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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CONT.CAS(C) 836/2015 & CM Appl. 25067/2015**

MOHIT MEHTA

..... Petitioner

Through: Dr. Harish Uppal with Mr. Tileshwar
Prasad, Advs.

versus

NAYANIKA THAKUR

..... Respondent

Through: Mr. Anil K. Aggarwal with
Md. Imteyaz, Adv.

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Date of Decision : 07th December, 2015

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. The present contempt petition has been filed alleging wilful disobedience of the order dated 05th June, 2015 passed by the Principal Judge, Family Courts, Patiala House, New Delhi whereby the respondent was restrained from removing the child from the jurisdiction of the Court without its prior permission.

2. The prayer clause in the present contempt petition is reproduced hereinbelow:-

“A) That the respondent bear the consequences for deliberately and wilfully disobeying and flouting the order dated 05/06/2015 (Annx.C) of Shri Arun Kumar, Arya, Presiding Officer, Family Courts, Patiala House, New Delhi as appears to becoming prevalent with this educated well employed estranged vindictive female, and she must be made to realise that law and orders cannot be made into a joke by her and she cannot overreach the

courts and law; she cannot be allowed to take advantage of her own wrong;

B)That the custody of child Manasvini of 7 years be directed to be given to the law abiding husband/petitioner and his parents;

C)That further necessary actions may be taken against the contemner for wilfully disobeying the order dated 05/06/2015 (Annx.C)as the hon'ble court may deem fit and proper in the facts and circumstances of the case.”

(emphasis supplied)

3. Learned counsel for the petitioner states that the respondent in flagrant disregard of the aforesaid order had taken the minor daughter to Kolkata without prior permission of the Court on 02nd October, 2015. In support of his contention, he relies upon paras 7, 12 and 13 of the order dated 05th June, 2015.

4. On the other hand, learned counsel for the respondent, who appears on advance notice, points out that the order dated 05th June, 2015 was to operate only till 30th June, 2015 and thereafter the order dated 07th March, 2015 was to remain in operation. He also states that during hearing held on 05th June, 2015, the petitioner had restricted his claim to the summer holidays. He points out that there was no restriction in the order dated 07th March, 2015 restraining the respondent from taking the minor child out of the jurisdiction of the Court.

5. Having heard learned counsel for the parties, this Court is of the view that it is first essential to reproduce the relevant portion of the order dated 05th June, 2015 relied upon by the parties:-

“ 7.Per contra, in its application under section 7 of the Family Courts Act the respondent has restricted his claim through para

(d) and (f) of the Prayer Clause in view of the summer holidays without prejudice to rights and contentions of both the parties which reads as under:-

“D. That at the least with the above visiting rights should also be added over night stay of the child Manasvini with her dada dadi and appa on Friday and Saturday and the child will be dropped back on Sunday evening after dinner, before 9.00 p.m. (only if the custody has not been given to the father or paternal grandparents.

F. That as prayed earlier specific directions may be passed that during vacations without the consent of the father the child will not be taken out of Delhi and whenever there are vacations of more than three days, the child will stay with the father/dada dadi for 50% of the vacation period (only if the custody has not been given to dada dadi/father). ”

12.It is settled legal proposition that while determining the question as to which parent the care and control of a child should be given, the paramount consideration remains the welfare and interest of the child and not the rights of the parents under the statute. For this purpose the court has met the child in the chamber for 20 minutes. She is happy in sleeping with the mother and wants to spend time with her father. She does not seem to be bothered by the present schedule. During the course of argument it was revealed by counsel for petitioner that the child was to be taken by the petitioner/mother to Hyderabad which was opposed by the counsel for respondent.

13.The child shall remain with the petitioner from 05.06.2015 to 18.06.2015. It is made clear that in future if the child is taken out then permission of the court is required to be taken.

14.In view of the facts and circumstances of the present case, respondent is allowed to meet the child on 20.06.2015, 21.06.2015, 23.06.2015, 25.06.2015, 27.06.2015, 28.06.2015 and 29.06.2015. The father may pick up the child at 10:00 a.m. from

the house of her mother and drop her back on the same day on or before 6:00 p.m. at the same place. It is expected that both the parents i.e. mother and father shall maintain dignity of being the parent and let the child develop. This order shall operate till 30.06.2015 and after 01.07.2015 the order dated 07.03.2015 of my Ld. Predecessor shall remain in operation and the schedule filed by the mother in pursuance thereto.”

(emphasis supplied)

6. In the present case, the Principal Judge, Family Courts, Patiala House while imposing the restriction in para 13 that in future the child should be taken out of the city only with prior permission of the Court, clarified in para 14 that the said order shall operate till 30th June, 2015 and after 01st July, 2015, the order dated 07th March, 2015 shall operate. No condition of prior permission of the Court for travelling was imposed vide order dated 07th March, 2015.

7. This Court is also of the view that a contempt of Court is an offence of a criminal character and a person can only be sent to prison if the offence is proved beyond reasonable doubt. Where there are two equally consistent possibilities open to the Court, it is not right to hold that the offence is proved beyond reasonable doubt. (See *All India Anna Dravida Munnetra Kazhagam v. L.K. Tripathi And Others* (2009) 5 SCC 417)

8. Certainly in the present case no one can say that interpretation drawn by the respondent of the order dated 5th June, 2015 is not plausible. In fact, the Supreme Court in *Sahdeo alias Sahdeo Singh vs. State of Uttar Pradesh & Ors.*, (2010) 3 SCC 705 after referring to the Constitution Bench judgment in *State of Bihar vs. Sonabati Kumar*, AIR 1961 SC 221 has held that the provisions of Contempt of Courts Act, 1971 deal with the wilful

defiance of the order passed by the court and order of punishment be not passed if the court is satisfied that the party was, in fact, under a misapprehension as to the scope of the order or there was an unintentional wrong for the reason that the order was ambiguous and reasonably capable of more than one interpretation or the party never intended to disobey the order but conducted himself in accordance with the interpretation of the order. In the opinion of this Court, the aforesaid ratio clearly applies to the facts of the present case.

9. In any event, the present contempt petition has not been filed for violation of the order dated 07th March, 2015.

10. Keeping in view the aforesaid, the present contempt petition and application are dismissed.

MANMOHAN, J

DECEMBER 07, 2015
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