

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Contempt Petition no.208/2013
Amit s/o Narendra Samrit Vs. Mrs. Charuta w/o Ashish Ingole

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	<u>Court's or Judge's Orders.</u>
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CORAM : Z.A. HAQ, J
DATE : 7th January, 2015.

1] Heard Shri Bhandarkar, the learned Advocate for the petitioner and Dr. R.S. Sirpurkar, the learned Advocate for the respondent.

2] The grievance of the petitioner is that the petitioner is not being given visitation rights as per the Consent Terms entered into between the petitioner and the respondent in the petition before the Family Court. The submission on behalf of the petitioner is that the entitlement of the petitioner to have access to the minor daughter was one of the important conditions because of which the petitioner had agreed to consent divorce and the condition to access the minor daughter being foundation of the decree for divorce granted by the Family Court, the said condition has to be considered as part of the decree granted by the Family Court and breach of the condition of providing access to the petitioner to the minor daughter amounts to contempt of the judgment and decree passed by the Family Court.

3] Shri Bhandarkar, the learned Advocate has submitted that there is calculated attempt on the part of the respondent to keep the minor daughter away from the petitioner at the cost of disobeying the judgment and decree passed by the Family Court. It is submitted that the respondent is making an attempt to change the identity of the minor daughter and in support of his submission reliance is placed on certain events like changing surname of the minor daughter in the passport of the minor daughter. It is submitted that the minor daughter was taken to the United States without seeking any permission of the Family Court and to frustrate the condition of providing an access to the petitioner on third Saturday of every alternate month and excuse was given that the minor daughter was not keeping well. It is submitted that the respondent has produced false medical certificate in the matter.

In support of the submission that disobedience of the consent terms also amounts to Contempt of Court reliance is placed on the judgments in the case of **Ama Narang Vs. Ramesh Narang and another reported in (2006) 11 SCC 114** and in the case of **Ashish Ranjan Vs. Anupma Tandan and another reported in (2010) SCC 274**.

4] Dr. R.S. Sirpurkar, the learned Advocate for the respondent has submitted that the respondent had filed an application seeking modification of the Consent Terms. It is pointed out from the Consent Terms entered into between the petitioner and the respondent. Condition No.6 which reads as follows:-

“The custody of the daughter Ishita is with the respondent/mother. However, the access to meet the daughter is open for the petitioner. He will meet the daughter on every 3rd Saturday after every alternate month at 11.00 a.m. To 5.00 p.m. in the chamber of Marriage Counsellor and both are agreed for the same. If the respondent fails to bring the child she will compensate in the next month”.

5] The learned Advocate for the respondent has pointed out from the reply of the respondent that extra access was given to the petitioner to compensate the period for which the access could not be given to the petitioner when the minor daughter was in United States. The relevant portion of the reply filed by the respondent is in paragraph 3, which reads as follows:-

“It is denied that since the date of judgment i.e. 7/2/2009 the petitioner never allowed regular access to his daughter till April, 2013. Contrary regular access of daughter Ishita was given by Respondent no.1 although access was given only in Family Court premises, as per clause 6 of Consent terms, the petitioner took her out of the Court premises which contradicts the consent terms. The petitioner on many occasions taken the custody of child on one pretext or the other (to celebrate birth, to attend marriages) extra custody of child, extra access of the child was also given by respondent no.1. It is pertinent to state here that extra 236 hours access was given by respondent No.1 to petitioner till April 2013. It is

false that respondent No.1 had not allowed access of his daughter till April, 2013”.

6] Dr. R.S. Sirpurkar, the learned Advocate has pointed out that the petitioner had undertaken several applications before the Family Court and on one of the applications filed by the petitioners warrant was issued and order was passed by the Family Court directing the respondent to deposit passport of the minor daughter. It is submitted that the order passed by the Family Court rejecting the application for modification of the Consent Terms and the order passed by the Family Court directing the respondent to deposit passport of the minor daughter are challenged before this Court in Writ Petition No.3123/2014 in which the order is passed by the Division Bench of this Court on 2nd July, 2014 issuing Rule. By an interim order, the Division Bench has stayed the consent terms on which the petitioner is relying. This order was challenged by the petitioner before the Honourable Supreme Court in Petition for Special Leave to Appeal (C) No.21875/2014 which is disposed of by the order dated 25th August, 2014. The Honourable Supreme Court has not interfered with the order passed by the Division Bench of this Court.

7] Be that as it may, considering the facts of the present case, I find that there is no wilful disobedience of the order passed by the Family Court by the respondent. The respondent has

explained the circumstances in which the visitation rights in respect of the minor daughter could not be given to the petitioner. The respondent has also stated on oath that the petitioner is given access to the minor child for 236 hours more than for what he was entitled. It cannot be said that there is deliberate intention on the part of the respondent to flout the consent terms or any directions given by the Family Court. I am not convinced that the present case is a fit case in which powers under the provisions of Contempt of Courts Act are required to be invoked. The contempt petition is dismissed. In the circumstances, the parties to bear their own costs.

JUDGE

Ambulkar