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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 7642 OF 2025
IN
MISCELLANEOUS CIVIL APPLICATION NO. 20 OF 2021**

Sandeep Naresh Bhatia ... Applicant

Vs.

Vanita Rajkumar Aswani ... Respondent

Mr. Subhash Jha for the Applicant.

Mr. Atharva S. Jagtap a/w. Ms. Siddhi Bhosale for the
Respondent.

CORAM : GAURI GODSE, J.

DATE : 28th AUGUST 2026

ORDER :

1. This application is filed by the original respondent in a disposed of Miscellaneous Civil Application No. 20 of 2021. The said application was filed by the respondent under Section 24 of the Code of Civil Procedure, 1908 ("CPC") for transfer of Marriage Petition No. 80 of 2020, filed by the present applicant in the Court of the Civil Judge, Senior Division, Kalyan, to the Family Court at Pune. In this miscellaneous civil application, the parties agreed to amicably resolve the dispute and consent terms dated 28th April 2022 were filed. The miscellaneous civil application was disposed of in terms of the consent terms.

2. The parties had agreed that the permanent custody of the minor child would remain with the applicant, i.e., the father, and the respondent, i.e., the mother, was granted the right of visitation and access on weekends and during summer, Diwali, and Christmas holidays. In view of the agreed terms and conditions, the marriage petition filed by the present applicant was converted into a petition for dissolution of the marriage by mutual consent. Accordingly, by judgment and decree dated 24th August 2022, the Civil Court at Kalyan allowed the marriage petition by dissolving the marriage by mutual consent under Section 13(B) of the Hindu Marriage Act, 1955.

3. The applicant had filed an application under the Guardian and Wards Act, 1890 ("Guardian and Wards Act") which he had agreed to withdraw in view of the consent terms. Hence, in view of the consent terms, the marriage petition is disposed of, and the application filed under the Guardian and Wards Act is withdrawn.

4. By this application, the father seeks modification of certain terms of the consent terms regarding the visitation rights recorded under clause (11) of the consent terms dated 28th April 2022. The grounds for modification are alleged

changed circumstances, the child's unwillingness, or the child's lack of interest in meeting the mother. Since modification is sought on the ground of changed circumstances, it was suggested to the applicant that the appropriate remedy would be to file such an application in the trial court.

5. Learned counsel for the respondent-mother agrees that the correct remedy would be to file an appropriate application before the trial court. However, learned counsel for the applicant submits that, in view of the well-settled legal principles laid down by the Apex Court, the correct remedy to modify the consent terms would be only before the court that accepted the consent terms. He submits that relegating the party to the trial court, which is a subordinate court, would amount to fiddling with the order passed by this court, which accepted the consent terms. Hence, according to the learned counsel for the applicant, the correct remedy is to file an application before this court.

6. To support his submissions, learned counsel for the applicant relies upon the decision of the Apex Court in the case of *Pushpa Devi Bhagat (Dead) through LR Sadhna Rai (Smt) vs. Rajinder Singh and Others*¹. Learned counsel for the

¹ (2006) 5 SCC 566

applicant submits that it is a consistent view taken by the Apex Court that for modifying the consent terms the application has to be made before the same court in view of the bar under Rule 3-A of Order XXIII of the CPC. Learned counsel for the applicant therefore submits that in view of the grounds raised in the application and the desire expressed by the child, it would be appropriate that this court modifies the consent terms.

7. I have perused the papers of the application. The consent terms are taken on record in the miscellaneous application which was filed under Section 24 of the CPC for transfer of the marriage petition. The issue of dissolution of marriage or of custody and access to the child was never before this court in the application filed under Section 24 of the CPC. This court has not expressed any view or adjudicated the issue of child custody or access or visitation rights of the parties. The bar under Rule 3-A of Order XXIII of CPC would apply if the application is filed on a ground that the compromise on which the decree or order is based was not lawful. In the present case, there are no allegations that the decree passed pursuant to the compromise between the parties for the dissolution of the marriage, or the order for custody, access, and visitation rights,

was unlawful or not a genuine compromise. Hence, there is no question of bar under Rule 3-A of Order XXIII of the CPC.

8. It is a well-settled legal principle that an order for custody, visitation rights, or access to a minor child is never final and can always be revisited in accordance with the law. Hence, even the order of custody, access, or visitation rights agreed between the parties by consent would be final until it is varied in accordance with law. Since there is no allegation that the terms and conditions recorded in the consent terms are unlawful or not genuine, the bar would not apply.

9. The decisions relied upon by the learned counsel for the applicant are irrelevant so far as the present case is concerned. The grounds raised in the present application pertain to the child's psychology and to some opinions expressed by psychologists, which are relied upon by the applicant. Any allegations made against the party in connection with the custody or access or visitation rights of either parent cannot be dealt with solely on the basis of a psychologist's report. The allegations in the application pertain to events that occurred after the parties acted on the consent terms. Hence, the prayer is based purely on subsequent events. The allegations in the

application cannot be determined without permitting the parties to lead evidence. The scope of the original application filed under Section 24 of the CPC cannot be expanded to the extent of varying the parties' visitation and access rights. The correct remedy, therefore, would be to file an appropriate application before the trial court in accordance with law.

10. I therefore see no reason to entertain this application. The application is therefore dismissed.

11. The applicant is at liberty to file an appropriate application in the trial court in accordance with law for modification of the consent terms, as prayed in this application. It is further clarified that if such an application is filed before the trial court to vary the terms as prayed in the present application, the same shall be decided on its own merits in accordance with law.

12. It is further clarified that for the reasons recorded above, the bar under Rule 3-A of Order XXIII of CPC would not apply to the application, if any, filed in the trial court for modification in view of the liberty granted by this order. All rival contentions of the parties on the merits of the proposed application are kept open to be decided in the appropriate application, if filed by the

applicant.

13. It is further clarified that this court has not granted any interim relief. Hence, the consent terms are binding upon the parties until modified in accordance with law.

[GAURI GODSE, J.]