



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 4038 OF 2023
IN
FAMILY COURT APPEAL (ST.) NO. 10252 OF 2021
WITH
INTERIM APPLICATION NO. 1841 OF 2022
IN
FAMILY COURT APPEAL (ST.) NO. 10252 OF 2021
WITH
CONTEMPT PETITION (ST.) NO. 5689 OF 2022
WITH
INTERIM APPLICATION NO. 3350 OF 2022
IN
FAMILY COURT APPEAL (ST.) NO. 10252 OF 2021

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[REDACTED] .. Appellant

Versus

[REDACTED] .. Respondent

WITH
INTERIM APPLICATION (ST.) NO. 10253 OF 2021
IN
FAMILY COURT APPEAL (ST.) NO. 10252 OF 2021
WITH
CONTEMPT PETITION (ST.) NO. 18906 OF 2022

[REDACTED] .. Appellant

Versus

[REDACTED] .. Respondent

*Mr. Abhijit Sarwate a/w Hardev K. Aidhen for the Applicant in
IA/4038/23, IA/1841/2022, and IA/3350/2022, for the*

Petitioner in CPST/5689/2022 and for the Respondents in IAST/10253/2021, CPST/18906/2022 and FCAST/10252/2021.

Mr. Amol Jagtap a/w Chandani Sachade *for the Applicant in IAST/10253/2021, for the Petitioner in CTST/18906/2022, for the Appellant in FCAST/10252/2021 and for the Respondent in IA/4038/2023, IA/1841/2022, CPST/5689/2022 and IA/3350/2022.*

 *Appellant-husband is present.*

 *Respondent-wife is present.*

**CORAM : B. P. COLABAWALLA &
M. M. SATHAYE, JJ.**

**DATE : SEPTEMBER 04, 2023
(at 4.30 pm in Chambers)**

P. C.

1. Interim Application No. 4038 of 2023 is filed by the Applicant seeking permission to take her daughter abroad (USA) along with her. The above Application is necessitated because the Applicant-mother has secured a job for herself in the United States of America and since the custody of the daughter is with the Applicant-wife, the aforesaid permission is sought.

2. We are happy to note that with our intervention, both parties have settled their disputes by entering into consent terms dated 4th September, 2023. The consent terms *inter-alia* provide that the

opponent-father is giving his consent to allow the daughter to relocate with the Applicant in USA on the terms and conditions more particularly set out in the consent terms.

3. The consent terms *inter-alia* provide for virtual access; physical access; school of the daughter; and certain other terms and conditions. The consent terms also provide for withdrawal of certain criminal cases as more particularly set out therein.

4. The consent terms have been signed by the Applicant-mother as well as the Opponent-father. They both are present in Court today. They both have stated that they have signed the consent terms after reading and understanding the same as well as the implications thereof. They both have further stated before the Court that they will strictly comply and abide with the terms and conditions of the consent terms.

5. The consent terms are also signed by the Advocates for the Applicant-mother and the Advocates for the Opponent-father.

6. In these circumstances, the consent terms dated 4th September, 2023 are taken on record and marked 'X' for identification.

The undertakings given in the consent terms, if any, are accepted as undertakings given to the Court. There shall be an order in terms of the consent terms.

7. There was an apprehension raised on behalf of the Opponent-father that though provisions have been made for access to of the daughter-Saloni, there is no guarantee that the said order would be adhered to and there would be no real way of enforcing these consent terms as the Applicant-mother would be outside the jurisdiction of this Court.

8. We find this apprehension to be well founded. In the consent terms, there is nothing that is set out as to what would be the consequences if the order of access is not complied with. Considering that the Applicant-mother is now going to take the child outside the jurisdiction of this Court, it would only be fair and equitable that if it is the case of the Opponent-father that the mother has violated the order in relation to the access, he would be free to file contempt proceedings against the Applicant-mother. In those contempt proceedings, if the Court comes to the conclusion that there has been a willful disobedience of the consent terms in relation to the access, this Court hearing the

contempt matter, would have the power and jurisdiction to call upon the Applicant-mother to release her 50% share in Flat No. [REDACTED]

[REDACTED] Pune- 411021, in favour of the Opponent-father.

9. If for any reason the Applicant does not release her share in the said Flat, the Court hearing the contempt matter is free to appoint the Court Commissioner to act on behalf of the Applicant for transfer of her 50% share to the opponent-father. This apart, if this Court holds the Applicant-mother in contempt of the consent terms, the Opponent-father is also at liberty to forward the orders of this Court (passed in contempt) to any authorities for further action. In our opinion, this would, atleast to a certain extent, safeguard the rights of the Opponent-father in the event there is any contempt committed by the Applicant-mother and for which she is held guilty by this Court.

10. Both parties have agreed that in light of this order, not only Interim Application No. 4038 of 2023, but the above Family Court Appeal can also be disposed of.

11. In view of the consensus between the parties, the above Family Court Appeal is also disposed of in terms of the consent terms dated 4th September, 2023.

12. In view of disposal of the above Family Court Appeal, nothing survives in any pending Applications, and the same are disposed of accordingly.

13. We are also informed that Contempt Petition (St.) No. 18906/2022 is filed by the Opponent-father and Contempt Petition (St.) No. 5689 of 2022 is filed by the Applicant-mother. Both parties have stated before us that these Contempt Petitions have not been admitted and no show cause notice has been issued. They have further stated that in light of the settlement arrived at between the parties as recorded in the consent terms dated 4th September, 2023, the respective parties would like to withdraw the above Contempt Petitions.

14. In view of the aforesaid statement, both the above Contempt Petitions are dismissed as withdrawn.

15. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[M. M. SATHAYE, J.]

[B. P. COLABAWALLA, J.]