

EXH.NO.53

Presented On : 09-01-2013
Registered On : 02-03-2013
Decided On : 28-05-2015
Duration : Y M Ds
02 - 04 - 19

IN THE FAMILY COURT MUMBAI AT BANDRA

PETITION NO. D-13 OF 2013

S

Age : 39 years, Occupation : Service,

... Petitioner

Vs.

M

Age : 37 years, Occupation : Service,

... Respondent

CORAM : JUDGE PRASAD PALSINGANKAR
DATED : 28th MAY, 2015.

J U D G M E N T

This is a petition filed by husband with a prayer for custody of minor children.

2. Brief facts are as under :

Petitioner and respondent married each other on 23-8-1998 at Delhi. They are blessed with two children. Petitioner was employed as Software Consultant in U.S. Respondent was also gone to U.S. for further studies. They started cohabiting with each other in U.S. Respondent also started earning. It is his contention that the petitioner and respondent visited India in 2006, where respondent asked petitioner for financial assistance of Rs.10,00,000/- to her father. The petitioner could not meet that demand and so respondent refused to come to the house of petitioner in India. The petitioner has given details about their disputes in U.S. and then their migration to India along with children. It is his contention that after returning to India they started cohabiting with each other and respondent started working, whereas the petitioner was relegated to the status of the housemaid, taking care of children. It is contention of petitioner that after returning to India, the respondent got close to one Mr. Akhil Aggarwal. They had been to Kashmir and petitioner found that said Akhil Aggarwal and respondent started spending late evenings, early nights roaming around together in a drunken state. It is contention of petitioner that the respondent on the instigation of her sister, falsely implicated him in criminal case. It is his contention that after Kashmir trip in May

2012 petitioner had left Mumbai, leaving all his certificates, valuables, ornaments and clothes behind. He visited U.S. The children are in custody of respondent since 30-5-2012. Petitioner contends that he is the lawful, natural and legal guardian of the minor children. The daughter is 10 years old and of impressionable age. It is contention of petitioner that respondent is staying alone in Mumbai and keeping ungodly hours of work. She never looks after the children. A maid servant had informed petitioner about her neglect towards children. It is his contention that he has resources, good family and educational background and good environment, therefore the custody of children be granted to him.

3. The notice of this petition was sent and served. Respondent appeared. She filed her defence. The trial did not proceed smoothly because of the conduct of respondent. The petitioner applied for restraining the respondent from leaving the jurisdiction of this Court and Country with children and the undertaking was given by respondent on 18-2-2014 before the Court. Despite that undertaking respondent had left India to U.S. with children. So, petitioner applied for non-bailable warrant against respondent by way of order dated 26-5-2014. This Court by detailed order below Exh.23, has allowed the application and non-bailable warrant against respondent. The non-bailable warrant could not be served and executed.

4. Petitioner has filed application for striking of defence at Exh.22. The said application was also heard and allowed and defence of respondent was struck down. Because of order dated

26-5-2014 the defence of respondent is struck down for not complying with order of this Court, for taking children out of jurisdiction of this Court and out of India and not bringing them before this Court despite directions. So, I do not consider the defence taken by respondent in this case. The orders of this Court were challenged before Hon'ble High Court, but considering conduct of respondent, the High Court not intervened in the order passed by this Court. Writ Petition No.6012 of 2014 and Civil Writ Petition No.6009 of 2014 was heard and decided on 14-1-2015. The Hon'ble High Court by it's order dated 14-1-2015 disposed of the said Writ Petition. Again in Writ Petition No.6012 of 2014 order passed below Exh.22 was challenged before the Hon'ble High Court. The Hon'ble High Court has dismissed the said Writ Petition and refused to quash the order of this Court, whereby defence of respondent was quashed. The matter again reached High Court and the Hon'ble High Court in it's order dated 5-5-2015 dismissed the writ petition. The High Court posed a single question to the present respondent, who was petitioner before the High Court, whether she can come before Court to justify her stand and she could not come before Court.

5. IN this case petitioner has filed written notes of arguments at Exh.52. I have perused those written notes of arguments. I have also perused the different orders of Hon'ble High Court in Writ Petition.

6. Following point arises for determination with my findings thereon for the reasons stated below.

<u>Point</u>	<u>Finding</u>
Whether petitioner is entitled for custody of children ?	Yes.

REASONS

7. If we peruse written notes of arguments, especially, page No.13 onwards, then the petitioner has argued that the children are not safe in the hands of respondent who is having multiple illicit affairs. The petitioner has filed affidavit of Lajwanti Panchal, the maid who attends the needs of children. The affidavit of Lajwanti clearly revealed that respondent is gone wayward and has multiple affairs outside marriage. So, this is not a good thing for a daughter of aged 10 years. While deciding application for access and while deciding petition for custody the Courts are duty bound to consider the welfare of minors. The provisions of Section 7,9 and 25 of Guardians and Wards Act and Section 13 of Hindu Minority and Guardianship Act, 1956 provides for the principle of welfare of minor. The petitioner has relied upon judgment of Supreme Court in case of Elizabeth Dinshaw Vs. Arvand M. Dinshaw reported in AIR 1987, Supreme Court 3(1), where the Supreme Court has observed that it is duty of Courts in all countries to see that a parent doing wrong by removing children out of their country did not gain any advantage by his or her wrong doing. In our case the respondent has done exactly the same thing. She has taken the children out of jurisdiction of this Court after giving a false undertaking to this Court that she will not remove the children out of jurisdiction of this Court or out of Country. The petitioner has also relied upon judgment of our High Court in

case of Asha Gomes Vs. Arthur Gomes reported in ALL MR-2002-2-687. It also deals on the same point.

8. Considering the statement on oath, of petitioner and maid servant Lajwanti Panchal, the respondent has started maintaining illicit relationship with multiple persons outside the marriage. The affidavit also show that she is a drunkard by habit. The welfare of children will not serve if they are kept in her custody. Similarly, she has misguided Court by giving a wrong undertaking and then virtually abducted children without informing Court and without seeking permission of this Court. Thus, she has deprived petitioner of having reasonable access to children and to have reasonable and fair trial of the case at hand. This conduct itself show that respondent is a highhanded person, who has scant regard for the order of the Court and welfare of her own children. Such conduct also pinpoint to the parental alienation syndrome. By her own highhanded conduct respondent has deprived her children love and affection of their own father. If children are allowed to continue the custody, then the children will totally get alienated towards petitioner and there will be no hope for petitioner that he will commit with children in any manner. This situation is not good for the children who are the subject of this proceeding. Therefore, I am of the view that shifting of custody would be the best available option in this matter. Therefore, it is my considered opinion that the petitioner is entitled for custody of the children. Hence, following order.

ORDER

1. Petition stands allowed.

2. Respondent is directed to restore custody of children to petitioner within a period of 30 days from today.
3. Respondent is directed to return to India and handover children to the petitioner.
4. The order of issuance of non-bailable warrant dated 26-5-2014, below Exh.23 shall continue till respondent is arrested and brought before the Court.
5. Order dictated, declared in open Court. Both parties absent. Learned Counsel for petitioner present, learned Counsel for respondent absent.

Sd/-28-5-2015
(Prasad Palsingankar)
Judge
Family Court No.3, Mumbai.

28th May, 2015
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