

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL REVISION APPLICATION NO. 509 of 2012****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE S.G.SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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ATSI W/O DHIREN KIRANBHAI SHAHD/O APURVABHAI

MEHTA....Applicant(s)

Versus

DHIREN KIRANBHAI SHAH & 1....Respondent(s)

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Appearance:

MR TARAK DAMANI, ADVOCATE for the Applicant(s) No. 1

MR AMRISH K PANDYA, ADVOCATE for the Respondent(s) No. 1

PUBLIC PROSECUTOR for the Respondent(s) No. 2

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CORAM: HONOURABLE MR.JUSTICE S.G.SHAH

Date :30/08/2013

ORAL JUDGMENT

1. Rule. Learned advocate Mr.Amrish K. Pandya waives service of notice of rule on behalf of respondent No.1. Learned APP waives service of notice of rule on behalf of respondent No.2.

2. Petitioner herein has challenged the order dated 28.09.2012 passed by the City Civil and Sessions Judge in Criminal Appeal No. 349 of 2011. By such impugned order, respondent was allowed to visit the minor son Aditya in custody of the petitioner. Similar application with similar prayer was preferred by the petitioner before the Metropolitan Court so far as visiting right of other son of the parties, Yash is concerned. However, it was rejected. One more application under Section 6 of the Guardian and Wards Act is also preferred by present petitioner is pending for 18 months which gives rise to present Revision Application.

3. Heard learned advocate Mr. Tarak Damani for the petitioner and learned advocate Mr.Amrish K. Pandya for the respondent No.2. Perused the record. Considering the dispute between the parents that they desired to remain in touch with their children. Both the parties were asked to settle the dispute amicably. However, so far as dispute between the husband and wife is concerned that matter was referred to Mediation Centre, the Mediator has vide his order dated 21.03.2013 conveyed that parties have failed to resolve their

dispute amicably and therefore matter was referred back to the Court.

4. Irrespective of such failure amongst the parties so far as present dispute which is pertaining to visiting right of both the children. On persuasion of this Court parties have agreed to put an end such litigations, so far as visiting right of their sons are concerned.

5. It is not in dispute that petitioner and respondent No.1 have married to each other and they have two sons namely Yash and Aditya. It is not disputed that elder son Yash is with the husband, whereas younger son Aditya is with the petitioner wife. So as to consider the possibility of settlement not immediately then at any time and on persuasion of this Court now both the parties have agreed and undertake. Thereby respondent - husband has filed an affidavit that since both the parties intends to meet children and to see that both the children can meet each other and to resolve the dispute about the visiting right of the children irrespective of other legal right under any other law, respondent No.1 will remained present with the minor son Yash on every meeting, if petitioner is agrees to undertake to comply with the order passed by the Court No.22, City Civil and Sessions Court, Ahmedabad on 28.09.2012. Practically, this order dated 28.09.2012 in Criminal Misc. Application No.349 of 2011 preferred by the respondent No.1 has been challenged in the present petition, wherein the Court has permitted the respondent No.1 - husband to meet his son Aditya once in a week on Sunday between 10:00 a.m. to 5:00 p.m. at the office

of the Protection Officer with further directions to the present petitioner that she and her family members shall allow the respondent No.1 - husband to meet his son Aditya.

6. In such undertaking learned advocate for the petitioner has endorsed that without going into contentions of the undertaking when respondent No.1 has agreed to allow the petitioner to meet her son, such petition can be disposed of, in view of such undertaking. Therefore, this petition can be disposed of in view of such undertaking.

7. Therefore, this petition deserves to be disposed of with following directions, keeping in mind the welfare and betterment of both minor children; (1) Both the petitioners and respondent No.1 shall fix place of meeting, which may be place of either of the litigants or office of the protection officer or any other place as may be mutually agreed upon by both of them and it shall be conveyed to each other on or before every Saturday and communicated each other about such place. (2) On Sunday petitioner and respondent No.1 shall keep minor children Yash and Aditya present at such mutually agreed place so as to allow them to meet each other between 10:00 a.m. and 5:00 p.m. (3) At such place both the petitioner and respondent No.1 are also permitted to meet both the children, thereby petitioner is permitted to meet Aditya and respondent is permitted to meet Yash on every Sunday as per above arrangement.

8. Therefore, this petition is disposed of with above directions. However, since it is not decided on merits but by

consent of both the parties it is made clear that the competent Court may pass appropriate orders regarding permanent custody of either of the child in accordance with law.

9. In view of above, petition is partly allowed. Rule is made absolute to the aforesaid extent.

(S.G.SHAH, J.)

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