

A.Nos.5248 and 5249 of 2016
in
O.P.No.204 of 2016

M.M.SUNDRESH, J.

Both these applications have been filed by the applicant/party-in-person, who is the husband of the respondent, seeking interim custody of the minor child aged about 2 years and four months and to take appropriate action against the learned counsel for the respondent. It appears that the applicant has dispensed with his counsel.

2.The applicant, who appears before this Court submits that there is a perjury and contempt committed by the respondent with the tacit support of her counsel. It is further submitted that a falsehood has been made as if the respondent is having licence to ride a two wheeler and therefore, there is a an apprehensive danger to the life of the child by taking her along with the respondent without the valid licence. The applicant made one more submission that the learned counsel for the respondent ought not to have communicated with him, which is contrary to the Bar Council Rules, governing the conduct of an Advocate.

3.This Court, already passed an order on 27.07.2016 permitting

the applicant to have the custody of the child from 10.00 a.m. to 7.00 p.m. on every Sunday. It appears that the said order is being complied with. There were exchange of communications between them. Pursuant to the communication sent by the applicant, the respondent has approached her counsel. The statement made by the respondent at paragraphs 6 to 8 of the counter affidavit are as under:

"6.I state that the averments in page 4 of the affidavit in respect of the alleged crime is misconceived. I state that the welfare of the child is paramount to me and I ensure that the same is maintained without trouble or harassing the applicant. I state that the further averment in respect of the applicant's exchange of text messages with his counsel is not known to me but it is a fact that the applicant's counsel sent a text message on 18.09.2016 but the same was at 12.18 p.m. and not at 11.31 a.m. as claimed by the applicant. I state that exchange of messages and mails took place in the following circumstances. As admitted by the applicant, he texted me asking for copy of my driving license and I refuse to provide him with same. I state that I informed my counsel

about the continuous messages from the applicant to me at which point of time my counsel also spoke to the counsel for the applicant.

7.I state that subsequent to their telephonic conversation, the counsel for the applicant sent the message as mentioned, to my counsel at 12.18 p.m. I state that since I wanted the same to be on record to highlight the attitude of applicant, I instructed my counsel to send an e-mail to the applicant's counsel which was duly done at around 12.24 p.m. on 18.09.2016. I state that as soon as email was sent, my counsel spoke to the applicant's counsel who informed him that she was outside and therefore could not access her e-mail, due to which she requested my counsel to forward the said e-mail to her client, the applicant herein. I state that it was in these circumstances that my counsel forwarded the said e-mail sent to the counsel for the applicant, a few minutes later both to the applicant and to me.

8.I state that the applicant sent a reply to his

counsel marking my counsel and me, explaining his stand and this e-mail was sent at around 4.53 p.m. on 18.09.2016. I state that subsequently at 5.52 p.m. the applicant sent another e-mail to his counsel and a copy to my counsel and me, followed by e-mails at 6.57 p.m. and 9.18 p.m. on 18.09.2016. I state that not stopping with the same, the applicant sent another e-mail dated 19.09.2016 to his counsel copying my counsel and me in which for the first time the propriety of addressing an e-mail directly to him was raised. I state that on receipt of this e-mail my counsel addressed an e-mail dated 19.09.2016 to the counsel for the applicant bringing to her notice that it was only on her specific request that the e-mail addressed and sent to her was forwarded to the applicant. I state that this e-mail was copied to the applicant and me for which the applicant sent a reply making various allegation. I state that it is in these circumstances that the averments starting from page 5 will have to be considered."

4. These facts are not in dispute, particularly, when not being

denied by the erstwhile counsel appearing for the applicant. They speak for themselves. The matter stands posted before the Mediation centre this afternoon. However, the applicant submits that these applications will have to be decided de hors the aforesaid proceeding as directed by this Court.

5.The original petition has been filed for custody. The child is at the tender age of 2 years and 4 months. On a query, the applicant himself has stated that the child is with the respondent for quite some time as the paramount importance is the interest of the child. It appears that these applications have been filed on mere apprehension. Therefore, this Court is of the view that there is no necessity to allow A.No.5248 of 2016 at this stage. Such an order would certainly be against the interest of the minor child.

6.Coming to the allegations made, this Court is of the view that they are not borne out by records. The applicant has made unwarranted allegation against the counsel. He wants to extend the fight to the counsel merely because he represents the respondent. The averments made in paragraphs 6 to 8 in the counter affidavit are quite sufficient. The erstwhile counsel appearing for the applicant is also present before the Court. She has stated that she is not appearing for

the applicant any longer. It is to be noted that she has also not controverted the averments made in the application.

7.The reputation of the respondent's counsel is also well known. The allegations made by the applicant against the respondent including the one touching upon the two wheeler with the specific reference to the licence is not supported by any evidence. The conduct of the counsel who has been a regular practitioner before this Court is well known with respect to his fair submissions. This Court does not find any semblance of misconduct. The emails have been sent on the instruction from the counsel and as per the advice of the counsel for the applicant. Perhaps that is the reason why he has chosen to change the counsel. Accordingly, both the applications are dismissed.

26.10.2016

mmi

M.M.SUNDRESH, J.

mmi

A.Nos.5248 and 5249 of 2016
in
O.P.No.204 of 2016

26.10.2016