

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

**CONTEMPT PETITION NO.302 OF 2014
IN
WRIT PETITION NO.11232 OF 2012**

Sabita Maria Burges
Age 47 years, occ. Home Maker
Indian Inhabitant, residing at B/101-102,
Wilfred Apartments, 112 St. Leo
Road, Bandra (West), Mumbai-400 050. .. Petitioner.

V/s

Mark Lionel Burges, age 53 years
Occ. Service (Merchant Navy), Indian
inhabitant, residing at Villa Alvares
Annexe, St. Anthony Road, Bandra
(West), Mumbai-400 050. .. Respondent.

Mr. Rohan Cama i/b Ms. Sapana Rachure, for Petitioner.
Mr. Pradip Chavan i/b Pradip Chavan & Associates, for
Respondent.

Coram : Smt. R.P. SondurBaldota, J.

Date : 28th April, 2015

P.C.

1 This Contempt Petition arises out of a matrimonial
dispute. The petitioner-wife alleges that the respondent-

husband has wilfully disobeyed the orders dated 9th May, 2012, 18th January, 2014 and 4th March, 2014 of the Family court in Petition No.A-2729 of 2009 and the order dated 8th February, 2013 passed by this Court in Writ Petition No.11232 of 2012.

2 The order dated 09th May, 2012 passed by the Family Court directs the respondent to pay a sum of Rs.75,000/- per month to the petitioner and a sum of Rs.25,000/- per month to each of three children by way of maintenance. Thus the total amount payable by the respondent towards maintenance of the petitioner and the three children is of Rs.1,50,000/- per month. At the time of the order, the respondent had made a statement that he had been paying the dues of the society in respect of the flat in occupation of the petitioner and also the EMIs in respect thereof and that he will continue to pay the same.

3 The order dated 08th February, 2013 is of this Court in W.P. No.11232 of 2012. By that order, the writ petition preferred by the respondent to challenge the quantum of maintenance awarded to the respondent and the children was

dismissed. By the same order, the petitioner was directed to clear the arrears.

4 The order dated 18th January, 2014 is the handwritten order by the Family Court endorsed on a xerox copy of the earlier order recording the undertaking of the respondent that he would clear all the dues except for painting and repair charges, if any, by the next date. The next order dated 4th March, 2014 of the Family Court records statement by the advocate for the respondent that the respondent would deposit the society dues as soon as he reaches the Court.

5 The petitioner filed this contempt petition on 30th April, 2014 alleging that the respondent has breached the orders of payment of maintenance, society charges and EMIs. The respondent is a Captain in Merchant Navy and is on a Cargo Vessel. He is often out of the country. Since filing of the petition till now, he has cleared the arrears of maintenance as also the dues of the society.

6 Mr. Cama, the learned advocate appearing for the petitioners submits that the respondent was undisputedly in default in payment of the maintenance, the society dues and EMIs in respect of the flat in occupation of the petitioner. The payment made by him after filing of the present petition is the payment made out of compulsion and duress. That payment ought not be considered as purging of the contempt by him. Therefore, the respondent deserves to be punished for committing contempt of the Courts by wilful disobedience of the orders of the Courts. He also requests that some directions as regards payment of the society dues directly to the society from wherever the respondent may be need to be given. With advanced banking facilities, according to him, there should be no difficulty for the respondent in transferring the amount every month from wherever he may be in the World.

7 Mr. Chavan, the learned advocate for the respondent on the other hand submits that in connection with his job, the respondent is required to sail continuously for six to eight

months at stretch. While sailing to various countries, there are times when even on reaching a Port, he cannot leave the ship. This fact is known to the petitioner. Therefore, the respondent has issued standing instructions to his banker to transfer a sum of Rs.1,50,000/- per month to the petitioner and the bank has been accordingly transferring the amount. The EMI in respect of the house is of Rs.1,20,000/-, which is also being paid regularly. According to him, the default in respect of which capital is being made was on account of confusion about the calculations. That confusion is now cleared. The respondent states in his affidavit-in-reply that he never intended to disobey the orders of the Courts and contends that the contempt petition is wholly unwarranted and vexatious in nature.

8 The documents on record indicate that there are standing instructions given by the respondent to the banker. Considering the facts that the respondent is on a ship for substantial period of the year, any default during that period cannot be said to be intentional. In any case, considering the

quantum of maintenance, it is obviously not hand to mouth situation. Hence, the contempt petition is dismissed.

(Smt. R.P. SondurBaldota, J.)