

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

CONTEMPT PETITION NO. 149 OF 2015

Gaurav Dhama

Petitioner

Vs

Charu Pragya

.. Respondent

Mr. Abbad Ponda i/b Mr. Jai Bansal and Ms. Radhika Mehta,
Advocate for Petitioner.

Mr. Ashwin Sheti i/b Jayakar and Partners, Advocate for
Respondent.

CORAM : R.G.KETKAR,J.

DATE : 10/03/2015

PC:

1. Heard Mr. Abbad Ponda, learned counsel for the petitioner and Mr. Ashwin Sheti, learned counsel for the respondent at length.

2. This Contempt Petition is filed alleging breach of the order dated 30.5.2014 passed by the learned Judge, Family Court No.2, Mumbai in Petition No. F-2034 of 2013. By that order, the Family Court allowed the petition and dissolved the marriage dated 14.12.2004 solemnized between the petitioner and respondent herein under section 13-B of the Hindu Marriage Act, 1955 (for short, "Act"). The Family Court ordered that the permanent custody of the minor son Aryaman born on 3.10.2008 shall remain with the respondent herein.

3. In support of this petition, Mr.Ponda submitted that in paragraph 2 of that order, the Family Court recorded that "it is

agreed between the petitioners (parties herein) that the permanent custody of their son shall remain with petitioner no.1 (respondent herein) and petitioner no.2 (petitioner herein) shall avail access. In paragraph 4, the Family Court noted that the parties have filed their affidavits at Exhibits 7 & 8, wherein they have reiterated their petition averments. After going through the documents annexed with the petition-Exhibit 2, the Family Court recorded its satisfaction by observing that the petition was filed without any coercion, fraud or collusion. The statutory period of one year before institution of the petition and the period of six months thereafter, has elapsed. The parties have not united in the meanwhile. Neither there is any chance for the same. As such, there is no reason for withholding decree for divorce by mutual consent. The Family Court accordingly allowed the Petition.

4. Mr.Ponda submitted that the respondent herein (petitioner no.1 before the Family Court) made affidavit dated 30.5.2014. She has made declaration on solemn affirmation. Paragraphs 10,14 and 16 of that affidavit read as under:

“10. I further state that it is agreed between us that the petitioner no.2 shall be entitled to visit Aryaman on any one Sunday of every month upto 18 Sundays per year. On such Sunday(s), the petitioner no.2 may take Aryaman for an outing between 11.00 am and 4.00 pm depending on the comfort and convenience of Aryaman and the petitioner no.2 must pick up Aryaman and drop Aryaman at his residence for these outings. Aryaman will be accompanied by my representative such

representative being entitled to inform me of the whereabouts of Aryaman and I shall monitor the movement of Aryaman during such outings. The petitioner no.2 shall, however, under no circumstances remove the minor son Aryaman from the jurisdiction of this Hon'ble Court so long as I live in Mumbai and outside the jurisdiction I reside in case of a change of address on all such outings.

14. I further state that I shall withdraw all allegations of whatsoever nature made against petitioner no.1 and/or against her family members anywhere unconditionally and I put on record that I have no grievances against petitioner no.1 and her family members.

16. I further state that there is no collusion or connivance between us in presenting this petition. I submit that we have presented this petition by our mutual consent without any force, fraud, coercion, undue influence or pressure from any one."

5. Mr. Ponda submitted that in paragraph 10 of the affidavit, the respondent stated that it was agreed between the parties that the petitioner herein shall be entitled to visit Aryaman on any one Sunday of every month upto 18 Sundays per year. On such Sunday(s), the petitioner shall take Aryaman for an outing between 11.00 am and 4.00 pm depending on the comfort and convenience of Aryaman and the petitioner will pick up Aryaman and drop him at his residence for these outings. In paragraph 14, the respondent withdrew all allegations made against the petitioner and/or against his family anywhere unconditionally and she further placed on record that she had no grievances against the petitioner and his family members. In paragraph 16 she stated that there was no collusion or connivance between the

parties in presenting the petition. The petition was presented by mutual consent without any force, fraud, coercion, undue influence or pressure from any one.

6. Mr. Ponda submitted that relying upon the assertions made in the affidavit, the Family Court was made to believe for passing the order dated 30.5.2014. The respondent had given solemn declaration, as set out in paragraph 10 of the affidavit, which amounts to undertaking to the Court. Even if no undertaking is given, the respondent can be held liable for contempt if the Family Court was induced to sanction to a particular course of action, namely, granting of divorce by mutual consent on the basis of representation of the respondent. He submitted that the respondent never intended to act on such representation. In other words, on the basis of the representation made by the respondent, the Family Court was persuaded to pass the order on 30.5.2014.

7. Mr. Ponda submitted that the petitioner had sent e-mail on 10.12.2014 to the respondent. It was set out therein that the respondent was not giving him visitation right/access as per the order of the Family Court dated 30.5.2014. The respondent responded to this email on 11.12.2014. It was set out therein that the divorce decree is just a piece of paper for her. She, however, came with the excuse that it was decided between the parties that Aryaman's happiness and comfort will be above the

guidelines written in the divorce decree. She also made it clear that if the petitioner wanted to see him every day, she would not stop him. If he (Aryaman) does not want to meet the petitioner, she would not force him either. He submitted that this was mere excuse given by the respondent for not implementing the order of the Family Court. He further submitted that after having accepted all benefits under the order of the Family Court, viz. the receipt of Rs. 30 lacs towards permanent maintenance for herself and minor son from the petitioner, she is deliberately flouting the order of the Family Court. In support of this submission, he relied upon the following decisions:

1. Rakesh Surana Vs. Rekha, MANU/TN/1201/2008, to contend that the excuse given by the respondent in her e-mail dated 11.12.2014 is with a view to not implementing the order of the Family Court.
2. Paramjit Singh Lamba Vs. Smt. Prabjot Kaur, AIR 2004 DELHI 318, wherein the learned Single Judge of Delhi High Court referred to the decision of the apex Court in the case of Kumar V. Jahgirdar Vs. Chethana Ramatheerth, (2004) 1 LLJ 106 SC.
3. Shailesh Bhatia Vs Gaurav Bhatia, 178 (2011) DLT 128. In paragraph 35 of that report, the learned Single Judge of Delhi High Court referred to the decision of the Apex Court in the case of Rama Narang Vs. Ramesh Narang, (2006) 11 SCC 114 and Santanu Choudhari Vs. Subir Ghosh (2007) 10 SCC 114, wherein

the Apex Court held that even in absence of undertaking in appropriate cases, defiance even of a compromise decree may be contemptuous if the conduct is found to be interfering in the due course of justice. Even without an undertaking a contempt may be made out when the Court has acted on the basis of a representation of a party.

4. Preeti Kapur Vs. Anshuman Kapur, (2010) ILR 2 Delhi 408
5. Dr. Ashish Ranjan Vs. Dr. Anupam Tondon, (2010) 14 SCC 274;
6. David Judge Vs. Hanna Grace Jude, AIR 2003 SC 2925.
7. Rita Markandey Vs. Surjit Singh Arora, (1996) 6 SCC 40
8. Santanu Chaudhari Vs. Sabir Ghosh, (2007) 10 SC 253.
8. On the other hand, Mr. Sheti submitted that in paragraph 10 of the affidavit dated 30.5.2014 made by the respondent, she had recorded the agreement arrived at between the parties. The respondent has not given any undertaking. He further submitted that in e-mail dated 11.12.2014 sent by the respondent to the petitioner, she clearly expressed her no objection to the petitioner to see him every day. She, however, stated that if Aryaman does not want to meet the petitioner she would not force him either. In other words, he submitted that the respondent has not flouted the order passed by the Family Court and, therefore, no case is made out for initiating contempt proceedings against her.

9. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record. Perusal of the order passed by the Family Court and in particular paragraph 2 shows that it was agreed between the parties that the permanent custody of their son shall remain with the respondent herein and the petitioner shall avail access. Paragraph 4 thereof shows that the Family Court recorded that the parties have filed their affidavits at Exhibits 7 and 8 wherein they have reiterated their petition averments. After going through the documents annexed with the petition Exhibit-2, the Family Court has recorded its satisfaction by observing that the petition was filed without any coercion, fraud or collusion. The statutory period of one year before institution of the petition and period of six months thereafter has elapsed. The parties have not united in the meanwhile. Neither there is any chance for the same. In the circumstances, the Family Court held that there was no reason for withholding decree for divorce by mutual consent and accordingly allowed the petition. The operative part of the order reads as under.

“1. Petition No.F-2034 of 2013 is allowed.

2. The marriage dated 14th December 2004 solemnized between the petitioners is hereby declared as dissolved under Section 13-B of the Hindu Marriage Act, 1955.

3. The permanent custody of the minor son viz. Aryaman born on 3rd October, 2008 shall remain with the petitioner no.1”

4. Petitioners to bear their respective costs.”

10. In my opinion, perusal of paragraph 2 of the order recorded that it is agreed between the parties that the permanent custody of Aryaman will remain with the respondent and paragraph 4 merely recorded filing of affidavits Exhibits 7 and 8 by the parties and after going through the documents, the Family Court recorded its satisfaction and ultimately disposed of the petition in the aforesaid terms. Perusal of the operative part of the order does not indicate that the Family Court passed any order in relation to the petitioner availing access. During the course of arguments, I suggested to Mr. Ponda to consider moving the Family Court for passing appropriate order in terms of affidavits filed by the respondent. After taking instructions, he said the petitioner is not agreeable to this suggestion. Perusal of e-mail dated 11.12.2014 also prima facie shows that the respondent is not averse to implementing the order of the Family Court. She, however, stated that it was decided between the parties that Aryaman's happiness and comforts will be above the guidelines written in the divorce decree. She also made it clear that if the petitioner wanted to see him everyday, she would not stop him. If he (Aryaman) does not want to meet the petitioner, she would not force him either. The question is whether this is a mere excuse given by the respondent with a

view to not enforcing the Family Court's order, cannot be gone into in the present contempt petition. As noted earlier, the operative part of the order also does not deal with the access part.

11. Mr. Ponda relied upon the decision in the case of Rita Markandey (supra) to contend that even if the respondent has not given any undertaking to the Family Court, she is liable for contempt as the Family Court was induced to sanction a particular course of action on the basis of representation of the respondent. The respondent never intended to act on such representation. The representation was false. In other words, the Family Court was persuaded to pass the order on 30.5.2014. In fact, by the order of the Family Court, the respondent has received Rs.30 lacs towards permanent alimony. I do not find any merit in this submission. Perusal of paragraph 12 of the decision in the case of Rita Markandey shows that the Apex Court further observed that the party cannot be held liable for contempt as the order clearly indicated that it was passed on the basis of the agreement between the parties and not on the representation of the respondent made before the Court.

12. Mr. Ponda relied upon the decision of Madras High Court in the case of Rakesh Surana (supra). In that case, the Family Court, Chennai passed order on 6.8.2007 directing the respondent-wife to hand over custody of child to the petitioner-husband on 1st

Sunday of every English Calender month and the petitioner was directed to hand over back to the respondent-wife at 5 pm on the same day. The respondent-wife contended that the child was afraid to go near the petitioner as he had not behaved like a lovable father. He treated the child like a play toy and tickled his private part. In paragraph 16 of that report, it was observed that the respondent had unambiguously admitted in the counter about the direction passed in the order dated 6.8.2007. It was observed that the respondent intentionally disobeyed the orders of the Court not on one or two occasions, but, during the entire period of one year and three months. In the present case, I have already extracted in detail the order passed by the Family Court. There is no positive direction issued to the respondent about access. Equally, the respondent has not given any undertaking. In view thereof, the decision of the learned Single Judge of Madras High Court in the case of Rakesh Surana does not advance the case of the petitioner.

13. Mr. Ponda relied upon the decision of Delhi High Court in the case of paramjit Singh Lamba (supra). In that case, the decision of the Apex Court in the case of Kumar V. Jahgirdar Vs. Chethana Ramatheerth was relied. The Apex Court held that every child requires exposure to and influence of both his parents. There is no dispute with this proposition. Mr. Ponda also relied upon the decision of Delhi High Court in the case of Preeti

Kapur (supra). In that case, it was observed that the respondent had given undertaking to the Court that he would cause the transfer of the property in favour of the petitioner. It was, therefore, held that the undertaking given by the respondent to the Court to transfer this property in favour of the petitioner in consideration of settlement of all her claims formed the very bedrock of the amicable settlement between the parties. The Trial Court acted upon the settlement and undertaking given by the parties and it is only on the basis of the settlement and undertaking that the trial Court proceeded to pass the decree for divorce by mutual consent. As noted earlier, in the present case, the undertaking is not given by the respondent. In view thereof, this decision does not assist the petitioner.

14. Mr. Ponda also relied upon the decision of the Delhi High Court in the case of Shikha Bhatia (supra). In paragraph 35 of that report, the learned Single Judge of Delhi High Court relied upon the decision of the Apex Court in the case of Rama Narang (supra) wherein it is held that even in the absence of undertaking in appropriate cases, defiance even of a compromise decree may be contemptuous if the conduct is found to be interfering in the due course of justice. He also relied upon the decision of Santanu Choudhari (supra) wherein it is held that even without undertaking, contempt may be made out when the court has acted on the basis of the representation of the parties. I

do not find that these Judgments are also of any assistance to the petitioner. The conduct of the respondent is not interfering in the due course of justice. That apart, even the respondent has not made any representation to the petitioner. The parties have entered into agreement.

15. Mr. Ponda relied upon the decision of the Apex Court in the case of Dr. Ashish Ranjan (*supra*). In that case, contempt petition was filed alleging breach of consent order dated 3.5.2008 passed by the Lok Adalat held by the Apex Court. The Apex Court considered the Consent Terms in paragraph 4 and after considering the material on record it was observed in paragraph 21 that the respondents have deliberately and intentionally violated the terms of the consent order and are guilty of committing the contempt of Apex Court. In my opinion, the said decision is of no assistance to the petitioner. As I have already indicated that the respondent has not committed the contempt of the order of the Family Court.

16. Mr. Ponda relied upon the decision of the Apex Court in the case of Devid Judge (*supra*). In that case, respondent no.2 had given undertaking to the Court. On facts, the Apex Court found that the respondents no.1 and 2 were guilty of contempt of Court's order. As noted earlier, in Rita Markandey's case, the Apex Court held that the party cannot be held liable for contempt as the order clearly indicated that it was passed on the basis of

agreement between the parties and not on the representation of the respondent made before the Court.

17. Mr Ponda relied upon the decision of the Apex Court in the case of Santanu Chaudhuri (*supra*). In that case, the petitioner had instituted suit for eviction against the respondent. The learned trial Judge dismissed the suit. Appeal preferred by the petitioner was allowed and a decree for eviction was passed against the respondent-tenant. The respondent filed Special Leave Petition in the Apex Court. The S.L.P was dismissed and the tenant was given six months time to vacate the premises subject to filing usual affidavit by way of undertaking within two weeks from the date of the order. Contempt Petition was filed on the ground that time granted by the Court to vacate the premises expired on 31.8.2008 but the tenant did not vacate the premises. The tenant filed counter affidavit in reply to the contempt petition and the main ground therein was that he did not file any affidavit or undertaking as directed and in the absence of any undertaking having been filed, it cannot be said that there was disobedience of the order.

18 The Apex Court considered its earlier decision in the case of Ram Pyari Vs. Jagdish Lal (1992) 1 SCC 157 as also Firm Ganpat Ram Rajkumar Vs Kalu Ram AIR 1989 SC 2285 wherein it was held that though contempt is a serious matter and it interferes with the rights of those who are found guilty of contempt, no

court should allow any party to mislead the court and thereby frustrate its order. In my opinion this judgment does not advance the case of the petitioner.

19. I have already extracted paragraph 10 of the affidavit wherein the agreement between the parties was set out. In view of paragraph 12 of Rita Markandey (supra), it cannot be held that respondent is guilty as the order was passed on the basis of agreement between the parties. It is not disputed that the respondent did not file any undertaking. Having regard to the order dated 30.5.2014 passed in the present case and e-mail dated 11.12.2014, in my opinion, no case is made out for initiating action under the Contempt of Courts Act, 1971. The Petition fails and the same is dismissed reserving liberty to the petitioner to move the Family Court for obtaining appropriate relief.

(R.G.KETKAR, J.)