

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

**CONTEMPT PETITION NO.197 OF 2016
IN
WRIT PETITION NO.3026 OF 2012**

Arush Adarsh Kishore	...Petitioner
Versus	
Mrs. Meghna Arush Kishore	...Respondent

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Mr. Mahesh Jethmalani, Senior Advocate i/b. Edith Dey for the Petitioner.

Mr. Shirish Gupte, Senior Advocate with Ms Mrunalini Deshmukh, Ms Devika Deshmukh and Mr. Anshuman Sugla i/b. M/s. Sanjay Udeshi and Co. for the Respondent.

**CORAM : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.**

DATED: 12th APRIL, 2017.

P.C.:-

The Petitioner-father and the Respondent -mother herein are parents of the minor child. The Petitioner-father had filed a habeas corpus being aforesaid writ petition No.3026 of 2012, which was disposed of in view of the consent terms dated 11th September, 2012. The breach of the said terms led to filing of this contempt petition. During the pendency of this contempt petition, both parties have arrived at an amicable settlement and have filed the consent terms, which read as under:-

“CONSENT TERMS

By Consent of the Petitioner and the Respondent abovenamed, the parties have arrived at the following terms of settlement in respect of all their disputes as under:

1. At all times, both the Petitioner and Respondent are Hindus and hence governed by the provisions of the Hindu Marriage Act, 1955 and are domiciled in the state of Maharashtra. The marriage between the parties was solemnised on 9th December, 2001 at Jaipur as per the Hindu Vedic rites and customs and has been registered with the Registrar of Marriages.

2. There is one daughter born from the wedlock, Tvisha Kishore born on 9th August, 2007 who is presently 9 years of age.

DIVORCE BY MUTUAL CONSENT

3. The Petitioner and Respondent have both agreed to dissolve their marriage solemnized on 9th December, 2001 by mutual consent as contemplated under Section 13 B of the Hindu Marriage Act, 1955.

JOINT LEGAL CUSTODY

4. The Petitioner and Respondent agree, declare, confirm and undertake that the legal custody and the legal guardianship of the minor daughter Tvisha shall remain jointly with the Petitioner (father) and the Respondent (mother) till she attains majority.

PARENTING TIME

5. The parties agree, declare and undertake that the parenting time of the minor child Tvisha will be shared by

the Petitioner (father) and the Respondent (mother) in the following manner;

a) During school days, on Monday after school hours till Friday of every week, the minor child Tvisha shall be in the care of the Respondent (mother). On Friday evenings, the Petitioner (father) shall fetch the minor child Tvisha from school and Tvisha will be in his care and physical custody till the following Monday morning till the Petitioner (father) drops her to school.

b) In the event of Monday being a school holiday, the child will be in the care of the Petitioner (father) till Monday evening until he drops the minor child Tvisha to the Respondent's (mother) resident at 06.00 p.m. In the event of Friday being a school holiday, the Petitioner (father) shall pick up the child from the Respondent's (mother) resident at 10.00 a.m. on Friday. However, in the event that the Respondent (mother) is not working on that Friday, she will drop the child herself to the Petitioner's (father) residence on Friday by 10.00 a.m. It is agreed between the parties that in the event the child has to attend a Kathak exam or an extra class to make up for a missed Kathak class or birthday parties during the parenting time of the Petitioner (father), he shall allow the minor child Tvisha to attend the same and will drop her and fetch her from such Kathak exam, or an extra class to make up for a missed Kathak class or birthday parties. The Respondent mother shall allow the minor child Tvisha to attend birthday parties which may fall on

public holidays during her parenting time and shall drop and fetch the minor child Tvisha from such birthday party.

c) The birthday of the minor child, Tvisha shall be celebrated jointly by the Petitioner (father) and the Respondent (mother) along with the minor child, Tvisha.

VACATION ACCESS

6. The parties hereby agree that :-

- a) All public holidays/ school holidays that are in the middle of the school week and not being on the aforesaid long weekend or vacation time, the minor child, Tvisha shall spend with the Respondent (mother).
- b) All vacations of the minor child like summer, midterm break, winter break, and Diwali shall be shared in the ratio of 60-40 wherein the Petitioner (father) shall be entitled to 60 percent of the vacation period and the Respondent (mother) shall be entitled to 40 percent of the vacation period. It is agreed between the parties that only for the present school summer break from April 13 to June 8, 2017, the Respondent (mother) will get only a total of 15 days of vacation access to the minor child, Tvisha. It has been agreed between the parties that only for the school summer break of 2017, the minor child, Tvisha will be with the Respondent (mother) from April 13 to April 20, 2017 and the Petitioner (father) may fetch Tvisha from the Respondent's (mother) residence on April

21, 2017 at 10:0 a.m. Further, the Respondent (mother) will also get vacation access to the minor child, Tvisha from June 1 to June 7, 2017 and the Petitioner (father) may fetch Tvisha from her school, after school hours on June 9, 2017 i.e. Friday. It is agreed between the parties that for the rest of the summer break of 2017, the minor child Tvisha will be with the Petitioner (father).

- c) The Petitioner and Respondent shall be entitled to take the minor child Tvisha on a holiday in India or abroad during their respective vacation access time with Tvisha. It is agreed between the parties that in the event one of the parent intends to travel overseas with Tvisha, he/she will inform the other parent will in advance before travelling abroad with the minor child. Either party shall handover the passport of the child for the purposes of overseas travel and provide necessary consent/documentation required for obtaining travel documents / visa of the minor child.

7. The passport of the minor child Tvisha shall at all times remain with the Respondent save and except when Tvisha is travelling overseas with the Petitioner father during his vacation access and for the visa formalities prior to such travel. The Respondent and the Petitioner agree and undertake to co-operate with each other in the renewal of Tvisha's passport as and when required.

8. The parties agree and undertake that neither party shall relocate out of India for the purposes of their jobs during the minority of Tvisha unless they obtain the written consent of the other or orders of the Hon'ble Court.

9. The parties agree that they shall go to an independent counsellor as appointed by the Hon'ble Court namely Dr. Jalpa P. Bhuta themselves as also along with the minor child Tvisha as per the counsellors requirement. The counsellor's professional fees and other related expenses shall be borne equally by the Petitioner father and Respondent mother.

10. The parties shall endeavour to spend time together, atleast once a month along with Tvisha, as a family for the sake of providing Tvisha the comfort and love of both parents together.

EXPENSES OF TVISHA

11. The parties hereby agree that :-

a) The minor child Tvisha has completed her 4th grade at Bombay Scottish School, Mahim. All educational expenses and fees of the minor child Tvisha including but not limited to school, college, university, graduate and post graduate/higher studies including overseas education shall be borne by the Petitioner father solely till the time she completes her education and is self-independent. It is further agreed between the parties that the expenses pertaining to the co-curricular and extra curricular activities undertaken by Tvisha, as mutually agreed by the

parties shall be exclusively borne by the Petitioner father. The said fees shall be directly paid to such institution/person by the Petitioner father. The Petitioner father shall also pay the school bus fees of Tvisha directly to the school authorities to forward the same to the bus company.

b) The Petitioner father agrees to also bear the fees of the private tuitions and classes taken by Tvisha and shall make the payment directly to the teacher /coaching institution by making such monthly payments without any delay.

c) The Petitioner father and Respondent mother undertake to bear the medical expenses of the minor child Tvisha when she is in their respective care and custody. However, the Petitioner father agrees that in the event of any unforeseen medical exigency, such medical expenses shall be borne by the Petitioner father solely.

ALIMONY /MAINTENANCE

12. The Petitioner and Respondent agree that they shall have no claims of permanent alimony or maintenance or residence against each other for past, present or future as they are self-sufficient. Moreover, they undertake to this Hon'ble Court that they will have no claims of any nature, whatsoever against each other and their family members for past, present or future, even under changed circumstances.

13. The Petitioner and Respondent agree and undertake to not seek division in each other's property including

ancestral property (property includes assets, movable and immovable and debts and other financial liabilities). Neither party shall seek any right over each other's ancestral, hereditary or self-acquired property or assets past, present and /or future.

JAIPUR HOUSE

14. The Petitioner agrees and undertakes to relinquish his right, title and interest in the house at Jaipur being 3 BHK Flat at E-605 Greenwood Ashiana, Jagatpura, Jaipur 302017 (hereinafter referred to as “the said Jaipur House”) which is in joint names of the Petitioner and Respondent. In that regard, the Petitioner agrees and undertakes to sign all such deeds, writings and documents as may be necessary to transfer his 50% claim in the said Jaipur House in favour of the Respondent.

15. The Respondent agrees that she has her Streedhan and personal belongings in her custody and she has no claims regarding the same against the Petitioner or his family members.

16. The parties agree to withdraw all allegations against one another.

17. The Petitioner and Respondent agree and undertake that they will not interfere in each other's lives or cause any nuisance.

18. The Petitioner and Respondent agree and undertake that they will not file any proceedings either civil or criminal regarding the subject matter of their matrimonial disputes.

19. The parties agree and declare that save and except what is mentioned hereinabove, the parties shall have no claims of any nature whatsoever against each other.

20. The parties agree that they are not taking advantage of their own wrongs and that there is no collusion between them. The parties further agree that there is no force, fraud, coercion or undue influence acting upon the parties in entering into this compromise.

21. The parties agree and undertake that the present terms shall supercede and prevail over the Consent terms dated 11.09.2012 filed by the parties in Criminal Writ Petition No.3026 of 2012 and taken on record vide order dated 11.09.2012 of this Hon'ble Court.

22. The parties further agree that in view of the aforesaid agreement arrived upon; the Writ Petition No.3026 of 2012, Contempt Petition No.197 of 2015 and all applications therein being Civil Application No.65 of 2016 and Criminal Application No.490 of 2016 may accordingly be disposed of in the above terms.

23. The parties agree that within a period of 2 weeks from the date of signing of these Consent Terms, the parties shall make a joint application before the Hon'ble Family Court at Bandra, Mumbai to convert MJ Petition A/494/2013 and MJ Petition D/99/2012 under section 13 B of the Hindu Marriage Act, 1955. It is hereby agreed that neither party shall withdraw their consent and accordingly the aforesaid Petitions will stand disposed off in terms of the present consent terms.

24. The parties agree that the present Consent Terms is as and by way of full and final settlement between the parties.

25. The parties agree, undertake and declare that they shall at all times ensure that they adhere to and abide by these terms and any violation or abrogation without due permission of the Court shall be treated as breach of undertaking.”

2. The Petitioner as well as the Respondent are present personally alongwith their respective counsels. The consent terms are signed by both the parties and their respective counsels. The Petitioner as well as the Respondent have submitted that they have agreed to settle the dispute as per the aforesaid terms, which are drawn as per their instructions and with their consent. Both the parties have further submitted that they have read the consent terms and that said terms are agreeable to them. They have made a statement that they will abide with the terms in letter and spirit.

3. We are satisfied that the consent terms are signed by the parties voluntarily, out of their own free will and consent. The consent terms are taken on record and marked 'x' for identification. The

statements made in the consent terms by the respective parties are accepted as undertaking to the Court. The Petition is accordingly disposed of in terms of the consent terms. Ordered accordingly.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)