

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
CONTEMPT PETITION ST. NO. 34034 OF 2016  
IN  
WRIT PETITION NO.7268 OF 2016**

**Rajesh Khanduji Jadhav**

**..Petitioner**

**Vs.**

**Smita Pendharkar Nee Jadhav**

**..Respondent**

**Ms Sulbha Dhamale for the Petitioner**

**Mr. Ajit Karwande for the Respondent**

**CORAM : R. M. SAVANT, J.**

**DATE : 8<sup>th</sup> FEBRUARY, 2017**

**P.C.**

1           The contempt alleged is of the order dated 15-10-2016 passed by a Learned Single Judge of this Court (K.K.Tated, J.). By the said order, the Respondent herein was directed to give overnight custody of the child Aryan in the Diwali Vacation from 22-10-2016 to 29-10-2016. The contempt alleged is that inspite of the said directions, the custody of the child was with the Petitioner only till 23-10-2016.

2           An affidavit in reply has been filed on behalf of the Respondent wherein it has been stated that on 21-10-2016 in the evening, after the open house in the school had got over, the child was left by the Respondent at the residence of the Petitioner. The child stayed overnight with the Petitioner on 21-10-2016 and thereafter also on 22-10-2016. It is the case of the

Respondent that child was frantically trying to call her up and after one such call, the Respondent and her present husband went to the residence of the Petitioner. After the Respondent reached the residence of the Petitioner, that the child came down with his baggage and sat in the car and refused to go to the Petitioner and reside with him. It is further the case of the Respondent that she tried to make the child understand that he would have to reside with the Petitioner, however the child refused to do so.

3           On behalf of the Petitioner, a letter has been addressed to the Advocate for the Respondent on 25-10-2016 wherein the fact that the custody was granted to the Petitioner have been stated as also the fact that the custody was with the Petitioner up to 23-10-2016. Hence the case of the Respondent that the custody was with the Petitioner up to 23-10-2016 has been accepted by the Petitioner. That the custody of the Respondent could not continue up to 29-10-2016 is unfortunate, it is not possible for this Court in the contempt jurisdiction to go into the veracity of the rival claims. Since the Diwali Vacation is already over and the custody was for the Diwali Vacation and having regard to the facts which have been placed on record, in my view, no case for exercising the contempt jurisdiction of this Court is made out, the Contempt Petition is accordingly dismissed.

4           However, the dismissal of the Contempt Petition should not be

construed as any licence to the Respondent to deny the access to the Petitioner in the vacations in future, and if such access the Petitioner is entitled to under the Consent Terms or in the event the Consent Terms are modified.

**[R.M.SAVANT, J]**