

Civil M.A. (G.W.) No. 236/2015.

Prashant Bhoite vs. Sarika Bhoite & another.

ORDER BELOW EXH.27

1] This is the application filed by applicant Prashant Bhalchandra Bhoite under Order 39 Rule 11 of Civil Procedure Code.

2] The applicant has stated that Court has passed an order on application Exh. 7 on 9-9-2016 and the said application was allowed. The Court has ordered and permitted that the father may meet son Sharvil within a week on Friday and Saturday and the Court had directed Sou. Sarika Bhoite to bring the son Sharvil in the Court. Since 9-9-2016 the respondent did not bring the boy in the Court and meet the applicant. The respondent never allowed the applicant to meet the son Sharvil. Due to the school the respondent was unable to bring Sharvil in the Court and by that time both have decided and filed a pursis in the Court that respondent will bring son Sharvil in the Court on every Friday in between 4 to 6 p.m. and on every Saturday from 11 a.m. to 5 p.m. excluding holiday.

3] In spite of the Court's order since 9-9-2016 till today the respondent did not bring the son Sharvil in the Court. So the respondent has intentionally committed the breach of the order of the Court and has requested that the legal action be initiated against the respondent and has also prayed that the defence of the respondent be struck off. The applicant has filed an affidavit vide Exh. 29 in support of the application.

4] The respondent Sou. Sarika Prashant Bhoite has filed her say vide Exh. 31. She has stated that the averments from the

application vide Exh. 27 are totally false and baseless hence those are denied. The averments from para No.2 of the application are totally false and baseless and those are denied. It is mentioned that the respondent after 9-9-2016 did not bring son Sharvil in the Court as per the order passed by the Court. All these averments from para No. 4 of application are totally false and hence those are denied.

5] The real fact is that the application has been filed in between applicant and respondent for the custody of son Sharvil till the final decision of the application and thereafter application Exh.7 was filed by the applicant to meet the son Sharvil once in a week in the Court premises. Thereafter the Court had passed an order on Exh. 7 for meeting the father and son Sharvil twice in a week i.e. on each Wednesday and Friday. After passing an order on Exh. 7, the respondent came to know about the said order on 28-9-2016. So on 5-10-2016 respondent brought son Sharvil in the Court. Son Sharvil refused to meet his father in front of the Court. He refused to even see him and accept any toys and articles from his father. Son Sharvil was weeping in the Court and he was not willing to go to his father and then respondent had taken Sharvil to the house. On 26-10-2016 Sharvil was ill so she could not bring him in the Court. The application is filed on record and it was granted by the Court.

6] Thereafter on 17-11-2016 respondent again brought son Sharvil in the Court but Sharvil refused to meet his father. He never talked with his father also. He was weeping in the court and so again the respondent took back Sharvil to her house. Again on 5-12-2016 on Monday she did not bring son Sharvil in the court as there was no Wednesday or Friday as ordered by the Court. Thereafter on 14-12-2016 an application was filed vide Exh. 24 and another order was passed by the Court. On 14-12-2016 there was Monday and so Sharvil

was not brought in the Court. Next date was fixed on 7-1-2017. On that date son Sharvil was not feeling well due to viral infection.

7] Again application Exh. 25 was filed and it was granted by the Court. Then application Exh. 24 was moved and the Court had passed an order on 13-1-2017. On that day respondent had brought son Sharvil in the Court. Respondent and son Sharvil were sitting in the Court. By that time applicant sat near son Sharvil and tried to take him near and impress but son Sharvil started weeping and he never allowed the father to touch him.

8] She has stated that the whole episode was going on in the open Court hall. Then respondent nos. 1 and 2 and their advocate and son Sharvil, applicant, father of applicant and advocate for applicant were called in the chamber. By that time also the applicant tried to take son Sharvil close to him but he started to cry loudly. Then the applicant offered a mobile to son Sharvil but he refused. As the son Sharvil was weeping constantly he was left free. On 6-2-2017 the next date was fixed but no Friday was there. The previous Friday was on 3-2-2017 and as per the order passed on Exh. 24 respondent had brought son Sharvil in the Court. But on 3-2-2017 the applicant left the Court hall before 5 p.m. and so the respondent took away Sharvil to the house. Again on 14-3-2017 application Exh. 27 was moved before the Court and the order passed on it was served on 7-4-2017. So as per the order passed on Exh. 7 and 24 respondent convinced son Sharvil to meet his father but Sharvil did not meet him and refused to see him also.

9] Respondent no.1 was residing with parental house. By that time son Sharvil has seen the behaviour of his father and since that Sharvil is not willing to meet his father and he always apprehends from his father. Due to the behaviour of the applicant son Sharvil is behaving

in that fashion. Son Sharvil is not having any love and affection towards his father. On the other hand, he has always afraid of him. Respondent had always brought Sharvil in the court but Sharvil did not meet the father. Therefore, she is not responsible for that purpose. Therefore, prayed that application Exh. 27 be rejected.

10] I have heard both the advocates at length and it appears to me that as per the order passed by the Court on Exh. 7 respondent Sou. Sarika Bhoite had brought son Sharvil in the Court from time to time on the dates fixed. Whenever she was bringing Sharvil in the Court, Sharvil was not willing to go to his father. He was also not willing to meet and talk his father. This was going on for 3-4 months continuously. I had also instructed son Sharvil to meet the father but he refused. The Court and the parents of Sharvil convinced the child taking into consideration his welfare and future. But son Sharvil was firm on his decision and refused to see his father. Whenever the father was trying to meet him and embrace him he was running away.

11] He was always weeping and crying in the Court hall. On several occasions this incident had occurred in the court hall and this fact is well within the knowledge of applicant and his advocate. Today also son Sharvil is not willing to go to the house of father and he is not willing to see his father.

12] His father had brought mobile handset to offer to Sharvil in the Court but Sharvil refused to accept the said mobile and returned it to father. I have also witnessed the number of incidents in the court taken place between applicant, respondent and son. So prima facie it appears to me that son Sharvil is not willing at all to see the father or to stay with the father.

13] After hearing both the advocates at length and keeping in mind the facts and circumstances of the case, it appears to me that the respondent has not committed any breach of order passed by the Court. The son Sharvil himself is not ready and willing to see his father. He has always afraid of the father even in the Court hall amongst the advocates. In these circumstances, it appears to me that the application filed by the applicant Prashant Bhoite for striking off the defence vide Exh. 27, is liable to be rejected. Hence, I pass the following order :-

ORDER

The application Exh. 27 stands rejected.

5th December, 2017

(N.K.Chavan)
District Judge-4, Satara.