

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

WRIT PETITION NO.1016 OF 2017

Mrs. Kaveri Abhijeet Tikhe

: Petitioner.

versus

Abhijeet Ramesh Tikhe

: Respondent.

Mr. Mihir S Raje for the Petitioner.

**CORAM : R. M. SAVANT, J.
DATE : 31st January 2017**

P.C.

1 Order dated 28/12/2016 (wrongly typed as 28/10/2016) passed by the learned Judge of the Family Court No.5, Pune partly allowing the Application Exhibit 66 filed by the Respondent is taken exception to by way of the above Petition. By the said order overnight access of child Pranjal was granted to the Respondent from 30/12/2016 to 31/12/2016 i.e. for two days in the Christmas Vacation. It is the case of the Petitioner that the said order could not be complied with in view of the fact that child Pranjal was not desirous of being with the Respondent.

2 The above Petition is moved on the ground that an application has been filed under Order XXXIX Rule 11 of the Code of Civil Procedure for striking of the defence of the Petitioner on account of non-compliance of the said order dated 28/12/2016. Since the Christmas Vacation for which the overnight access was granted to the Respondent is already over, the above

Petition challenging the said order dated 28/12/2016 in that sense has turned infructuous. It is therefore not necessary to entertain the above Petition.

3 In so far as the application under Section XXXIX Rule 11 of the Code of Civil Procedure filed by the Respondent is concerned, it would be open for the Petitioner to raise such defences as are available to her to justify the non-compliance of the said order dated 28/12/2016. Needless to state that the said application would be tried on its own merits and in accordance with law. The above Petition is accordingly disposed of as having turned infructuous.

[R.M.SAVANT, J]