

*** HIGH COURT OF DELHI : NEW DELHI**

% Judgment decided on : 13.04.2012

+ Contempt Petition No.47/2011 in CS (OS) No.1225/ 2003

RADHIKA NARANG & ORS Petitioners
Through: Mr. Y.P. Narula, Sr. Adv. with
Mr. Sanjay Ghosh, Mr. Anirudhha
Choudhary and Mohd. Farukh, Advs.

Versus

KARAN RAJ NARANG Respondent
Through: Mr. Shailen Bhatia, Adv. with
Ms. Zeba Tarannum, Adv.

**CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH**

MANMOHAN SINGH, J.

1. Heard. Issue show cause notice to the respondent. Reply has already been filed by the respondent. Both parties have made their submissions in the matter.

2. The present contempt petition has been filed by the petitioners named above. Briefly, the facts of the case are that the petitioner No.1 had filed a suit for maintenance and separate residence for self and on behalf of other petitioners under Sections 18 and 20 of the Hindu Adoption and Maintenance Act, 1956 along with interim application.

3. After hearing of the parties, the application of interim maintenance was allowed by order dated 16.02.2006. The following orders were passed:-

- a. "The defendant No.1 shall pay to the plaintiff No.1, 3 and 4 a sum of Rs.40,000/- per month. The amount shall be paid on 7th of each succeeding month. Defendant No.1 shall be liable to pay the said amount from the date of the application i.e. 20th May, 2003. The arrears would be paid 7th March, 2006.
- b. The defendant No.1 shall provide to the wife and children, a house minimum of two bed rooms-cum-drawing-cum-dining with an extra room in any of the colonies in South Delhi, the distance of which would not be more than 5 to 7 kms. from the school of the children in Vasant Vihar were they were studying.
- c. The defendant No.1 shall reimburse all medical expenses of his wife and children and any amount spent by the mother during her and her children sickness, shall be paid to them within 15 days from the date such bills are given by the plaintiff No.1 to defendant or his counsel..."
- d. The defendant shall also provide a car to plaintiff No.1 for the convenience of the wife and the children particularly for going to school etc.
- e. Since it is conceded position that defendant No.1 also gets petrol from the company, he shall provide petrol expenses to the extent of Rs.5,000/- per month to the wife.
- f. During the course of the learned counsel appearing for the parties have agreed that the elder brother shall visit his younger brother and sister in the flat where they were living on every Sunday at 11.00 a.m. and spend the day with them at the house of the mother. The father would be at liberty to pick up the children from the house of the mother on every alternative

Saturday and the grand children would be at liberty to go and meet their grandparents at the house of the grandparents.”

4. The said order dated 16.02.2006 was challenged by the petitioners in FAO (OS) No. 139 of 2006 seeking enhancement of the maintenance amount amongst other things. The Division Bench passed an order dated 16.01.2009 and modified order of the Single Judge, as far as interim protection is concerned. The following changes were made:-

- a. In substitution of the sum of Rs.40,000/- per month awarded by the learned Single Judge, to the appellant in respect of a claim of Rs.1.75 lac per month made by her, she would be entitled to interim maintenance at Rs.1.25 lac per month from the date of the application and all arrears as per this order are required to be paid on or before 31st March, 2009.
- b. We direct the respondents to provide for the use of the appellant, a new car of Honda City makes and provide the same facilities of petrol and driver provided along with the car which were provided alongwith the car which were provided by the Company M/s. Eastern Medikit Limited as a Director to the Appellant.
- c. We also affirm and reiterate the directions of the learned Single Judge that the respondent is to provide to the appellant a house minimum of two bed rooms-cum-drawing-cum-dining with an extra room in any of the colonies in South Delhi, the distance of which could not be more than 5 to 7 kms from the school of the children. In our view, the offer of DDA Flat by the respondent to the appellant does not in any way comply with the directions of the learned Single Judge. We, therefore, direct that the order the learned Single Judge qua the house, which we affirm, shall be

complied within 60 days from the date of pronouncement of this judgment.

- d. The rest of the directions of the learned Single Judge such as the reimbursement of medical expenses etc. shall be followed as provided by the learned Single Judge.”

5. Special Leave Petition bearing No. 8901 of 2009 was filed by the respondent challenging the order dated 16.01.2009 passed by the Division Bench. On the day of the hearing i.e. 23.04.2009 the Supreme Court made the following order:-

“it is agreed between the parties that in the meanwhile, without prejudice to the rights and contentions of both the sides, an ad hoc amount of Rs.25 lac, in addition to Rs.3 lac, per month, shall be paid by the defendant to the first defendant. Payment of Rs.3 lac per month shall be made on or before 10th of each calendar month commencing May, 2009 and the amount of Rs.25 lac shall be paid within four weeks from today.”

6. It is submitted by the petitioner No.1 that the respondent agreed to pay a sum of Rs. 3,00,000/- keeping in view that the respondent had failed to make provision for home, car etc as per direction of Single Bench and Division Bench. The respondent also undertook to pay Rs. 25,00,000/- as arrears of maintenance and Rs. 33,00,000/- towards arrears of maintenance as the same was kept at abeyance as respondent showed interest to settle the matter. Special Leave Petition was granted on 11.12.2009 and the following order was passed:

“Leave granted in both the matters. In the meanwhile, the appellant shall continue to pay to the first respondent an ad hoc amount of Rs. 3 lacs per month, as agreed, in order dated 23rd April, 2009. In the absence of any opposition to the application for substitution, the same is allowed. The amended memo of parties may be filed.”

7. After passing the order dated 11.12.2009, the respondent withdrew the appeal on filing the application seeking leave to withdraw the appeal. The said application was allowed. The appeal was treated as dismissed/not pressed by order dated 07.12.2010. The same reads as under:-

“By this application, the appellant seeks leave to withdraw the appeal. in the application it is stated that if the appellant is permitted to withdraw this appeal he would contest the main suit which is pending before the High Court and shall, in the meantime, comply with the order passed by the Division Bench on 16th January, 2009.

The application is vehemently opposed by learned counsel appearing for the respondents mainly on the ground that having enjoyed the benefit of the interim orders passed in this appeal for more than a year, the appellant would try to involve the respondents in further litigation by avoiding to comply with the order passed by the High Court.

We are of the view that since the appellant is no longer interested in prosecuting this appeal further and is also ready and willing to comply with the order, impugned in this appeal, there is no reason why the prayer made in the application should not be granted. At this juncture, Mr. Tulsi, learned senior counsel appearing for the appellant states, on instructions from the briefing counsel, that the directions issued by the High Court shall be complied with in letter and spirit within two weeks from today. We further

clarify that the appellant shall be entitled to adjust against the amounts, which he is required to pay to the respondents in terms of the order of the High Court, only the amount of Rs.25 lacs and no other amount, including the ad-hoc payments of Rs.3 lacs per month in terms of our order dated 24th April, 2009.

The application is allowed and as prayed, the civil appeal is dismissed as not pressed.”

8. It appears from the order dated 07.12.2010 that the respondent undertook before the Apex Court that the directions issued by the Division Bench would be complied with in letter and spirit within two weeks.

9. Petitioner No.1 submits that the respondent, no doubt paid Rs.33 lacs as per the order and directions of the Supreme Court. He has also given Honda City Car in terms of order passed by Division Bench on 16.01.2009, but did not comply other directions, like to provide a house and salary of driver and medical expenses. Instead, the respondent after passing the order of Supreme Court, wrote a letter dated 14.12.2010 to petitioner No.1. The extracts of the said letter reads as under:-

“Dear Radhika

In compliance of the order dated 07.12.2010 of Hon’ble Supreme Court, I have located the following premises available for rent:

- a) Property No.B-5/12, First Floor, Azad Apartments, Hauz Khas, New Delhi.
- b) Property No.C-5/28, Second Floor, Grand Vasant, Vasant Kunj, New Delhi.

c) Property No.C-5/31, Ground Floor, Grand Vasant, Vasant Kunj, New Delhi.

d) Property No.C-5/31, Second Floor, Grand Vasant, Vasant Kunj, New Delhi.

Please make it appropriate to arrange a visit to see the premises at the earliest. An early decision at your end would facilitate further steps. Please inform me the date and time for the visit.”

10. The said letter replied by petitioner No.1 vide letter dated 14.12.2010, retreating that the respondent did not comply the order passed by the Supreme Court. The respondent again wrote a letter dated 27.12.2010 to petitioner No.1 by clarifying his stand. The contents of the said letter read as under:-

“Dear Radhika,

The contents of your undated letter in reply to my letter dated 14.12.2010 are not correct. You are making totally wrong and incorrect averments. Please note we are not re-arguing the matter, hence you had no business to make such averments in the letter. My offer in my letter dated 14.12.2010 is strictly in compliance with the orders passed by the Hon’ble Court. Please appreciate that we do not have much time to finalize the houses. The houses which were selected by me after lot of road work are already in process of being negotiated by other parties. The order makes it clear that I have only to provide rented accommodation. Please note that when the Ld. Single Judge had passed an order, I had proposed a rented D.D.A. Flat. You challenged my action in Appeal. The only modification that has come in Hon’ble Division Bench’s order is that I have not to provide a D.D.A. Flat. Also, I wish to put on record that I have provided you with a car as per orders of the Court and I have also paid all arrears...”

11. Therefore, the petitioners have filed the present contempt petition. It is stated in the petition that the respondent with mala fide intention is not prepared to comply the undertaking given by him through his counsel in Supreme Court. It is stated by petitioner No.1 that the respondent has also failed to pay the charges of the driver as well as the medical cost. The following prayer is made in the present contempt petition:-

“(a) That this Hon’ble Court may issue notice of contempt to the Defendant and the Defendant may also be punished for Contempt of Court for willfully disobeying the Order dated 16.01.2009 of this Hon’ble Court.

(b) Pending the disposal of the Contempt Petition, the Defendant be directed to pay Rs.3,00,000/- per month to the Plaintiff No.3 as per the consent Order 24.04.2009 passed in SLP No.8091 of 2009 now Civil Appeal No.8429 of 2009.”

12. The contention of the respondent in his reply is that he is willing to take a flat on rent for the petitioners. He had contacted many brokers/property dealers. In fact, petitioner No.1 is not willing to even look into the said flats. The present petition has been filed with the sole aim to harass the respondent. The respondent is not in a position to pay the amount claimed by petitioner No.1 in the petition. He is earning a sum of Rs.2,25,000/- per month. He is also paying Rs.1,25,000/- every month to petitioner No.1 as maintenance fixed by the Court. He is also paying the educational expenses of the children. As far as the salary of driver and medical expenses are concerned, he is prepared to take the responsibility of the same. As there was no

consensus on amount, therefore, said amount was not paid. He is ready to pay the same as directed by the Division Bench.

13. Mr. Narula, learned Senior counsel appearing on behalf of the petitioners has argued that the respondent earlier offered to the petitioner No.1 any DDA flat, but after passing the order of Supreme Court, the respondent wrote a letter dated 14.12.2010, just in order to show his bonafide. He offered the following premises to petitioner No.1 on rent:-

- a) Property No.B-5/12, First Floor, Azad Apartments, Hauz Khas, New Delhi.
- b) Property No.C-5/28, Second Floor, Grand Vasant, Vasant Kunj, New Delhi.
- c) Property No.C-5/31, Ground Floor, Grand Vasant, Vasant Kunj, New Delhi.
- d) Property No.C-5/31, Second Floor, Grand Vasant, Vasant Kunj, New Delhi.

14. He states that the said offer is not strictly complied with the order passed by Division Bench in FAO (OS) No.139/2006, therefore, the Petitioner did not accept the same.

15. The petitioners have placed on record a copy of letter dated 08.02.2012 sent by the petitioners to counsel to the respondent informing that petitioners have identified the following properties for taking on rent in terms of the order passed by the Division Bench. The details of the same are referred as under:-

- (i) A-15/19, Ground Floor, Vasant Vihar, New Delhi
- (ii) A-16/4, First Floor, Vasant Vihar, New Delhi

(iii) E-5/4, Ground + Basement, Vasant Vihar, New Delhi

(iv) 3/22, Shanti Niketan – Ground + Basement

16. He also submits that as per the order dated 16.02.2006 the respondent was ordered to provide petrol expenses to the extent of Rs.5,000/- per month to the petitioner No.1, as the petrol has become so expensive the petitioner is entitled at least double the amount fixed by the Court. Thus, the amount fixed be increased.

17. The respondent during the hearing had sent another letter dated 20.02.2012 through his advocate to the learned counsel for petitioner No.1 by short-listing the following two properties to be taken on rent on behalf of petitioner. The details along with photographs are filed.

(a) C-5/31, Ground Floor, Grand Vasant, Vasant Kunj, New Delhi.

(b) A-16/9, Second Floor, Vasant Vihar, New Delhi.

Mr. Bhatia, learned counsel appearing on behalf of respondent submits that his client is not in a position to provide the properties suggested by petitioner No.1, mainly, for two reasons, firstly, that the Division Bench did not mention in the order to provide the property as per the choice of petitioner No.1 and secondly, the rent mentioned in the suggestion letter dated 08.02.2012 is very high. According to Mr. Bhatia, the details of the short-listed property are not the DDA flats, both are floors which are build on private plots.

18. The said offer of the respondent is not acceptable to the petitioner No.1 who filed an affidavit in which the statement is made that the respondent had offered a flat at Grand Vasant Complex even on earlier occasion which had already been inspected by petitioner No.1. The approach of the said flat is not good and the flats in the area were claustrophobic. The said flats are not properly maintained and there is also a security problem. In the affidavit, it is also stated that the bathrooms are filthy. The house overlooks a shabby terrace. It is unsafe for a single lady with two children to stay there as there is a perpetual traffic jam during school hours. There is also a narrow road. She submitted that one of the properties offered by the respondent is at second floor of the building. She is suffering from arthritis problem and therefore it would be of great inconvenience for her. She submits that the properties offered by the respondent are a great contrast to the sprawling matrimonial house where the petitioners resided along with the respondent for 17 years. It is alleged by her that the said offer has been made in a malafide manner in order to create a false impression that the respondent is not violating the order of the Division Bench otherwise, the respondent does not want that the petitioners should live in a proper place.

19. I have considered the rival submissions of the parties and have also gone through the pleadings in the contempt petition and the orders passed by the Courts. As far as the salary of driver and medical expenses are concerned, there is no dispute now, as, the respondent is prepared to pay the same as per order, earlier the said amount was not paid as alleged by respondent due to some dispute about the actual

expenses incurred by the petitioner no. 1. In reply, the respondent has shown his willingness to pay the said amount as per order of the Division Bench.

20. With regard to the main compliance to provide to petitioner No.1 a house minimum of two bed rooms, drawing-cum-dining room with an extra room, in any of the colonies in South Delhi as mentioned in the order dated 16.01.2009 passed by the Division Bench is concerned, after hearing, it becomes clear that on this aspect there is no consensus between the parties. The respondent's contention is that the accommodation offered by him is as per the order. On the other hand, the case of the petitioner No.1 is that the accommodation offered by the respondent is not proper and not as per order passed by the Division Bench. The respondent only has shown flats which are very shabby, unsafe and not properly maintained by the owners. The petitioner No.1 needs accommodation at least similar to that of the respondent where she resided for 17 years in the matrimonial house.

21. It is also not in dispute that when the Special Leave Petition was filed by the respondent challenging the order of the Division Bench dated 16.01.2009, Rs.3 lacs per month was fixed by the Division Bench. Mr. Bhatia, learned counsel for the respondent submits that the said order was a consent order between the parties and when it was passed there were talks of settlement otherwise, the respondent is not in a position to pay the amount claimed by the Petitioner. On inquiry, he has informed the Court that as far as the accommodation respondent is offering, rent of the same is about Rs.60-70,000/- per month. After

order the consent of his client Mr. Bhatia that his client is agreeable to pay the said sum of Rs.60-70,000/- which is rental amount of floor provided the said amount be kept in fixed deposits in the name of the two children who are residing with petitioner No.1. Petitioner No. 1 is already getting a high amount of maintenance. She has a habit to spend the money in no time, if it is ordered to be given to her.

22. Considering the over-all facts and circumstances of the case, it appears to this Court that as far as the accommodation is concerned, there is no consensus between the parties. Therefore, the present petition has to be decided on merits, and I feel that till the time the present petition is decided, some interim arrangement has to be made between the parties.

23. Till the final disposal of petition, the respondent is to comply the following directions :

- (a) The respondent is directed to pay the salary of the driver @ Rs.7,000/- per month and reimburse the entire and outstanding in terms of order passed by the Division Bench till date and shall continue to pay the same every month till further orders of this Court.
- (b) The respondent shall reimburse the outstanding medical expenses as per details provided by petitioner No.1. The respondent shall continue to pay the same till further directions.
- (c) The respondent shall pay a sum of Rs.70,000/- per month to the Petitioner No. 1 as adhoc payment against providing a

house (minimum of two bed rooms-cum-drawing-cum-dining with an extra room) as there is no consensus arrived at between the parties. This interim arrangement is tentative and shall continue till the time, it is vacated or modified by the court.

24. All the outstanding amounts shall be paid by the respondent to the petitioner No. 1 within eight weeks. In case of any default, the matter shall be listed before court for taking the appropriate action against the respondent.

25. As regards the increase of the amount of petrol is concerned, the petitioners may take appropriate steps for clarification of the earlier order passed by this Court in accordance with law.

26. List on 17.09.2012 for framing of issues in the contempt petition as well as for further directions.

MANMOHAN SINGH, J.

APRIL 13, 2012