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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment dated 7th May, 2010

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CONT.CAS(C) 542/2009

GAURAV TOMAR

..... Petitioner

Through : Mr. Rudra, Adv.

versus

BHAVNA TOMAR & ORS.

..... Respondents

Through : Mr. Raman Kapur, Ms. Fracisca Kapur and
Mr. Suraj Rathi, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

G.S.SISTANI, J. (ORAL)

1. Petitioner is the husband of respondent no.1. Respondents no.2 and 3 are the mother and father of respondent no.1. Petitioner alleges contempt and violation of order dated 21.5.2009 passed by a Division Bench of this Court in W.P.(Crl.)No.71/2009.
2. Learned counsel for the petitioner submits that during the hearing of W.P.(Crl.)No.71/2009 filed by respondent no.1, a Division Bench of this Court, on the basis of an arrangement arrived at between the parties, passed the following order on 21.5.2009:

" IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(CRL) 71/2009

BHAVANA TOMAR

..... Petitioner

Through: Mr Parag Chawla

versus

STATE (NCT OF DELHI) and ORS.

..... Respondents

Through: Mr Sanjeev Bhandari, ASC for the State

Mr Rudra Kahlon, Advocate for the Respondent No.4.

CORAM:
HON'BLE MR. JUSTICE BADAR DURREZ AHMED
HON'BLE MR. JUSTICE AJIT BHARIHOKE

ORDER
21.05.2009

The learned counsel appearing on behalf of Bhavana Tomar as well as the learned counsel appearing on behalf of Gaurav Tomar have indicated that an arrangement has been arrived at whereby the custody of the child Sanvi is shared by the parents. It has been agreed that during the summer/winter vacation, the child shall spend an equal number of days with the mother (Bhavana Tomar) and the father (Gaurav Tomar) and the exact schedule would be decided as per mutual consent. It has further been agreed that during the festival holidays also, the same schedule of sharing the custody on equal basis would be adopted and the parties shall mutually decide the exact schedule. During the holiday, when Sanvi's school is in session, she will spend all the school days with her mother. In other words, she will be with her mother from Monday to Friday. On Saturday, at around 11.00 a.m. to 11.30 a.m., she will be handed over to the father, who will take her custody till Sunday evening around 6.30 p.m. In case the child Sanvi falls sick, the party who has the custody of the child at that point of time will inform the other party and they will mutually take a decision with regard to her treatment and care. The child shall continue to study at Tagore International School, DLF, Phase-III, Gurgaon. In view of the above arrangement, this writ petition stands disposed of. The parties are at liberty to approach the appropriate court if they seek any modification of the arrangement.

BADAR DURREZ AHMED, J

AJIT BHARIHOKE, J

MAY 21, 2009
Pst"

3. It is further contended that the order dated 21.5.2009 was modified by a subsequent order dated 28.5.2009.
4. Order dated 28.5.2009 reads as under:

“ **IN THE HIGH COURT OF DELHI AT NEW DELHI**

W.P.(CRL) 71/2009

BHAVANA TOMAR

Through:

Mr Parag Chawla

..... Petitioner

versus

STATE (NCT OF DELHI) and ORS. Respondents
Through: Mr Sanjeev Bhandari for R 1-3.
Mr Rudra Kahlon for the R-4.

CORAM:
HON'BLE MR. JUSTICE BADAR DURREZ AHMED
HON'BLE MR. JUSTICE AJIT BHARIHOKE

ORDER
28.05.2009

CRL. M. A. 6214/2009

After the writ petition was disposed of on 21.05.2009 certain issues have arisen which necessitated the filing of the present application. The issue is with regard to the sharing of the custody of the child during the vacations. It has now been agreed that the custody of the child would be handed over by the respondent No. 4 to the petitioner on 02.06.2009 and the petitioner shall retain custody of the child for a period of 15 days thereafter, that is, up to 17.06.2009 whereafter, for the remaining period of the school vacations, that is, up to 01.07.2009, would be shared in the following manner:-

The custody of the child with the father would be from 17.06.2009 to 23.06.2009 and with the mother would be from 23.06.2009 onwards till the end of the vacations and thereafter the arrangement as indicated in the order dated 21.05.2009 shall be continue to be followed.

BADAR DURREZ AHMED, J

AJIT BHARIHOKE, J

MAY 28, 2009
SR"

5. Counsel for the petitioner submits that the respondents have failed to comply with the orders dated 21.5.2009 and 28.5.2009. Counsel further submits that the custody of the child was not handed back to the petitioner and, thus, the respondents have willfully disobeyed the orders passed by this Court. Counsel also submits that the act of not handing over custody of the child to the father was intentional and willful with a view to over reach the orders passed, which is evident from the fact that on 1.7.2009 itself respondent no.1 made

an application under Sections 7 to 11 and 17 of the Guardianship and Wards Act, 1890, before the District and Session Judge, Patiala House Courts, New Delhi. Counsel further submits that an application was filed together with this petition for interim relief, in which a prayer was made that till the time the respondent (petitioner herein) appears before the Court the girl child may not be sent to Sainik Farm on 3.7.2009 and also the visit of the minor child may be stayed till the next date of hearing. Counsel next submits that mere reading of the petition and the application filed along with the petition would show that the intention of respondent no.1 (mother) was to flout the orders passed by the Division Bench of this Court. It is submitted that medical certificate annexed with the communication dated 22.7.2009 is not a genuine document.

6. Reply has been filed. The allegations made in the petition have been denied by the respondents. It would be useful to reproduce paras 1 & 2(b) to (f):

1. That at the outset, respondents respectfully submit that they have utmost respect and regard for the orders passed by this Hon'ble Court and there can be no question of respondents disobeying any orders of this Hon'ble Court. It is respectful submission of the respondents that they as duty bound to observe and strictly comply with the orders passed by this Hon'ble Court, have not violated any order of this Hon'ble Court. However, respondents tender unconditional apology if they have inadvertently violated any order of this Hon'ble Court as there is no occasion for respondents to violate any order passed by this Hon'ble Court.
2. b. That however, due to extreme heat prevailing in Delhi in June, 2009, State Government extended the schools' vacations from 01.07.2009 when the schools were duly open to 06.07.2009. As per order dated 28.05.2009, the custody of the child was to remain with respondent No.1 till the end of summer vacations which stood extended to 06.07.2009. However, on 04.07.2009, child was taken sick and this was duly informed to petitioner by letter dated 07.07.2009 and medical certificate was enclosed with the said letter, they being sent by registered post. Copy of said letter dated 07.07.2009 alongwith postal receipt has been

enclosed as Annexure A-1 with earlier affidavit dated 23.07.2009 filed by the respondent No.1.

c. That this fact of child being taken sick was also duly informed to the school on 09.07.2009 on telephone and also vide letter dated 11.07.2009 which was sent by speed post and copy thereof has been filed as Annexure A-2 alongwith earlier affidavit dated 23.07.2009.

d. That the child rejoined the school on 10.07.2009. However, Sh. Y.S. Tomar, father of petitioner visited residence of the respondents on 06.07.2009, met the child and had satisfied himself about the sickness of the child.

e. It may further be pointed out that vide order dated 21.05.2009 in WP(Crl)71/2009, it was clearly held by this Hon'ble Court that in case, the child fall sick, the party who has the custody of the child at that point of time will inform the other party and they will mutually take a decision with regard to treatment and care.

f. That from the above, it is apparent that there is no question of disobedience of any order of this Hon'ble Court by the respondents. The present petition is not maintainable and is liable to be dismissed.

7. Counsel for the respondents submits that there is no willful disobedience of the order passed by the Division Bench. The custody of the girl child was to remain with the mother from 23.6.2009 onwards till the end of school vacations. The school vacation was extended upto 6.7.2009. Counsel further submits that reading of the order dated 28.5.2009 was interpreted by the mother to mean that the custody of the child was to remain with her upto the end of the vacation, which is 6.7.2009. In addition thereto counsel also submits that the child had suffered from gastroenteritis. Counsel next submits that a communication dated 7.7.2009 along with a medical certificate was sent to the petitioner (father of the child) informing him about the illness of the child. Besides a communication dated 11.7.2009 was addressed to the Principal of the School together with a copy of the medical certificate. Counsel contends that the respondents have all along

complied with the orders passed by the Division Bench and even after 1.7.2009 the arrangement has been followed in all fairness.

8. I have heard counsel for the parties and perused the pleadings as well as the annexures filed. I am unable to accept the submissions made by counsel for the petitioner that the child was not sent to the father and the order of the Division Bench was willfully violated. The documents placed on record show that the girl child was suffering from gastroenteritis and thus could not even attend the school. I am satisfied that it was in the interest of the girl child, who was barely three and a half years of age at the relevant time, in not sending the child either to the school or to the father during the illness and this borne out from the medical certificate according to which the child was advised bed rest for five days. The petty differences and the continuous fight between the parents cannot be permitted to put the interest of the child in the background. Since I am satisfied with the explanation rendered by the respondents that the custody of the child could not be handed over for cogent reasons, there is no willful disobedience of the orders of this Court. In view of this, I find no merit in the present petition, the same is accordingly dismissed. Parties undertake that they will continue to abide by the orders passed by the Division Bench in letter and spirit unless varied by the competent court of jurisdiction.
9. Notice of contempt is discharged.

G.S. SISTANI, J.

May 07, 2010

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