

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

CONTEMPT PETITION NO.444/2014

Ms. Kavita Agrawal

... Petitioner

V/s.

Mr. Salil Surajprakash Agrawal & Anr.

... Respondents

Mr. Pradeep Havnur with Ms. Najafiya Shroff for the Petitioner

Mr. Dhananjay Deshmukh, Nighel Qunaishy i/b. Abhijeet A. Joshi for
the Respondent No.1.

Mr. Y. S. Bhate withh. V. Mehta for Respondent No.2.

CORAM: K.K. TATED, J.

DATED : AUGUST 10, 2015

PC. :

1. Heard the learned counsel for the parties.
2. The Petitioner wife alleges that the Respondent husband violated the order dated 20/10/2012 passed by the Principal Judge, Family Court No.1 Pune below Exhibit- 54 in P.D.No.47/2011 by not producing the child Aditi before the court on or before 29/10/2012.
3. The learned counsel for the Petitioner submits that earlier they preferred Contempt Petition No.38/2013 which was dismissed with liberty to the Petitioner to take out appropriate Application for custody of the child which would be decided according to law. He submits that the Contempt Petition No.38/2013 was dismissed only on the ground that the order passed by the Family Court on 20/10/2012 was not

served on the Respondent. He submits that the Petitioner, by Email dated 16/04/2013 communicated the order passed by the Family Court on 20/10/2012 to the Respondent husband and called upon him to produce the child before the Family Court in Pune. He submits that in spite of the said communication, the Respondent failed and neglected to comply with order passed by the Family Court. Hence, the Petitioner preferred the present Contempt Petition. He submits that the petition is not barred by limitation because the cause of action is recurring. He submits that as the Petitioner failed and neglected to comply with the order dated 20/10/2012 passed by the Family Court, Pune, below Exhibit- 54 in P.D.No.47/2011. Hence, this Court be pleased to take action against the Respondent under the Contempt of Courts Act.

4. On the other hand, the learned counsel for the Respondent No.1 vehemently opposed the Contempt Petition. The Respondent No.1 husband filed the Affidavit-in-Reply dated 30/06/2015. The learned counsel for the Respondent raised objection about the limitation. He submits that the impugned order passed by the Family Court was on 20/10/2012 and the Contempt Petition was filed on 07/07/2014, which was beyond the period of limitation. Hence, the Contempt Petition be dismissed. He further submits that the Family Court passed exparte order on 20/10/2012 directing Respondent to produce the child before the court on or before 29/10/2012 whereas said order was allegedly communicated by the Petitioner to the Respondent by Email dated 16/04/2013.

5. The learned counsel for the Respondent No.1 submits that both the parties entered into terms of settlement on 09/06/2010. He

submits that as per the consent terms, the Respondent husband paid Rs.30 lacs to the Petitioner wife by DD No.394982 drawn on State Bank of India. He submits that as per clause (D) of the said terms of settlement, the custody of the child was given to the Respondent husband. He relies on clause (C) and (D) of the terms of settlement which reads thus:

“(C) This amount of Rs.30,00,000/- (Rs. Thirty lakhs only) will be paid by the Petitioner No.1 to Petitioner No.2 by way of DD No.394982 State Bank of India in the Hon Family Court, Pune at the time of decree of divorce, not before that.

(D) The Petitioner No.2 has agreed to hand over the custody of daughter Mithi to the Petitioner No.1 on the date of decree. Henceforth, the Petitioner No.1 Salil Agrawal shall have the permanent custody of the daughter, Mithi and the Petitioner No.2 shall not challenge this arrangement in future. On receiving the custody of the Petitioner No.1 shall withdraw his petition for custody filed at Durg.”

6. The learned counsel for the Respondent No.1 further submits that the Petitioner wife filed petition for modification of the legal decision making, parenting time and child support in the superior court of the State of Arizona in and for the country of Maricopa. He submits that in that Application the Petitioner had claimed following reliefs:

“(1) That the previous Pune, India Court orders be modified and the Petitioner be awarded sole legal decision making of the parties' minor child, Aditi Agrawal, designating Petitioner as the primary residential parent and allowing Aditi to return to India.

(2) That the previous orders regarding parenting time be modified to allow Respondent only supervised parenting time with the minor child in India.

(3) That the Court order Respondent to pay child support in accordance with the Arizona Child Support Guidelines.

(4) *That the Respondent be ordered to pay for all of Petitioner's legal fees incurred in having to bring this action.*

(5) *For such other and further relief as the court deems just and appropriate.”*

7. The learned counsel for the Respondent No.1 submits that earlier the Petitioner filed habeas corpus petition bearing Writ Petition No.3109/2012 before this court. He further submits that even the Petitioner had made several complaints/ Applications before Scotland Police Department. He relies on the remarks made by the Scotland Police Department which reads thus:

“Supplement must be reduced by Officer Haines prior to release.

On March 28, 2014, Kavita Agrawal contacted the Scottsdale Unified School District legal department multiple times claiming that her daughter, Aditi Agrawal, had been kidnapped from India and brought to the United States by her father, Salil Agrawal. She was attempting to obtain information about whether or not her child attended an SUSD school.

I was contacted by SUSD because Aditi is registered at Mountainside Middle School. I reviewed her file and observed two divorce decree's from India. Both grant Salil exclusive custody of Aditi and state that Kavita is not to interfere with this arrangement.

I checked welfare on Aditi at school and she did not express being in any distress.

The FBI was contacted due to the international nature of the call. The FBI stated that they were aware of Kavita's accusations. They confirmed that Salil had legal custody of Aditi. They also stated that they had no reason to believe that Kavita would try to enter the U.S. to contact Aditi.

I contacted Salil and explained the situation to him. He requested that we document this issue as he is afraid for his daughter's safety and is considering legal options against Kavita in the U.S. and India.”

8. The learned counsel for the Respondent No.1 submits that in view of the terms of settlement dated 09/06/2010 and as the Contempt Petition filed by the petitioner is barred by limitation, same is not maintainable and be dismissed with costs.

9. Heard the learned counsel for the parties at length.

10. It is to be noted that the submission made by the learned counsel for the Petitioner about limitation cannot be sustained in law. Admittedly, the Trial Court directed the Respondent No.1 to produce the child on 20/10/2012 and the present petition is filed beyond the prescribed period of limitation under the Contempt of Courts Act. Same is barred by law of limitation.

11. Apart from that, in the present proceedings, both the parties entered into terms of settlement dated 09/06/2010 by which the custody of the child was given to the Respondent No.1 husband. In spite of that the Petitioner filed habeas corpus Writ Petition No.3109/2012 in this court. He also made a complaint before the Scotland Police Department. Even exparte order passed by the Family Court communicated by the Petitioner to the Respondent No.1 after more than one and half year.

12. The Apex Court in the matter of ***R. N. Dey and Others vs. Bhagyabati Pramanik & Ors. (2000) 4 SCC 400*** held that contempt is a matter between the court and the contemnor – Aggrieved has no right to insist that court should exercise its jurisdiction. The weapon of contempt is not to be used in abundance or misused. Paragraph 7 of that authority reads thus:

“7. We may reiterate that weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the Court is to be exercised for maintenance of Court's dignity and majesty of law. Further, an aggrieved party has no right to insist that Court should exercise such jurisdiction as contempt is between a contemnor and the Court. It is true that in the present case, the High Court has kept the matter pending and has ordered that it should be heard along with the First Appeal. But, at the same time, it is to be noticed that under the coercion of contempt proceedings, appellants cannot be directed to pay the compensation amount which they are disputing by asserting that claimants were not the owners of the property in question and that decree was obtained by suppressing the material fact and by fraud. Even presuming the claimants are entitled to recover the amount of compensation as awarded by the trial court as no stay order is granted by the High Court, at the most they are entitled to recover the same by executing the said award wherein the State can or may contend that the award is nullity. In such a situation, as there was no willful or deliberate disobedience of the order, the initiation of contempt proceedings was wholly unjustified.”

13. Essentially, Contempt of Court is a matter which concerns the administration of justice, and the dignity and authority of judicial tribunals; a party can bring to the notice of Court, facts constituting what may appear to amount to contempt of Court, for such action as

the Court deems it expedient to adopt. But, essentially, jurisdiction in contempt is not a right of a party, to be invoked for the redressal of his grievances; nor is it a mode by which the rights of a party, adjudicated upon by a tribunal, can be enforced against another party.

14. Considering these facts and the law laid down by the Apex Court, I do not find any substance in the Contempt Petition. Same stands rejected.

(K.K. TATED, J.)