

HON' BLE SRI JUSTICE SANJAY KUMAR
AND
HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

C.C.No.1017 of 2015 and C.C.No.808 of 2016

COMMON ORDER (per Hon' ble Dr. Justice B. Siva Sankara Rao)

C.C.No.1017 of 2015:

This contempt petition is filed by the petitioner-wife in FCA No.373 of 2013 against the FCA respondent-husband(hereinafter the parties are referred to as wife and husband), seeking to initiate contempt proceedings against the husband and punish him as per law for willfully flouting Court orders dt.08.04.2015 passed in FCA supra by the Division of this Court(myself is one of the Judges in DB).

The averments in the petition in nutshell are that her two daughters, studying MBBS course in Osmania Medical College, are under her care and custody along with minor boy viz: Mohd.Afraaz Ahmed, 11years. Since her husband neglected them, she filed maintenance case vide M.C.No.41 of 2010 before the Family Court Nampally, Hyderabad where the respondent was directed to pay in altogether Rs.11,000/- (Rupees eleven thousand only) p.m. for herself and her children but he refused to pay the same and arrest warrant for disobedience is issued against him. He started paying Rs.5,000/- p.m. a meager amount. With an intention to harass her and her family members, he filed a children custody case vide O.P.No.1411 of 2010 before the Family Court, City Civil Court, Hyderabad as a counterblast to the case filed by her for grant of maintenance, which case after conducting detailed enquiry

dismissed by the Court but however granted visiting rights to him to see the minor boy on 4th Sunday of every month at NTR Park in between 2.00P.M. to 4.00P.M., against which an appeal filed by the respondent before the High Court and the High Court by order dated 08.04.2015 while confirming the lower Court's order in O.P.No.1411 of 2010, granted interim custody of the minor boy considering 9 days in Summer vacation in the month of May (both days inclusive), against which, no SLP is filed by her husband and so the order of the High Court became final. As per the High Court's order, she handed over the minor to her husband on 23.05.2015 at his residence, and her husband who is supposed to return the minor after nine days i.e. on 31.05.2015, did not return and even not respond to her requests even not disclose whereabouts of the minor. Even his petition vide FCAMP No.252 of 2015 for extension of custody was dismissed with an observation that he has to return the minor after completion of 9(nine) days custody, but he did not return. The minor boy is studying in Little Flower High School, Abids, Hyderabad in VI Class and classes have already been commenced from 12.06.2015 and school administration is warning for absence of the minor. In spite of receiving her legal notice dt.03.06.2015, with a demand to return the minor else to take appropriate steps, her husband did not respond, for which she lodged a complaint before the police Humayun Nagar, Hyderabad on 13.06.2015. Her husband deliberately and intentionally flouting the Court orders and hiding

himself along with the boy which made her to apprehend danger to the minor boy and his welfare and also she cannot live without the minor child.

In reply to the above, her husband filed counter affidavit denying her averments stating that the minor child over-stayed with him on his own and not inclined to go back to his mother. His wife did not give 9-days custody of his minor son from 01.05.2015 and did not respond even to his notice dt.30.04.2015 and to SMS dt.28.04.2015 and shifted minor child to her brother's house. He pursued even in the Supreme Court to file SLP for interim relief for over stay of minor child with him but due to vacation he could not. Himself and minor child were detained at Kazipet Junction in the night at about 2.30AM. by two policemen in connivance with brother of his wife by name Khaja Nizamuddin and were taken to Humayun Nagar P.S., Hyderabad, and for about 5 hours they were detained. That soon after pronouncement of judgment in FCA No.373 of 2013, she filed O.P.No.860 of 2015,dt.04.05.2015 for dissolution of marriage before the Addl.Family Court, City Civil Court, Hyderabad, with false and fabricated allegations, instead his petition for restitution of conjugal rights is allowed vide order dated 15.06.2013 in FCOP No.1217 of 2010, hence to dismiss the petition.

C.C.No.808 of 2016:

This contempt petition is filed by the husband against the wife, seeking to initiate proceedings against her for committing

several contempts to the Court's order, dt.08.04.2015 in FCA No.373 of 2013 supra with the averments that he filed FCOP No.1411 of 2010 before the Addl.Family Court at City Civil Court, Hyderabad, seeking permanent custody of his two daughters and minor son from his wife and during pendency of the case his daughters became majors as he being father is in much better position to take care of their proper welfare and overall development. In FCA No.373 of 2013 the High Court allowed in part on 08.04.2015 by granting him a temporary custody of 9 days every year in month of May in addition by confirming the visitation rights granted by the lower Court but his wife disobeyed. She even disobeyed the order of the Family Court vide O.P.No.1217 of 2010 filed for restitution of Conjugal rights by him and cut-off his beloved children from him having similar family background. His wife has been consistently violating his visitation rights viz; on 23.01.2011, 27.02.2011, 27.03.2011 and 27.05.2012. He filed I.A.No.663 of 2015 in FCOP No.1411 of 2010 before the Family Court at City Civil Court, Hyderabad for several violations, which is allowed in his favour on 18.03.2016, but the respondent continued to violate without any respect to Court orders which acts of her deprived him of sharing his natural love and affection with his beloved children out of his high education, hard earned money and rich experience. He further submits that she is tutoring, misguiding and threatening them because of which his children are becoming poor in all aspects. When the minor boy came to him on 23.05.2015

for 9 days custody, he took him on an educational tour of 7 days, which the minor boy enjoyed very much, mingled and adjusted very well with him and was not inclined to go back to his wife. He produced the child before the Addl. Family Court on 30.05.2015 in S.R.No.1152 of 2015 and on 15.06.2015 in S.R.No.1401 of 2015 and before the High Court on 08.06.2015 and 09.06.2015 in FCA MP No.252 of 2015 in FCA No.373 of 2013 and the same is also informed to his wife, but she, by suppressing all above facts, misused the provision of writ of Habeas Corpus in W.P.No.17983 of 2015 with false and fabricated allegations in connivance with the police of Humayun Nagar Police Station and also with influence of her maternal uncle Syed Hameeduddin Ahmed (C.I. of Police) in stead of moving to the Family Court as per para-18 of the judgment dt.08.04.2015 in FCA No.373 of 2013. The Revision vide CRP No.4279 of 2013, for committing perjury in FCOP No.1217 of 2010 for the Restitution of Conjugal Rights, is admitted against his wife by the High Court and is pending for final hearing. C.C.No.1030 of 2015 is registered at City Criminal Court, Hyderabad, against his wife for defamation u/ sec.500 CrPC and was ordered NBW for refusing summons and was recalled on a personal bond of Rs.5000/- . In spite of his legal notices about violations of his visitation rights and consequences, she did not care and said copies along with tickets of NTR park to prove his presence are submitted to the Court. that he also issued a notice on 16.04.2016 after orders dated 18.03.2016, In spite of her legal

obligation as held in I.A.No.663 of 2015 in O.P.No.1411 of 2010 to comply with the orders dt.08.04.2015 in FCA No.373 of 2013, she failed to produce the minor child at NTR park at 2.00P.M. on 27.03.2016 and continue to willfully violate the visitation rights. Thus, his wife is liable for punishment.

In reply, the wife filed counter affidavit denying the averments of her husband stating that the petition under reply is not maintainable in facts or law. Even the Supreme Court dismissed SLP© No.17611 of 2015,dt.13.07.2015 filed by her husband alleging violation of visitation rights by her. Her husband used the decree of restitution of conjugal rights as a tool for filing false criminal complainants in various police stations but not out of love and affection. Her husband deliberately absconded with minor boy several times. In M.C.No.41 of 2010, her husband clearly stated that he is not in a position to maintain her and the children. He never spent time, energy and money on grooming children. He forcibly kept the minor for thirty days losing his school attendance for twenty days and continuously harassing her by way of lodging false criminal complaints and threatening her with dire consequences. Even her husband was strictly directed not to go beyond the Family Court premises with the child during his visitation and must hand over by 4.00 P.M., but on 11.12.2016 when she produced the minor child before the Bench clerk of the Addl. Family Court, her husband took the boy outside the Court, and later after issuing notice, dt.11.12.2016, and phone calls and

lodging a complaint to police, he dropped the minor boy on 12.12.2016 at 11.00 P.M, which reveals that her husband has no respect to the Court orders. Hence, to dismiss the petition.

Heard both sides at length in both the cases for common disposal and perused the material.

In fact, Division Bench of this Court in FCA No.373 of 2013 by order dated 08.04.2015 held as follows:-

“While confirming the order of the lower Court to the extent of visiting rights of once in a month on 4th Sunday at N.T.R Park for the petitioner-father of the minor boy to spend; also given once in a year during May, for 9 days (both days inclusive) custody in summer vacation. Any violation by any of the parties, the Judge, Family Court can be moved to enforce; besides liability for legal consequences of any disobedience.”

The above direction is very clear that the parties shall approach to the Family Court for implementation of the order and also for any violation to enforce. It is for the reason that the provisions of the Guardians and Wards Act, are taking care of effective enforcement and implementation of the matters relating to custody by providing not only remedies but also consequences. For more clarity, the relevant provisions are reproduced hereunder:-

25. Title of guardian to custody of ward:

(1) If a ward leaves or is removed from the custody of a guardian of his person, the Court, if it is of opinion that it will be for the welfare of the ward to return to the custody of his guardian, may make an order for his return, and for the purpose of enforcing the order may cause the ward to be arrested and to be delivered into the custody of the guardian.

(2) For the purpose of arresting the ward, the Court may exercise the power conferred on a Magistrate of the first class by section 100 of the Code of Criminal Procedure, 1882(10 of 1882 of CrPC).

(3) The residence of a ward against the will of his guardian with a person who is not his guardian does not of itself terminate the guardianship.

26. Removal of ward from jurisdiction:

(1) A guardian of the person appointed or declared by the Court, unless he is the Collector or is a guardian appointed by will or other instrument, shall not, without the leave of the Court by which he was appointed or declared, remove the ward from the limits of its jurisdiction except for such purposes as may be prescribed.

(2) The leave granted by the Court under sub-section (1) may be special or general, and may be defined by the order granting it.

41. Cessation of authority of guardian:-

(1) The powers of a guardian of the person cease-

- (a) by his death, removal or discharge;
- (b) by the Court of Wards assuming superintendence of the person of the ward;
- (c) by the ward ceasing to be a minor;
- (d) in the case of a female ward, by her marriage to a husband who is not unfit to be guardian of her person or, if the guardian was appointed or declared by the Court, by her marriage to a husband who is not, in the opinion of the Court, so unfit; or
- (e) in the case of a ward whose father was unfit to be guardian of the person of the ward, by the father ceasing to be so or, if the father was deemed by the Court to be so unfit, by his ceasing to be so in the opinion of the Court.

(2) The powers of a guardian of the property cease-

- (a) by his death, removal or discharge;
- (b) by the Court of Wards assuming superintendence of the property of the ward; or
- (c) by the ward ceasing to be a minor.

(3) When for any cause the powers of a guardian cease, the Court may require him or, if he is dead, his representative to deliver as it directs any property in his possession or control belonging to the ward or any accounts in his possession or control relating to any past or present property of the ward.

(4) When he has delivered the property or accounts as required by the Court, the Court may declare him to be discharged from his liabilities save as regards any fraud which may subsequently be discovered.

43. Orders for regulating conduct or proceedings of guardians, and enforcement of those orders:-

(1) The Court may, on the application of any person interested or of its own motion, make an order regulating the conduct or proceedings of any guardian appointed or declared by the Court.

(2) Where there are more guardians than one of a ward, and they are unable to agree upon a question affecting his welfare, any of them may apply to the Court for its direction, and the Court may make such order respecting the matter in difference as it thinks fit.

(3) Except where it appears that the object of making an order under sub-section (1) or sub-section (2) would be defeated by the delay, the Court shall, before making the order, direct notice of the application therefor or of the intention of the Court to make it, as the case may be, to be given, in a case under sub-section (1), to the guardian or, in a case under sub-section (2), to the guardian who has not made the application.

(4) In case of disobedience to an order made under sub-section (1) or sub-section (2), the order may be enforced in the same manner as an injunction granted under Section 492 or 493 of the Code of Civil Procedure, 1882 (14 of 1882) in a case under sub-section (1), as if the ward were the plaintiff and the guardian were the defendant or, in a case under sub-section (2), as if the guardian who made the application were the plaintiff and the other guardian were the defendant.

(5) Except in a case under sub-section (2), nothing in this section shall apply to a Collector who is, as such, a guardian.

44. Penalty for removal of ward from jurisdiction:-

If, for the purpose or with the effect of preventing the Court from exercising its authority with respect to a ward, a guardian appointed or declared by the Court removes the ward from the limits of the jurisdiction of the Court in contravention of the provisions of section 26, he shall be liable, by order of the Court, to fine not exceeding one thousand rupees, or to imprisonment in the civil jail for a term which may extend to six months.

45. Penalty for contumacy:-

(1) In the following cases, namely:-

(a) if a person having the custody of a minor fails to produce him or cause him to be produced in compliance with a direction under section 12, sub-section (1), or to do his utmost to compel the minor to return to the custody of his guardian in obedience to an order under section 25, sub-section (1), or

(b) if a guardian appointed or declared by the Court fails to deliver to the Court, within the time allowed by or under clause (b) of section 34, a statement required under that clause, or to exhibit accounts in compliance with a requisition under clause (c) of that section, or to pay into the Court the balance due from him on those accounts in compliance with a requisition under clause (d) of that section, or

(c) if a person who has ceased to be a guardian, or the representative of such a person, fails to deliver any property or accounts in compliance with a requisition under section 41, sub-section (3), the person, guardian or representative, as the case may be, shall be liable, by order of the Court, to fine not exceeding one hundred rupees, and in case of recusancy to further fine not exceeding ten rupees, for each day after the first during which the default continues, and not exceeding five hundred rupees in the aggregate, and to detention in the civil jail until he undertakes to produce the minor or cause him to be produced, or to compel his return, or to deliver the statement or to exhibit the accounts, or to pay the balance, or to deliver the property or accounts, as the case may be.

(2) If a person who has been released from detention on giving an undertaking under sub-section (1) fails to carry out the undertaking within the time allowed by the Court, the Court may cause him to be arrested and re-committed to the civil jail.

Having regard to the above and for the above provisions got effective teeth in enforcement and in view of the observation by the Division Bench in FCA No.373 of 2013, dt.08.04.2015, both these Contempt Cases are closed directing the parties to approach the Family Court to enforce the order for implementation and also to make liable for violation with penal consequences by availing the effective remedies available under law supra.

Consequently, pending miscellaneous petitions if any, in these two Contempt Cases shall stand closed.



JUSTICE SANJAY KUMAR,

Dr. JUSTICE B. SIVA SANKARA RAO J,

Dt.06.10.2017
Vvr.