

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2017

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA
C.M.A.No.1092 of 2015 and M.P.No.1 of 2015
& Contempt Petition No.20 of 2017

J.Meena ... Appellant in C.M.A., & /
Petitioner in Cont. Petition/
Respondent
...vs..
T.Manikandan ... Respondent in C.M.A.,
& Cont. Petition/Petitioner

Civil Miscellaneous Appeal filed under Order 43 Rule 1 of the CPC to set-aside the fair and decreetal order, dated 28.04.2015, made in I.A.No.2826 of 2014 in O.P.No.4650 of 2014 on the file of the Principal Family Court at Chennai.

Contempt Petition filed under Section 11 of the Contempt of the Courts Act, against the order dated 01.07.2015 made in CMA No.1092 of 2015.

For Appellant in C.M.A. &
For Petitioner in Cont.Petition : Mr. K.P.Gopalakrishnan
For Respondent in both
CMA & Cont. Petition : Mr.K.J.Parthasarathy

C O M M O N J U D G M E N T

Children are not mere chattels nor are they toys for their parents. Absolute right of parents over the destinies and the lives of their children, in the modern changed social conditions must yield to the considerations of their welfare as human beings so that they may grow up in a normal balanced manner to be useful members of the society and the guardian court in case of a dispute between the mother and the father, is expected to strike a just and proper balance between the requirements of welfare of the minor children and the rights of their respective parents over them - (2009) 1 SCC 42 (Gaurav Nagpal Vs. Sumedha Nagpal).

1.1. Despite the guidance / observation by the Apex Court, still the parents never stop playing with the life of children and this is one such case, where the custody and guardianship issue has cropped up for consideration.

2. The petition in O.P.No.4650 of 2014 has been filed by the husband (respondent herein) under Section 7 of the Guardians and

Wards Act, declaring / appointing the petitioner as the Natural Legal Guardian and grant permanent custody of the minor male child, Harshit.

2.1. The petitioner / husband has also filed I.A.No.2826 of 2014, seeking interim injunction restraining his wife (appellant herein) and others from interfering with the custody of the petitioner's son, Harshit.

2.2. The wife has filed I.A.No.2981 of 2014 in I.A.No.2826 of 2014 under Order 39 Rule 4 CPC, praying to vacate the orders of interim injunction, dated 08.12.2014, granted in I.A.No.2826 of 2014.

Brief facts:-

3. The marriage between the petitioner / husband and the respondent / wife took place on 04.02.2010 and they were living along with the husband's parents. The wife used to go for work at 09.30 am and return by 05.30 pm. Out of the wedlock, a child was born to the appellant / wife and the respondent, on 06.01.2011. A separate matrimonial house was set up by the appellant and the respondent, by March 2013. During June 2013, the child was admitted in a play school and the child was taken by the in-laws in the afternoon from school. The appellant, after returning from the office, used to take the child to their separate residence.

3.1. The respondent is employed at SINTEL, Solinganallur, Chennai, who leaves home at 10.00 am in the morning and used to return home by 11.00 pm, and at times, he doesn't come home in the night.

3.2. During May 2013, the respondent left the matrimonial home and the child and he never joined the appellant and the child. Hence, the respondent shifted the residence to ECR at Thiruvannamiyur. During June 2014, the child was admitted to Sankara School and the appellant arranged a bus to take the child in the morning from her house to the school and in the evening, the child was to be dropped at the in-laws house at about 01.00 pm. The appellant, on her return from the office, used to pick up the child from the in-laws house around 05.30 pm.

3.3. From September 2014, there was some mediation and according to the mediation, the child should be with the appellant for four days, including Sundays and with the respondent for three days, viz., Thursdays to Saturdays.

3.4. While the circumstances stood thus, the respondent filed O.P.No.4230 of 2014 for dissolution of marriage on the ground of cruelty before the Family Court.

3.5. The custody arrangement continued till November 2014. During conciliation, the respondent agreed for withdrawal of the Divorce O.P., but did not do so, therefore, the custody arrangement of 4 days and 3 days, respectively, with the respondent and the appellant, (in a week) discontinued. The child was exclusively with the mother for the period from November 2014 till 06.12.2014.

3.6. On 03.12.2014, the respondent forcibly took the child from the house of the appellant, which was prevented and a complaint was lodged by the appellant to the Police. The police enquired and warned the respondent.

3.7. There was a second incident on 06.12.2014 - when the appellant was with the child in the Bank, in Besant Nagar, Chennai, the respondent forcibly took away the child and the appellant filed the complaint before the Police Station. When the enquiry was pending, the respondent filed GWOP No.4650 of 2014, on 07.12.2014, and obtained an ex parte injunction, restraining the appellant from interfering with the custody. Immediately, the appellant filed a petition to vacate the injunction and the Court below had reserved orders on the petition and allowed the appellant to visit the child daily whenever she wants and she had been visiting the child and had been with the child for 1 or 2 hours.

3.8. On 28.04.2015, the Court below dismissed the Petition filed by the appellant to Vacate the Interim Injunction, thereby confirming the interim custody to the respondent. As against the said dismissal order, this Civil Miscellaneous Appeal has been filed by the appellant.

4. When this matter was taken up by this Court, on 01.07.2015, this Court has directed the custody of the child to be with the respondent (father) from Wednesdays to Saturdays and with the appellant (wife) from Sundays to Tuesdays. This Court requested Dr.Jayanthini, Psychiatrist, Institute of Child Health and Hospital for Children, to examine the parties and give appropriate counselling and treatment and also to send a report by 29.07.2015.

5. The Doctor has recorded the history as spoken by the wife as well as the husband and the child. In the report, the Doctor has mentioned that the wife resigned her job, when she was seven months pregnant and rejoined when the boy was eight months old; there was also complaint of beating by the husband; she did not have parents and when the mother kisses the child, the husband has asked the child to wash his face, indicating that he did not want her in his life.

5.1. The wife was referred to a clinical psychologist. The child was referred to Mr. Sangeetha Madhu, Pediatric Clinical Psychologist. The report reveals that the child is happy with both the parents, on a turnkey basis and the child has expressed his desire for the parents to live together and wants both of them.

6. This Court heard the appellant, respondent and the child, individually and separately also.

6.1. The contention of the wife was that the child is in need of both the parents and in the interest of the child, she is willing to live with the husband, even if not as husband and wife, but as friends also. In other words, the contention is that, she is prepared to continue the relationship as the mother, even if her status as the wife of the respondent is declined.

6.2. The contention of the husband is that the wife was in the habit of accusing the husband, alleging illegal relationship with the mother and that is intolerable for him and therefore, he is not willing to live with the wife.

6.3. It is not known whether the allegations levelled by the husband is true or not. It is the matter for enquiry / trial. Even assuming it to be true, it may be a ground for the husband to seek divorce and may not be a ground to decline custody of the child to his wife.

7. The main question for consideration is, whether there are justifiable grounds to decline custody to the wife.

7.1. A perusal of the records would go to show that when the wife preferred the complaint alleging forcible seizure of the child, by her husband, the father-in-law of the appellant had given a statement that he did not know about the whereabouts of his son and grandson and if they visit the house of him, he will co-operate for the enquiry.

7.2. The Court below has relied upon the following decisions. Out of the following four decisions, decisions 1 and 3 are relied upon by the learned counsel for the respondent before this Court also:-

1. 2008 (4) CTC 425 (Nil Ratan Kundu and another v. Abhijit Kundu) :-

"56. A Court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and well-being of the child. In selecting a guardian,

the Court is exercising parens patriae jurisdiction and is expected, nay bound, to give due weight to a child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings....."

In the very same decision, how to construe the expression 'welfare' in Section 13 of the 1956 Act, liberally has been indicated.

"It is well settled that the word 'welfare' used in this section must be taken in its widest sense. The moral and ethical welfare of the child must also weigh with the Court as well as its physical well being".

Reference has been made to decision of this Court, reported in M.K. Hari Govindan v. A.R. Rajaram, AIR 2003 Mad 315, where-under it has been held that custody cases cannot be decided on documents, oral evidence or precedents without reference to 'human touch'. The human touch is the primary one for the welfare of the minor since the other materials may be created either by the parties themselves or on the advice of counsel to suit their convenience."

2. 2010 (1) CTC 713 (Athar Hussain v. Syed Siraj Ahmed and others):-

"Statutory provisions dealing with the custody of the child under any personal law cannot and must not supersede the paramount consideration as to what is conducive to the welfare of the minor. In fact, no statute on the subject, can ignore, eschew or obliterate the vital factor of the welfare of the minor."

3. 2011 (2) CTC 372 (Sarah Vijayalakshmi and two others v. Dr. J.D.Devadatta):-

"The next question which arises for consideration is as to whether such an order of injunction could be granted against the biological mother of the child even before the validity of the adoption deed has not been decided by this Court in the main petition. When such a question was posed, the learned Senior Counsel appearing for the respondent would submit that the order impugned in this appeal may be construed to be an order of protection of the minor child passed under Section 12 of the Act and not an order of injunction in its strict legal sense. Of course,

we find force in the said argument. It is needless to point out that while passing an interim order under [Section 12](#) of the Act, the paramount consideration of the Court will be only the welfare of the minor child. In this regard, the learned Senior Counsel has relied on a judgment of the Honble Supreme Court in [Nil Ratan Kundu v. Abhijit Kundu](#) (2008(9) SCC 413) wherein, the Honble Supreme Court, after having elaborately dealt with the law on the subject and after having made a thorough survey of several other judgments of the Honble Supreme Court, in paragraph No.52, has held as follows:-

52.....A court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and well-being of the child.

4. 2010 (6) CTC 426 (R.Chandrasekaran v. C.Umamaheswari):-
"8. ... In a recent decision reported in (2009) 1 SCC 42 (Gaurav Nagpal Vs. Sumedha Nagpal), reiterating the earlier decisions, the Supreme Court held as follows:

"40. ... Children are not mere chattels nor are they toys for their parents. Absolute right of parents over the destinies and the lives of their children, in the modern changed social conditions must yield to the considerations of their welfare as human beings so that they may grow up in a normal balanced manner to be useful members of the society and the guardian court in case of a dispute between the mother and the father, is expected to strike a just and proper balance between the requirements of welfare of the minor children and the rights of their respective parents over them."

Thus when the Court is confronted with conflicting demands from the parents, the Court does not give emphasis on what the parties say but it has to exercise its jurisdiction to protect and promote the welfare of the minor. The Apex Court pointed out that though the provisions of special statutes which govern the rights of the parents or guardians may be taken into consideration, there is nothing which can stand in the way of the Court exercising its parens patriae jurisdiction arising in such cases."

7.3. It is settled law that the welfare of the child should be the paramount consideration and that should be the supreme law than the statutory law, in considering the issue regarding custody and guardianship.

8. The learned counsel for the appellant has relied upon the following decisions:-

(i) 2015 Law Suit (SC) 138 (Roxann Sharma v. Arun Sharma):-

"12 The HMG Act postulates that the custody of an infant or a tender aged child should be given to his/her mother unless the father discloses cogent reasons that are indicative of and presage the livelihood of the welfare and interest of the child being undermined or jeopardised if the custody retained by the mother. Section 6(a) of HMG Act, therefore, preserves the right of the father to be the guardian of the property of the minor child but not the guardian of his person whilst the child is less than five years old. It carves out the exception of interim custody, in contradistinction of guardianship, and then specifies that custody should be given to the mother so long as the child is below five years in age. We must immediately clarify that this Section or for that matter any other provision including those contained in the G&W Act, does not disqualify the mother to custody of the child even after the latter's crossing the age of five years."

(ii) 2011 (2) CTC 736 (S.Anand @ Akash v. Vanitha Vijayakumar):-

"In an Article published in "The Matrimonial Strategist" (October 2003) titled "Children as Pawns:Who Determines Custody?", by Lawrence Jay Braunstein, the author states as follows:-

"The division of assets in a divorce is a process rife with potential conflict, which varies according to the value of the assets and relative worth of the parties. More painful and much more difficult, however, is the determination of custody. Children are not assets to be divided. Their lives, already affected by the divorce, will be further impacted by the custody situation. Attorneys and Courts struggle with ways to determine which parent would be the better primary caretaker. If only there were a test ... Because there is not such a determining factor, the legal system has come up with many tests and people to evaluate them. Rather than simplify the decision, this process may have further complicated it. In addition to the questions of objectivity raised about the tests themselves, there are the questions

raised about the individuals who evaluate them."

It is true of every child custody case and the case on hand is no exception."

(iii) CDJ 2015 SC 531 (ABC v. The State (NCT of Delhi)):-

"... The biological mother of a child, whether married or unmarried, has full parental responsibilities and rights in respect of the child...."

8.1. It would be relevant to refer to Section 6 of the Hindu Minority and Guardianship Act, 1956, which reads thus:-

"Section 6 - Natural guardians of a Hindu minor:

The natural guardians of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are-

(a) in the case of a boy or an unmarried girl-the father, and after him, the mother; provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;

(b) in the case of an illegitimate boy or an illegitimate unmarried girl-the mother, and after her, the father;

(c) in the case of a married girl-the husband:

Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section-

(a) if he has ceased to be a Hindu, or

(b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi).

Explanation.-In this section the expressions "father" and "mother" do not include a step-father and a step-mother."

8.2. In the case of Smt. Surinder Kaur Sandhu Vs. Harbax Singh Sandhu and Anr., reported in MANU/SC/0184/1984 : (1984) 3

SCC 698, after referring to Section 6 of the Hindu Minority and Guardianship Act, 1956, it has been held as follows:-

"The minor child is about 8 years of age and loving care of mother ought not to be denied to him. Father made of coarse stuff. Mother earns income which is certainly not large by English standards, but is not so low as not to enable her to take reasonable care of boy. Section 6 of Act constitutes father as natural guardian of minor son. But said provision cannot supersede paramount consideration as to what is conducive to welfare of minor."

8.3. In the case of Ms. Githa Hariharan & Anr. Vs. Reserve Bank of India & Anr., reported in AIR 1999, 2 SCC 228, it has been held as follows:-

"Whenever a dispute concerning the guardianship of a minor, between the father and mother of the minor is raised in a Court of law, the word 'after' in the Section would have no significance., as the Court is primarily concerned with the best interests of the minor and his welfare in the widest sense while determining the question as regards custody and guardianship of the minor. The question, however, assumes importance only when the mother acts as guardian of the minor during the life time of the father, without the matter going to Court, and the validity of such an action is challenged on the ground that she is not the legal guardian of the minor in view of Section 6(a) (supra). In the present case, the Reserve Bank of India has questioned the authority of the mother, even when she had acted with the concurrence of the father, because in its opinion she could function as a guardian only affect he life time of the father and not during his life time.

9. Is that the correct way of understanding the section and does the word 'after' in the Section mean only 'after the life time'? If this question is answered in the affirmative, the section has to be struck down as unconstitutional as it undoubtedly violates gender-equality, one of the basic principles of our Constitution. The HMG Act came into force in 1956, i.e., six years after the Constitution. Did the Parliament intend to transgress the constitutional limits or ignore the fundamental rights guaranteed by the Constitution which essentially prohibits discrimination on grounds of sex? In our opinion - No. It is well settled that if on one construction a given statute will become unconstitutional, whereas on another construction, which may be open, the statute remains within the constitutional limits, the Court will prefer the latter on the ground that the

Legislature is presumed to have acted in accordance with the Constitution and courts generally lean in favour of the constitutionality of the statutory provisions.

10. We are of the view that the Section 6(a) (supra) is capable of such construction as would retain it within the Constitutional limits. The word 'after' need not necessarily mean 'after the life time'. In the context in which it appears in Section 6 (a) (supra), it means 'in the absence of, the word 'absence' therein referring to the father's absence from the care of the minor's property or person for any reason whatever. If the father is wholly indifferent to the matters of the minor even if he is living with the mother or if by virtue of mutual understanding between the father and the mother, the latter is put exclusively in charge of the minor, or if the father is physically unable to take care of the minor either because of his staying away from the place where the mother and the minor are living or because of his physical or mental incapacity, in all such like situations, the father can be considered to be absent and the mother being a recognized natural guardian, can act validly on behalf of the minor as the guardian. Such an interpretation will be the natural outcome of harmonious construction of Section 4 and Section 6 of HMG Act, without causing any violence to the language of Section 6(a) (supra)."

8.4. In the case of Nirali Mehta Vs. Surendrakumar Surana & Anr., in WRIT PETITION NO.345 OF 2013, dated 14.02.2013, the High Court of Bombay, has held as follows:-

"Section 13 of the Hindu Minority and Guardianship Act, runs as follows:

13. Welfare of minor to be paramount consideration.-

(1) In the appointment or declaration of any person as guardian of a Hindu minor by a court, the welfare of the minor shall be the paramount consideration.

(2) No person shall be entitled to the guardianship by virtue of the provisions of this Act or of any law relating to guardianship in marriage among Hindus, if the court is of opinion that his or her guardianship will not be for the welfare of the minor.

.... It is interesting in this context to appreciate how the concept of "welfare of the child" which corresponds with the "Responsibility of the guardian" is considered in other jurisdictions. The pre-requisite and qualifications for applying for any custody or access to a child, even by a parent, in the UK is upon the premise of "Responsibility" and not "Right". Hence such an applicant must show and offer parental responsibility if he desires to have any contact with the child. Parental Responsibility" is explained in Section 3 of the Children Act, 1989 in the UK thus:

3. Meaning of "parental responsibility".

(1) In this Act "parental responsibility" means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property.

(2) It also includes the rights, powers and duties which a guardian of the child's estate (appointed, before the commencement of section 5, to act generally) would have had in relation to the child and his property.

(3) The rights referred to in subsection (2) include, in particular, the right of the guardian to receive or recover in his own name, for the benefit of the child, property of whatever description and wherever situated which the child is entitled to receive or recover.

(4) The fact that a person has, or does not have, parental responsibility for a child shall not affect-

(a) any obligation which he may have in relation to the child (such as a statutory duty to maintain the child); or

(b) any rights which, in the event of the child's death, he (or any other person) may have in relation to the child's property.

(5) A person who-

(a) does not have parental responsibility for a particular child; but

(b) has care of the child, may (subject to the provisions of this Act) do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promotion the child's welfare.

18. It is imperative to note that none is granted legal "rights" over the person of any child under any law. The law in India (Section 6 of HMG Act) cited above has only conferred guardianship of a child. This conferment is upon the parents of the child. Similarly, the law in the UK has not granted any "rights" over any child. The expression "parental responsibility" under Section 3(1) of the Children's Act, 1989 cited above, embraces within itself any right alongside the duties, powers and responsibilities that the position of such person entails. Hence a person who, as the father of the child in this case, shirks his duties and responsibilities would have no corresponding rights over the child. In his sagacity and discretion the father has accepted such position upon his own choice not to carry out his duties towards his child, the prime duty of which is to maintain the child. He has shown no parental responsibility.

19. For any person other than the parents of the child, the guardianship would be considered only in their absence. There "rights" are similar for such guardians under Section 3(2) of the Children's Act cited above. These rights cannot be exercised, availed of, demanded or granted without the corresponding duties, responsibilities and obligations. Such other person indeed has no duties, responsibilities and obligations per se in respect of the person or property of the minor child. Such would be the duties only of his own guardian-the father, and in his absence, the mother. Such person also, under Section 3(5) of the Children's Act, 1989 cited above, would have the responsibility do acts only for safeguarding and promoting welfare of the child in the UK as under Section 13 of the HMG Act in India.

20. The appointment of a person as the guardian of the child in the foundation of such right. The ground for such appointment is only when the child is bereft of a natural guardian (as specified in Section 6 of the HMG Act). Amongst the persons who may be the guardians of the child-the father, and in his absence, the mother-only may have not the parental responsibility but only the care of the child. None else would have such a seminal right when the

guardian of the child is already available for the child and has accepted parental responsibility. In the absence of such appointment, therefore, the custody of the child and further the access to the child cannot be demanded or granted.

21. The grandparents of the child have filed an application in the Family Court, Mumbai simplicitor demanding custody/access/visitation rights. Such an application is, therefore, wholly, alegal. Their case does not emanate from a legal right. No legal right can be established as the guardian of the child-fit and proper-is available for the child. The basic legal right being totally absent, ancillary rights, which would flow only from the main right as a corollary, cannot be availed on the established proposition of law-that no interim relief can be granted when the final relief cannot be granted to an individual. The initial application, therefore, itself deserves to be dismissed as not made under the provisions of any law applicable to the applicants.

22. This must be appreciated also from a different angle. A husband, who neglects, dodges and evades his own parental duties and responsibilities may easily give up custodial rights to his child so as be free from the obligations of parenthood as has been done demonstrably irresponsibly by the father of the child in this case. Such a father may, from the back-door, gain entry and access to the child through his parents agitating on his behalf in another garb. This also cannot be allowed to happen upon the sublime equitable principle that none can do indirectly what he cannot do directly. The Courts must see thorough the game. The Courts cannot allow a child to be "used" for the mental satisfaction of another. That would go totally against the mandate of "safeguarding and promoting the welfare of the child".

23. Seen from all standpoints, the order of the family Court is alegal. It is not based upon the provisions of law. It considers the child as a chattel. It requires the mother to give the access to the child on certain holidays etc. Such order cannot at all be sustained under any law. At best the grandparents may work out their differences with the mother of the child for what they can do with the child which, in the interest of the minor child, the mother may consider so that the child may not be deprived of the best which the contact with the grandparents would offer. However, that is not a legally enforceable right obtainable in a Court of

Law based upon the laws governing the grandparents of the child.”

9. The child cannot be deprived of the love, affection, attention, guidance, support and the physical touch (human touch / humane touch) of the mother, for no fault of the child. The moral values to be inculcated cannot also be deprived. According to the mother, who claims to be an orphan, but for the child, the child is the world. No disqualification has been alleged on the part of the mother by the father to have the custody of the child. The father did not disclose cogent reasons that are indicative that the livelihood, welfare and interest of the child would be undermined or jeopardized, if the custody is retained by the mother. Contrary to that, if the child is taught by the father to wash of the face, when the child is kissed by the mother, then the child is likely to learn to wash of the feeling of the affection and touch and it would not be in the interest of the child. The mother is also educationally qualified and economically competent to extend physical, psychological, moral and emotional support to the child. The child at the younger age stands on a different footing so far as access to mother is concerned. It is not only the human touch but the physical touch of the mother matters much for the emotional and physical growth of the child. Considering the principles and the dictum laid down in the decisions relied upon by both sides, it is evident that there is no justification whatsoever to decline custody to the mother.

9.1. Therefore, the order of injunction granted by the Court below is not legal. The Court has not appreciated the decisions in proper perspective. Dehors the factual background, the decisions have no application. Hence, the order passed by the Court below is set-aside. The injunction petition is misconceived and it is dismissed.

10. The trial court is directed to give priority in the disposal of the OP and to dispose of the main OP within a period of three months from the date of receipt of a copy of this order. Till such time, the custody of the child shall be with the mother and the father can visit the child on Saturdays and Sundays as well as on Public Holidays, at the residence of the mother, till the disposal of the main OP. If this arrangement causes any problem between the parties, then the place of visit may be shifted to the Child Care Center attached to Family Court, Chennai. Needless to state that the trial court shall not be carried away by the observations made by this Court, as this order has been passed in the absence of evidence having been recorded on oath.

10.1. In the result, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected MP is closed.

11. The Contempt Petition is filed regarding the violation of the order passed by this Court, dated 01.07.2015, i.e., before referring the parties for counselling and treatment. The allegation in the contempt petition is that, the order, i.e., the child would be with the custody of the father for four days and with the mother for three days was continuing till 24.12.2016; thereafter, it was violated. The violation is alleged on account of the SMS sent by the husband, which allegedly reads thus:-

"As per the High Court order 01.07.2015 I no longer need to send him to you. So don't come to pick him or see him from tomorrow."

11.1. It is also alleged that the respondent did not cooperate with psychiatrist Dr.Jayanthini, as he did not meet Dr.Balakrishnan / Dr.Sangeetha as directed by Dr.Jayanthini.

11.2. In the concluding portion of the report by Dr.Jayanthini, it is stated that the father is requested to go for a psychological assessment and the report is to be sent to the Registrar of this Court, for reference. In the enclosure, the psychological assessment report of Master.Harshit and Mrs. Meena and the interview notes of all the three are seen. The psychological assessment report of the husband is not available with the concluding report. A perusal of the report would reveal that he has been sent to psychological evaluation to Dr.Sangeetha. But the report is not seen. Therefore, in all probability, the husband would not have cooperated in subjecting himself for a psychological evaluation. But, in the open court, the husband would state that he extended the cooperation for his evaluation.

11.3. These are alleged to be willful disobedience of this court order, dated 01.07.2015.

11.4. Except making a request for personal examination of the parties, no counter is filed in the contempt petition. However, taking into account, the violation alleged is at the interim stage and the main Appeal itself has been disposed of, the Contempt Petition is closed, with the caution that the respondent cannot expect the same lenience, in future.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. Child Care Center attached to Family Court,
Chennai.

2. Principal Family Court, Chennai

3. The Section Officer, V.R.Section,
Madras High Court, Chennai 104

4. The Sub Assistant Registrar
Original Side High Court Madras

+1 cc to Mr.K.P.Gopalakrishnan Advocate sr 10551

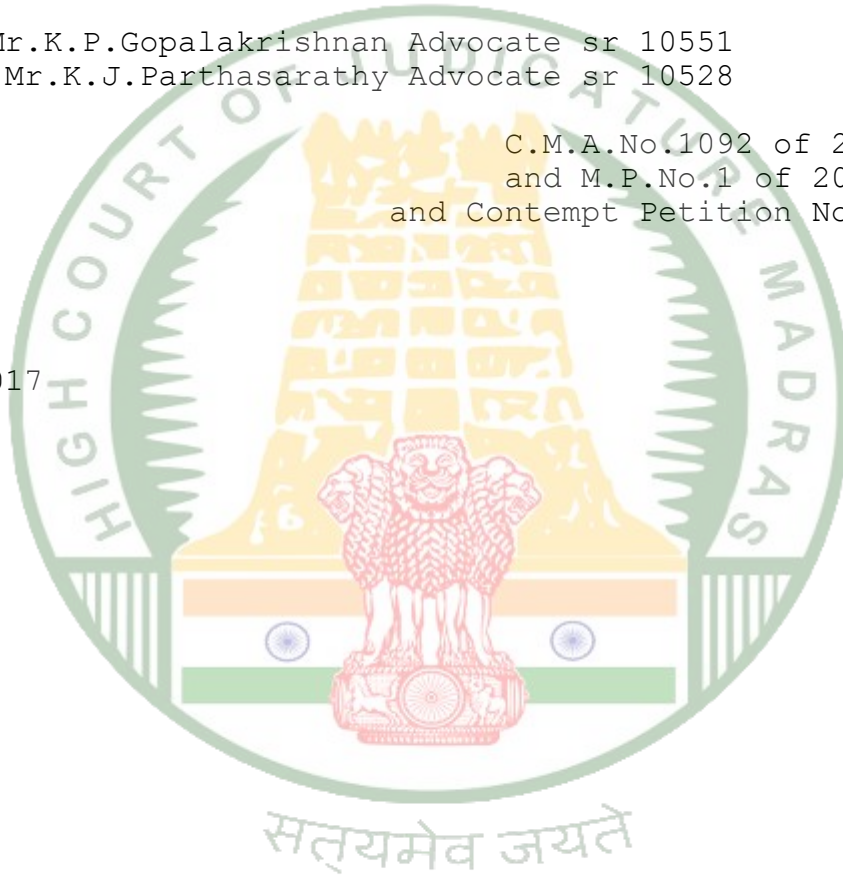
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C.M.A.No.1092 of 2015

and M.P.No.1 of 2015

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