

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6569 OF 2022**

Anuradha Sharma .. Petitioner

Versus

Anuj Sharma .. Respondent

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Mr.Abhijit Sarwate with Ms.Hardev Kaur and Mr.Rahul Pardesi for the Petitioner.

Mr.Mayur Khandeparkar with Mr.Ajinkya Udane for the Respondent.

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**CORAM: BHARATI DANGRE, J.
DATED : 08th JULY, 2022**

P.C:-

1. The present petition assails the order passed by the learned Judge, Family Court No.5, Pune on 13/04/2022, on an application filed by the petitioner/wife (Exh.12), seeking permission to relocate and shift along with her minor daughter to Krakow, Poland. By the very same order, the learned Judge has partly allowed the application filed by the respondent/husband (Exh.18) seeking a restraint order

against the wife from taking the minor daughter, out of the jurisdiction of the Court and further injuncting the mother from changing the school of the daughter and for depositing her passport with the Court during the pendency of the petition.

The two applications were filed in P.D.No.31 of 2020 i.e. a petition filed by the wife, seeking permanent custody of the minor child.

2. The impugned order in the background of the applications will have to be appreciated by introducing brief facts.

The marriage between the petitioner and the respondent was solemnized on 08/07/2010 as per the Hindu rites and customs and without going into further details of their premarital relationship, suffice it to say that a daughter was born out of the wedlock on 08/07/2013.

The petitioner/wife allege that the respondent and his family was always hostile towards her and she accused her mother-in-law of commanding a dominant position in the entire household, which resulted in harassment to the petitioner, since she was required to engage in various

domestic activities. The petitioner claims to be an Engineer by profession and prior to her marriage, she was gainfully employed with TCS and according to her, she was graded as Class I performer (Grade 'A'). However, since she was overburdened with domestic work, she was not able to perform and she was reverted to the lower grade of performance.

Attributing irretrievable breakdown of marriage between the two, by referring to various specific instances, the petitioner/wife filed the petition for dissolution of marriage before the Family Court, Pune on 14/11/2017, stating that though she was residing with the respondent/husband and her daughter in Delhi, on account of ill-treatment, disgrace and humiliation suffered by her, she returned to Pune alongwith her daughter and admitted her in a school, since her mother is residing in Pune. Pleading that the marriage had irretrievably breakdown and the marital relationship has been completely deteriorated on account of the conduct of the respondent and expressing difficulty in continuing the relationship on account of the mental cruelty and agony, she sought dissolution of marriage under Section 13(1)(i) and (i-a) of the Hindu Marriage Act.

3. One more petition came to be filed by the petitioner/wife under Sections 7 and 8 of the Guardian and Wards Act, which was numbered as P.D. No.31 of 2020 and a relief was sought to the effect that she shall be declared as sole guardian and custodian of the minor child, aged about 7 years. The said petition came to be filed on 25/11/2020, wherein she pleaded that she had single handedly taken care of the daughter, since her birth, without any assistance from the respondent or his family and she was forced to leave the matrimonial home and her parents have been supporting and assisting her in taking care of her daughter. She also state that she as well as her daughter are attached to her parents and who endeavour their co-operation in the activities of the minor child who is an extremely brilliant girl and deserve a conducive and affectionate environment. Pleading that she, as a mother, is best suited to promote her child's welfare and since, the child has not spent a single day under the exclusive care of the respondent, as he has prioritized his career and position in the society over the interest of his family and has made a meager contribution towards maintenance of the child, it was averred that he is disqualified from seeking her custody.

The petitions were contested by the respondent/husband by filing various affidavits from time to time and the same are pending for adjudication before the Family Court.

4. In the proceedings of P.D.No.31 of 2020, the petitioner filed an application on 09/02/2022, seeking permission of the Court to relocate and travel to Krakow, Poland alongwith the minor daughter in the interest of justice.

The said application was filed in the backdrop of the fact that the petitioner is an Engineer by profession and is employed in a private firm in Pune. Having regard to her excellent performance at work, she has been offered a senior position in the establishment at Krakow, Poland. It is specifically averred that the said position has high visibility amongst the topper of the company and she look at it as a great opportunity for career advancement. It is also pleaded that it will also provide Akshita, the daughter an excellent opportunity and will ensure improvement in the standard of their living.

Considering the above advantages, the petitioner states that she decided to accept the position of Technical Business Analyst (Equivalent to the rank, Association Director) with UBS Business Solution, Krakow, Poland. It is also stated that

the said position was offered earlier, but it could not be materialized on account of the Covid pandemic, but now she has found this as a once in lifetime opportunity, to work on the project since she has been nominated by her senior management.

5. According to the petitioner, the date of joining in Polan was scheduled as 01/03/2022 and, therefore, to complete all the necessary formalities, including seeking admission for the daughter in Krakow, she has already initiated various steps. The petitioner also stated that she is likely to take her mother alongwith her for necessary assistance and support and she has searched for the schools in the close proximity of her office campus, which would ensure minimal commuting time for the child. Assuring that the child will not have difficulty in adapting to the new environment and indeed, she will receive exposure that will broaden her horizons, she pleaded that relocating in Krakow, Poland is beneficial for Akshita's growth and welfare.

She moved another application, supplementing her prayer in the earlier application and seeking necessary directions to the respondent and complete all formalities vis-a-vis her daughter, so that she can avail the VISA for Poland,

since the formalities require his no-objection.

6. The said application was strongly contested by the respondent/husband by reiterating that the allegations levelled against him are false and without any basis. The relief sought was opposed on the ground that she is projecting the said decision to relocate to Poland as a professional decision in advancement of her career, but the real intention is to break the bond between the father and the daughter, by denying him the access and for harassing and torturing the minor daughter as well as the husband. It is also pleaded that the daughter is impacted by the trauma of losing touch with the family members and friends on account of frequent shifting of residence and school and now once again, she will be uprooted, since she will have to face a completely alien culture, surrounding, language, weather etc. The respondent has also expressed an apprehension that if the child is moved away from him, he will not get to see the child again, as the mother may abscond and in any case, the relocation of the child is not in her interest. An option is given to the effect that the wife can move wherever she want, but let the child not accompany her. Several reasons are projected being the crime rate/rape rate in Poland as well as the present situation where nuclear

facilities right next to Poland are already being attacked every day and it is stated that the entire Eastern European region is currently the hotspot of a potentially nuclear war. The economic stability as well as the physical security of the region is in extreme turmoil and is suffering from unpredictable situation is also projected as a ground, why it is not in interest of child to shift to Poland.

Further more, the decision of the petitioner is criticized, being the unilateral one, to satisfy her own ambition and considering the deep bond of love between the child and the father, it is urged that the child shall be left back in India so that he alongwith his family will cater to her needs. The long reply, running into 60 pages, seeks dismissal of the application with costs.

7. It is this application, which was adjudicated by the learned Judge, Family Court, Pune and came to be rejected, whereas the application filed by the respondent/husband was partly allowed and the operative portion of the order dated 13/04/2022, reads as under :-

“1. The application Exh.12 filed by the petitioner-wife is rejected whereas application Exh.18 of the respondent-husband is partly allowed.

2. The petitioner-wife is hereby restrained from taking the minor daughter Akshita out of India without the permission of Court during the pendency of both the petitions P.A.No.1347/2017 and P.D.No.31/2020.

3. The petitioner-wife is further restrained from changing the present school of minor daughter Akshita i.e. Kalyani International School, Pune to any other school without the consent of respondent-husband and permission of this Court.”

8. I have heard learned counsel Mr.Abhijit Sarwate for the petitioner-wife and learned counsel Mr.Mayur Khandeparkar with Advocate Mr.Ajinkya Udane for the respondent-husband.

9. The learned counsel Mr.Sarwate has invited my attention to the proceedings, which are instituted by the petitioner/wife against the respondent/husband and he would submit that on account of the incompatibility between the two and for which the respondent has to be blamed, the relationship was strained and it is the wife, who has filed the proceedings for divorce. He would submit that the Family Court has failed to consider the prospects available to the petitioner and the order amounts to imposing fetters upon her, despite she being found suitable for job and offered a higher position, which is necessary for her career growth. He would further submit that she is going for a limited period and he has also filed an undertaking to that effect.

The submission of Mr.Sarwate is, her date for joining a new posting in Poland has been postponed from time to time and if no timely order is passed, she may lose the opportunity forever. Apart from this, he would submit that in the affidavit filed by the petitioner, she has assured access to the father and by no means, she intends to give an impression to the respondent, that in order to deprive him of meeting his child, she is moving away. Mr.Sarwate would submit that the father has failed to take up the responsibility financially, but in any case, she will take care of her daughter.

He further submit that the Family Court has failed to take into account the decision of the Hon'ble Supreme Court placed before it and the application came to be rejected on a flimsy and specious ground of welfare of the minor daughter.

Mr.Sarwate has also placed reliance upon a series of judgments, where in such situation the Hon'ble Supreme Court has ensured the autonomy in personhood of a woman and held that it cannot be curtailed on the ground of prior order of custody of the child. He submits that right to development is a basic human right, which is recognised by the highest Court of this country and, therefore, it cannot be denied to the petitioner.



10. Per contra, learned counsel Mr.Khandeparkar appearing for the respondent has raised a serious objection to the petitioner's relocating the minor daughter Akshita to Krakow/ Poland and he would submit that the wife had made previous attempts to alienate the child from him and his family under the guise of her job prospects and the whole intention is to sever the ties between the father and the daughter and once she moves to Poland, his visitation right would be curtailed.

Apart from this, it is also submitted that the present warlike situation prevailing in the Eastern and Central Europe is not suitable for the daughter to relocate in Poland. The learned counsel has also express an apprehension that the daughter will not be brought back. A serious objection is also raised on the ground that the child would be uprooted from her present environment and Mr.Khandeparkar has invited my attention to various instances where it is alleged that the access was denied to the respondent on one ground or the other and he allege that she has blatantly refused to follow the order and directions of the Court and now when she is moving the daughter away from him, the respondent is seriously apprehending that he may not get to see his daughter again.



Submitting that the welfare of the child is of the top priority and not whims and ego of the parents, it is sought to be argued that the child will face the language barrier, volatile climate, which is difficult to adjust and this may lead to a feeling of loneliness and depression in her. He would also submit that the petitioner is assuring that her mother is travelling with her, but she may not be able to have her continuous presence during the period of two years and submitting that his three generations are there to take care of the child, the relocation is vehemently opposed. It is even sought to be argued that comparing the pay-scale of the petitioner, there is no justification why she is going on a lesser pay and it is then suggested that the only intention of the petitioner is to take the daughter away from him.

Mr.Khandeparkar would thus request to uphold the order passed by the Family Court, which has rightly refused the permission to relocate the daughter, by considering her own welfare.

11. ***"There has never been, nor will there ever be, anything quite so special as the love between the daughter and her father".***

The feeling of the respondent are somehow similar and he is

pained and anguished by the relocation of his daughter.

Every possibility is contemplated in opposing the application, on the ground that the daughter shall be uprooted. The father is apprehensive that the distance between the two would widen the gap in the relationship, if she is moved to Poland and is apprehensive that he may be permanently deprived of the daughter's company.

12. The petitioner/wife, who has an excellent career graph, however, is desperate to take up the job, which has been offered to her in Poland and she is of the opinion that it is going to advance her career and the experience would fetch her better prospects. She is, therefore, confronted with a choice whether to take up the opportunity or refuse the same, since her husband/respondent does not want the child to accompany her.

Needless to state that the custody of the minor girl is with the mother, who is the natural guardian and considering her age, the girl must accompany her mother, particularly when it is the case the petitioner that she has single handedly brought up the child, on being separated from the husband.

No doubt, the issue is very sensitive, considering the

deep love and affection of both the parents towards young Akshita, who is likely to turn 9 in one or two days. The father is enjoying the access of the child, virtually and physically at definite intervals. He is naturally concerned about the welfare of the child and his only anxiety is that the bond between the two shall be severed, if she is moved to Poland.

13. In the conundrum so faced by the parties, I do not think that the Court can refuse the job prospects to a mother, who is inclined to take up the job and she cannot be deprived of this opportunity.

The Hon'ble Supreme Court in the case of *Vikram Vir Vohra Vs. Shalini Bhalla*¹, while dealing with somehow similar situation, has observed thus :-

23. Now coming to the question of the child being taken to Australia and the consequent variations in the visitation rights of the father, this Court finds that the Respondent mother is getting a better job opportunity in Australia. Her autonomy on her personhood cannot be curtailed by Court on the ground of a prior order of custody of the child. Every person has a right to develop his or her potential. In fact a right to development is a basic human right. The respondent-mother cannot be asked to choose between her child and her career. It is clear that the child is very dear to her and she will spare no pains to ensure that the child gets proper education and training in order to

1 I(2010) DMC 524 (SC)



develop his faculties and ultimately to become a good citizen. If the custody of the child is denied to her, she may not be able to pursue her career in Australia and that may not be conducive either to the development of her career or to the future prospects of the child. Separating the child from his mother will be disastrous to both.

24. Insofar as the father is concerned, he is already established in India and he is also financially solvent. His visitation rights have been ensured in the impugned orders of the High Court. His rights have been varied but have not been totally ignored. The appellant-father, for all these years, lived without the child and got used to it.”

14. Necessarily, a balance has to be drawn between the interest of both the parties and by offering paramount consideration to the welfare of the child, so as to ensure that in the situation where the parents are in conflict, the child has a sense of security and it is always in the interest of the child to have presence of both the parents while he or she grows up, but here is a situation when the parents are at loggerheads and the child is with the mother with a limited access being granted to the father, which he must avail qualitatively. The petitioner is the mother of the child and has been continuously with the child, since her birth and though a working woman, has struck a balance between her work and care and affection of the child and ensured that she enjoy an healthy upbringing.

The option suggested by the husband that the child should be left with him and his family will take care of her is not a viable one, as the little girl has always stayed with her mother, barring for few hours, when she was exclusively in company of her father or his family. One thing is clear that the girl cannot be separated from the petitioner-mother.

However, at the same time, being conscious of the fact that the child has developed a strong bond with the father and the same is required to be nurtured and continued, even if the child accompany her mother to Poland for her better prospects, which she cannot be stopped from availing.

15. The primary consideration must weigh in favour of the welfare of the child. The argument that the child will be uprooted fails to convince me, since Akshita is a young child, who can adopt a new environment and it is even good for her to be in a new environment and I do not think that she will feel uprooted, as the petitioner had assured that she will be taking her own mother and has arranged for a school in English medium. In any case, it is not uncommon for children to shift alongwith their parents, who decide to go abroad and, therefore, the apprehension that she will be uprooted is totally unfounded. It is also not uncommon for working woman to



leave her child in a Day-Care, on account of her office responsibilities and here, the petitioner has specifically undertaken that her mother will be accompanying her so that she can cater to the child while the petitioner is out for work. Even at present, it is informed that, while in Pune, it is the grandmother of Akshita, who is taking care of her while the petitioner is discharging her duties.

16. The interest of the respondent/father to be in touch with his daughter can be kept intact by imposing certain conditions and the petitioner has specifically filed an affidavit, continuing his access at regular intervals, when she is in Poland.

Though I am not inclined to accept the pleading in the application that, Poland would serve a better environment than India, as the applicant has glorified the said country in comparison to India, in any case, when the petitioner, by way of affidavit, has specifically stated that she is also restricting her stay there for two years, to have the job experience. For both, the mother and her daughter, the period of two years cannot be said to be too long to presume that the child will be completely disassociated either from the father or his family or her country itself.

17. The petitioner/wife has filed an undertaking/affidavit on 24/06/2022, where she has given the following undertaking as regards her duration of work in Poland :-

“2. I hereby undertake that as per the agreement between me and my company, namely UBS my joining date have been extended from time to time and as per the recently received extension letter my joining date is scheduled on 01/07/2022. I hereby undertake to state that in the agreements received by me till date, the company has not included/stated the time period/duration of my work at Poland. Hence, I hereby undertake to come back to India after 2 years of me joining the company at Poland.”

She has also assured in the said affidavit that the proceedings which are filed by her and pending before the Family Court, Pune as well as J.M.F.C., Pune will not be postponed due to her non-availability and she has undertaken that she shall attend the said proceedings, either physically or virtually and assist the Court in its early disposal.

18. As regards the access of the child is concerned, she has stated that, as per the order dated 16/08/2021 (Exh.98), virtual access is granted to the respondent on every Tuesday, Thursday and Saturday for 15 minutes, either by phone call or video call between 3 p.m. to 4 p.m.. She has undertaken that the access shall be continued but shall be subject to the

adjustment as per the timings in Poland, since India is 03:30 hours ahead of Poland. She has assured that the virtual access shall be continued.

19. In the said affidavit, she has given the details about the vacations for the schools in Poland and which is reproduced as under :-

“6) Vacations to schools at Poland :

I state that as per the information available to me, daughter Akshita will have school vacations in the month of :

A. December during her **Winter** holiday break (8 days), Dec. 23 to 31st Dec.

B. **Spring break** during the month of April (5 days), 14th April to 19th April.

C. Month of June-August during the Summer holidays (67 days). 25th June to 31st Aug.”

20. About the physical access, she has undertaken to provide the same in the manner set out in para 7, which reads as under:-

“7) **Physical Access:** I state that vide consent terms dated 24/08/2018, in PA no. 1347/2017 the respondent is allowed to meet the daughter at Child Care Centre, Pune on every 1st and 3rd Saturday from 02.00pm to 05.00pm. Thus the total number of hours of physical access granted to the respondent in a year will come to 6 hours per month* 12 months = 72 hours in a year.

As mentioned above that the Spring break is only for 5 days, it will not be financially viable to spend around Rs. 1.5 lacs to give access for merely 2 days. Thus I **undertake** and propose to travel to India during every Christmas and Summer break as mentioned above and given access as stated hereunder:

A) December - Winter break - **5 days * 5 hours** = 25 hours.

B) June August - Summer Break = **5 Hours * 12 Days = 60 Hours.**

Hence in total I state that I will provide the respondent access of 85 hours in total which is more than what he is receiving as of now of only 72 hours.”

21. Apart from this, it is also indicated in the affidavit that if the husband wants another physical access, he can visit Poland during spring break. The affidavit contain a rider to the effect that since the admission is not yet confirmed, her vacation dates may change, but tentatively would be in the same months, which are set out in paragraph 6 of the affidavit.

22. It is to be noted that in Petition No.1347 of 2017 filed by the petitioner, consent terms were filed by the parties for availing access of the daughter in the wake of the fact that the custody of the child is with the petitioner -mother. The consent terms has recorded the schedule for access as under :-



“2. Respondent-father shall meet the daughter Akshita on every 1st and 3rd Saturday of every month from 2 p.m. to 5.00 p.m. at Child Care Centre, of Family Court, Pune. The access shall be unsupervised access. In the event of any change, the parties will intimate each other. This access will start from July 2018 till the next order of Honorable Court.”

The access is being availed in terms of the aforesaid terms, though at present, due to intervention of Covid-19, physical access for some period of time could not be availed.

23. The Hon’ble Supreme Court in the case of *Ritika Sharan Vs. Sujoy Ghosh*², was dealing with the similar situation where the parents of a 7 years old child, who shared serious differences between them and were living apart. The appellant/wife sought a direction to the respondent to hand over the passport for the child on the ground that she was in employment of a company, and was posted in Singapore. The Family Court dismissed the application for child’s passport and allowed the application filed by the respondent, restraining the appellant from taking the child out of Bengaluru.

During the pendency of the writ petition, the child was

² AIROnline 2020 SC 832

allowed to travel Singapore during Christmas vacation. The High Court dismissed the Writ Petition filed instituted by the appellant, challenging the validity of the order of the Family Court, restraining her from taking the child out of Bengaluru.

While dealing with somehow similar situation and confronted with similar arguments on behalf of the appellant-mother, pleading that the custody of the child was with her, since his birth and child was in her care all the while and the appellant and her son, who hold Indian Passports are willing to furnish an undertaking that the child will not be placed outside the control and jurisdiction of the Court of Bengaluru. The opposition of the father was also somehow on the similar lines, where he pleaded that it is an attempt on part of the appellant to 'shift the goal-posts' from time to time and the apprehension expressed was that if the appellant is permitted to take the child to Singapore, there is no guarantee that she will not relocate elsewhere and take the child with her, effectively placing the child outside the jurisdiction of the Indian Courts.

24. Dealing with the aforesaid contention, Their Lordship of the Supreme Court held that, the primary consideration that must weigh with the Court is the welfare of the child. It was admitted that since 2016, the appellant has taken the

responsibility for welfare of the child, though at earlier point of time, the child was in care of both the parents. After interacting with the child, where he expressed his desire to live with the mother, the appellant was allowed to take the child with her, but the arrangement of access came to be modified by ensuring that the father is entitled to have adequate right of access and visitation. The Apex Court has expressed itself in the following words :-

“A balance has to be drawn so as to ensure that in a situation where the parents are in a conflict, the child has a sense of security. The interests of the child are best subserved by ensuring that both the parents have a presence in his upbringing.”

Though it was argued on behalf of the appellant that the respondent had made no contribution in the maintenance of the child, in the interest of the child, the appellant-mother was allowed to take him with her to Singapore and certain directions came to be issued in para 20 of the judgment, by directing the appellant to make suitable arrangement to facilitate the travel to and admission of the child in a school in Singapore. The respondent was directed to hand over the passport of the child to the appellant.

25. In order to facilitate the grant of access and the visitation right, the arrangement was specifically worked out in supersession of the previous orders of the Family Court and the High Court in the following manner :-

“(a) The respondent would be at liberty to engage with the child on a suitable video-conferencing platform for one hour each on every Saturday and Sunday and for five to ten minutes on other days;

(b) Should the respondent desire to travel to Singapore during the school vacations of Sattik, he would be entitled to have visitation right over half of the vacation between 10 am and 6 pm. He may meet the child on any other day subject to the mutual convenience of the parties and the child;

(c) The appellant will ensure the presence of the child in Bengaluru during the course of the child’s summer vacations in 2021 for a period of at least two weeks with prior intimation to the respondent and during the course of the visit, the respondent shall be entitled to meet the child and/or take him out between 11:00 am and 7:00 p.m.

(d) The appellant shall bring the child to India at least twice a year during which the respondent shall have access to and visitation with the child on the terms set out in (c) above;

(e) The appellant shall file an undertaking before this Court to abide by the conditions imposed by this order. The undertaking shall specifically provide that the appellant shall (i) not relocate the child to any other country, unless permitted by this Court; (ii) ensure the presence of the child during the summer vacations of 2021 unless prevented by the travel restrictions imposed by the government of either

country; and (iii) furnish the contact details of the child in Singapore to the respondent. Clarified that (e)(i) above shall not prevent the appellant from taking the child out for holidays outside Singapore. A copy of the undertaking shall be placed on the record of the Family Court.”

26. An undertaking-cum-affidavit, somehow on the similar lines, is already placed on record by the petitioner/wife. However, I intend to modify the physical access to be availed by the father during the vacations, in addition to virtual access, which is already assured to the father in paragraph 5 of the affidavit, filed by the petitioner.

27. It is indicated in the affidavit that there are going to be three breaks for the child i.e. (A) December break (**Winter holiday**) from 21st December to 31st December (B) **Spring break** in the month of April from 14th April to 19th April for 5 days and (C) Summer break between June and August and precisely from 25th June to 31st August for 67 days.

I do not agree that the arrangement of physical access, which was continued in the wake of the consent terms, shall continue to operate, particularly since the father will not be able to avail the physical access as granted every month and for some months, the father will not even get to have glimpse

of the child physically. Daughter Akshita is now 9 years' old and as I can see from the proceedings that some objections were raised about the overnight/long duration access to the effect, when the father was not be able to handle the child, for example it is stated that she had her clothes soaked, but the father did not remove it or he did not administer medicine, though she was suffering form fever.

I do not think that this contingency will prevail as on date when the child is 9 years' old. The allegation that the father did not properly care for the child was made when she was approximately 4-5 years old, but now even the 9 years' child is capable of taking care of herself. The absence of the daughter from country can only be compensated by permitting overnight access to the father, since ultimately it is not the quantity of time spent with the children, but the quality time, which assumes great significance to develop a Parental Bond. Therefore, the access shall be availed by the father in the following manner :-

A) December/Winter break :- Father shall be granted three hours access everyday, when the child shall be brought to India on 23rd December and she shall continue to stay here till 31st December, 2022. The father shall be entitled to avail

overnight access in the first year i.e. December, 22 for two days.

B) During April/Spring Break :- Father will be entitled to avail overnight access of the child for four days and will be entitled for access of five hours for the remaining days.

C) During June to August/Summer Break :- Father shall be entitled for 25 days overnight access, which could be either separated or continuous, as per the convenience of the parties. He shall be entitled to have access for five hours for the remaining twenty-five days.

28. Since, the petitioner will be leaving the country somewhere between July and August, for the year 2022, the father shall not avail the access of Summer break, since the petitioner is visiting Poland in July and August and it will take time to settle her and the child. The first access, therefore, could be availed by the father only during the winter break, which would fall in December.

For the year 2023 and, thereafter, the access shall be availed in the following manner :-

(A) December/Winter break :- Five days overnight access

(B) During April/Spring Break :- Five days overnight access

(C) During June to August/Summer Break :- Thirty days overnight access.

Over and above, the respondent shall continue to avail daily access for limited hours, similar to the one which has been granted for the year 2022.

29. With the aforesaid arrangement in place, it is also necessary to clarify that the petitioner shall bring the child to India on her own expenses, during all the three breaks so that the respondent-father can avail the access.

30. In addition to the above three visits to India, for availing the access by the father, if the father is desirous of availing an additional access, he is permitted to travel to Poland and avail access. During his stay there, the access shall be unsupervised and it shall be availed after taking into consideration her school hours as well as hours for other activities. The father is permitted to avail this access for the year 2022 in between September to November and for the remaining years, as per his choice and convenience, he can visit Poland and avail day time access.

It is made clear that the petitioner, shall not deny the access to the respondent, on being intimated 15 days prior of

his visit to Poland.

31. The petitioner has also submitted that the respondent has failed to pay the maintenance amount and when, particularly asked, learned counsel Mr.Khandeparkar for the respondent would submit that he is arranging for the fees of the child and presently, it is approximately Rs.12,000/- per month and, therefore, he is paying approximately Rs.1,00,000/- year for the child. It is not clear as to what shall be the expenses of the child in the new school to which she shall be admitted in Poland, but since the mother has undertaken to take up the job there by stating that there will be hike in her earnings, the respondent is directed to continue his contribution of Rs.12,000/- per month for the educational expenses of the daughter.

32. The petitioner has undertaken to come back to India after two years in her affidavit-cum-undertaking filed on 24/06/2022, but she has also pose a rider in para 3 to the following effect :-

“3. This I state subject to my rights to seek permission from the Honourable Court to travel again, if needed on the situation then.”

In the wake of the aforesaid statement, the apprehension expressed by the respondent that she may continue her stay in Poland cannot be said to be baseless. However, in that situation, if the petitioner intends to extend her stay in Poland beyond two years from the date of her travel for the first time somewhere in July-August, 2022, the respondent-father shall be entitled to file appropriate application before the Family Court, seeking modification in the order of custody of his daughter and the Family Court shall then consider the application in the background of the fact that earlier the wife had intended to stay in Poland only for two years, but is now seeking an extension and it may pass an appropriate order.

33. Since the permission is now granted to the petitioner to travel to Poland alongwith the minor daughter and the procedural formalities contemplate a no-objection, being granted by the father, since the petitioner is not the only custodian of the minor and the father is availing the right of access, it is directed that the respondent, shall accord his no-objection on the visa application, or any other documents, which require his signature within a period of 3 days from the date of the uploading of the order, which will facilitate the petitioner to obtain visa for the daughter as well.



34. With the aforesaid direction and on noticing that the impugned order has failed to consider the important aspect of right to development, being vested in the petitioner as she cannot be asked to choose between her child and her career, the impugned order is quashed and set aside.

The writ petition is allowed in the aforestated terms.

(SMT. BHARATI DANGRE, J.)