

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

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WRIT PETITION NO. 4262 OF 2010.

Mohan Kumar Rayana.Petitioner.

v/s.

Komal Mahuvakar.Respondent.

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Mr. S.U. Kamdar, a/w. Pooja Patil, a/w. H. Rahman, a/w. Y.R. Singh, i/b. D.H. Law Associates, for Petitioner.

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**CORAM : S.J.KATHAWALLA & 'R.G. KETKAR, JJ.
(VACATION BENCH)**

DATE : 28TH MAY 2010.

P.C.

By an application dated 17th May 2010, the Petitioner-father approached the Family Court, seeking directions against the Respondent-mother to hand over the custody of their minor daughter 'Anisha' in terms of the order of this Court dated 16th January 2009, for sharing 50% of the school vacation of 'Anisha'. The Application is simpliciter adjourned to 9th June, 2010 by the Family Court, Bandra thereby rendering the said Application infructuous, since the school vacation of Anisa is getting over on 6th June, 2010.

2. The Petitioner-father has in the present petition therefore impugned the order of the Family Court, Bandra adjourning his

Application dated 17th May, 2010 to 9th June, 2010. The Respondent-mother has refused to accept notice of this Application along with the relevant papers, as set out in the Affidavit dated 28th March, 2010 filed before this Court.

3. Initially, the custody of 'Anisha' was with the father. However, by an order dated 2nd February 2007 passed by the Family Court at Bandra, Mumbai, the custody was handed over to the Respondent-mother. The Petitioner-father was allowed to have access to Anisha as stipulated therein. The order passed by the Family Court was impugned before this Court by the Petitioner-father. By an order dated 16th January 2009, this Court allowed the Respondent mother to retain the custody of 'Anisha'. However, by the said order, the Petitioner-father was allowed additional access. This Court by its order dated 16th January 2009, clearly directed the Respondent-mother as follows :-

"Similarly, the Respondent – mother shall take initiative and all necessary steps to ensure that Anisha spends 50% of the school vacations with her father."

4. Aggrieved by the order of this Court dated 16th January 2009, the Petitioner-father filed a Special Leave Petition (SLP) before

the Hon'ble Supreme Court. The Hon'ble Supreme Court by its detailed order dated 6th April 2010 upheld the order passed by this Court dated 16th January 2009 and dismissed the SLP filed by the Petitioner-father.

5. According to the Petitioner despite the said order, the Respondent-mother has failed to allow Anisha to spend 50% of the present school vacations with the Petitioner-father. In view thereof, the Petitioner-father moved an application dated 17th May 2010 before the Family Court, Bandra, Mumbai, seeking necessary directions against the Respondent-mother to allow Anisha to spend 50% of the school vacations with the Petitioner-father in terms with the order of this Court dated 16th January 2009. The Family court, Mumbai has simpliciter adjourned the petition to 9th June 2010 though the school vacation of Anisha is getting over on 6th June 2010.

6. In our view the Family Court, Mumbai, ought to have realised that by an order of this Court dated 16th January 2009, the Respondent-mother is directed, to allow the Petitioner-father to spend 50% of the school vacations with minor 'Anisha'. The application filed by the Petitioner shall become infructuous by 9th June 2010, since

Anisha's school reopens on 7th June 2010. Under the circumstances, the Principal Judge, Family Court, Bandra, shall dispose of the Application filed by the Petitioner-father dated 17th May 2010 in M.J. Petition No.D-66/2005, on or before 31st May 2010. The Principal Judge, Family Court, Mumbai, may hear the said application himself or assign the same to any other Judge of the Family Court. In view thereof, Writ Petition stands disposed of.

Parties to act on a copy of this order duly authenticated by the P. A. of this Court.

[R.G. KETKAR, J.]

[S.J.KATHAWALLA, J.]