

**LD-VC-CW-155-2020**  
**IN THE HIGH COURT OF BOMBAY AT GOA**

**LD-VC-CW-155-2020**

**Deepali Bhivshet** ..... **Applicant/Petitioner**

**V e r s u s**

**Nivas Bhivshet** ..... **Respondent**

Adv. Abhijeet Gosavi for the Applicant/Petitioner.

Adv. A. D. Bhobe for the Respondent.

**CORAM: DAMA SESHADRI NAIDU, J.**

**DATE: 8th September, 2020.**

**ORDER:**

The dispute centers on the child custody. Before the trial Court, the husband is the petitioner and the wife the respondent. Here, it is on the converse. But I will refer to the parties as they have been arrayed before the trial Court.

2. Because of the matrimonial disputes, the wife left Goa and reached her parental home at Sangli, Maharashtra. She has taken along with her their son, aged 8 years. When the boy was with both parents at Goa, he was pursuing his schooling in St. Britto School at Mapusa. As the respondent is now living at Sangli, she got the boy admitted into a local school: Takshila School. Since the pandemic is all pervasive, in Sangli, too, the boy seems to be having online classes.

3. In the meanwhile, the petitioner husband applied under Articles 137, 138 and 141 of the Portuguese Civil Code, 1867, for the child's custody. It is before the Civil Judge, Senior Division, at Mapusa. In that application, the petitioner has also sought interim relief, especially, concerning the child's schooling. Though the petitioner had been served with a notice, she could not enter her appearance immediately. The reason is obvious: COVID-

19. Thereafter, she engaged a counsel. Initially, it seems, the counsel took one adjournment on the premise that he had not yet received the vakalatnama from the respondent wife staying at Sangli, Maharashtra. Then, on the same day, that is 27.7.2020, the trial Court passed the following order:

“This being the situation, the court is constrained to intervene in the interest of the child and issue the following directions:

- i. The Respondent is directed to ensure that the minor child attends online school conducted by St. Britto's School on all dates of hearing-starting from 28.7.2020 without fail.
- ii. Since admission to Takshila School, Sangli was taken without obtaining the Leaving Certificate of St. Britto's School and also without the consent of the father (or an order of the court granting exclusive custody of the child to the Respondent), issue notice to Takshila School and directing them to suspend the admission of Master Niket Nivas Bhivset forthwith and they are also directed not to provide online class to Master Niket so that he can instead attend online classes from St. Britto's School, where he is already admitted by both the parents.
- iii) Issue notice to the Principal, St. Britto's High School directing him not to provide leaving certificate of Master Niket Bhivshet, without order of the court.
- iv) The Principal of St. Britto's High School is directed to provide a record of the attendance of Master Niket Nivas specifically w.e.f 28.7.2020 at the end of every month.
- v) The respondent to forthwith contact the teacher of St. Britto's High School and ensure that the child receives all the missed portion from 1.7.2020 till date.
- vi) It is hereby made clear that while dealing with these proceedings, the court is all concerned about the welfare of the child starting with his education. The rights of the parents is an aspect which the court will consider later in the proceedings.”

4. At this stage, the learned counsel for both the parties, on instructions, have agreed before me that both the parents are anxious about the child's welfare, including his education. Therefore, when I have suggested a way-out for ensuring undisturbed schooling for the child

pending this litigation, they have agreed for the Court's proposal. I am glad that, to that extent, the parents have sunk their differences—for the child's welfare.

5. Indeed, initially I heard the matter extensively, but that concerned technicalities: whether this writ petition is maintainable, as raised by the petitioner husband and whether the original proceedings before the Civil Judge Senior Division Mapusa are maintainable, as raised by the respondent wife. I reckon this technicality will consume a lot of time and, in the meanwhile, the child's education will get affected.

6. Seen from the record, though a learned counsel reported before the trial Court that he had instructions from the respondent wife to appear in the matter, he could not file vakalatnama. Therefore, there was no appearance as such for the respondent in the original proceedings before the Senior Civil Judge's Court. Thus the impugned order was passed ex parte. So this Court either in a revision or an appeal, whichever is maintainable, cannot effectually adjudicate the dispute without having the completing pleadings and contentions of the parties on record. Nor has it the prima facie of the trial Court on the dispute either.

7. Under these circumstances, any adjudication on merits by this Court at this stage is not only premature but may also affect the rights of the parties adversely. Therefore, I set aside the impugned order and remand the matter to the trial Court.

8. This setting aside is only to facilitate a fresh hearing before the trial Court. And I reiterate, as required by both the parties, that this disposition is not on merits but only as an arrangement as agreed to between both the parties. The matter remanded, the trial Court will allow the respondent wife to file her reply, and then the Court will adjudicate the matter on the merits. This adjudication will be as early as possible—in 15 days if possible. In the meanwhile, the child will continue to receive his education at Sangli from Takshila school. Even this arrangement does not reflect on the merits of the

case. It is only to ensure that the child's education has not been disrupted pending adjudication of the proceedings before the trial Court.

With these observations, I remand the matter to the Trial Court.

**DAMA SESHADRI NAIDU, J.**

**AP/-**