have custody for period ending on 9<sup>th</sup> June 2018.

13- Plaintiff has shown readiness to handover custody of son Marc one week earlier to 09.06.2018. If this period will be worked out, then also, mother will be having custody for a divided period. But at present, Marc is residing with her.

14- Plaintiff is at liberty to ask for weekend custody and custody during other vacations in future. It will be decided as per merits. So also, default custody is not considered herein because there is separate application to that effect also. Hence, I intend to pass the following order :-

### **ORDER**

- (i)- Application is disposed of in the terms of the following directions -

- (ii)- The defendant to handover custody of Master Marc at 10.00 A.M. of 14<sup>th</sup> May 2018 to the plaintiff and thereafter, the plaintiff will be having exclusive access till 10.00 A.M. of 4<sup>th</sup> June 2018.
- (iii)- Plaintiff will take care of Master Marc and give attention to all his requirements. He should not use this liberty to collect evidence in any manner and he should give an undertaking to the Court to that effect within two days from today.
- (iv)- Plaintiff will arrange for telephonic interaction of Master Marc with defendant on every day from 9.00 A.M. to 9.30 A.M. during duration of exclusive access.
- (v) Plaintiff to make arrangement of chatting in between Master Marc and defendant through Skype or any other mode from 6.00 P.M. to 7.00 P.M. every day during duration of exclusive access.
- (vi)- Plaintiff to hand over back the custody of Master Marc at 10.00 A.M. of 4<sup>th</sup> June 2018 to the defendant.
- (vii)- It is presumed that plaintiff will stay at Clover Pinnacle during this period along with Marc. In case of shifting of Master Marc, out of Pune, for any reason, plaintiff to inform the defendant two days in advance by e-mail.
- (viii)- Defendant is at liberty to take Master Marc outside Pune to Bombay. Defendant undertakes to stay during that period at Kerawala Lodge, 33, Station Road, Santacruz, Mumbai.

- (ix)- In case of shifting of Master Marc out of Pune for any reason, plaintiff to inform the defendant two days in advance by e-mail.
- (x)- Defendant will arrange for the telephonic interaction of Master Marc with plaintiff on every day from 9.00 A.M. to 9.30 A.M. once the defendant will shift to Bombay. It's intimation by e-mail be given to plaintiff.
- (xi) Defendant to make arrangement of chatting in between Master Marc and plaintiff through Skype or any other mode from 6.00 P.M. to 7.00 P.M. every day during stay at Mumbai or other place.

**Place – Pune**  
**Date -27.04.2018**

**(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 Stenographer (Grade-1)
Court Name	:	Principal District & Sessions Judge, Pune.
Date	:	27.04.2018
Judgment signed by P.O. on	:	27.04.2018
Judgment uploaded on	:	27.04.2018

