

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION NO.126 OF 2016

Rajesh Khanduji Jadhav	...	Petitioner
Vs.		
Smita Rajesh Jadhav	...	Respondent

Mr. A. M. Ranpise a/w. Ms Bhairavi A. Ranpise for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : JULY 5, 2018

P.C. :

Heard Mr. Ranpise, learned Counsel for the petitioner.

2. This Contempt Petition is filed alleging breach of judgment and decree dated 21.05.2013 passed by the learned Judge, Family Court No.5, Bandra, Mumbai in M.J. Petition No.F-1910 of 2012. By that order, the learned trial Judge dissolved the marriage between the parties by mutual consent under Section 13-B of the Hindu Marriage Act, 1955 (for short 'Act') with effect from 30.12.2004. The learned trial Judge declared that the custody of son Aryan shall remain with the petitioner-husband.

3. In support of this Petition, Mr. Ranpise submitted that the respondent has not handed over the custody of the child as ordered by the learned trial Judge. He invited my attention to Section 2(b) of the Contempt of Courts Act, 1971 to contend that respondent has committed civil contempt by willfully disobeying the decree passed by the Family Court. He further submitted that if the petitioner is relegated to file execution proceedings, it will take years together for completing the execution proceedings. He, therefore, submitted that this is a fit case for invoking contempt jurisdiction against the respondent.

4. With the assistance of Mr. Ranpise, I have perused - (i) the Petition filed by the parties under Section 13-B of the Act in October 2012, (ii) the Consent terms filed on 23.12.2012, and (iii) the order dated 21.05.2013 passed by the learned trial Judge. Paragraph 14 of the Petition reads thus,

“14. The Petitioner No.1 & Petitioner No.2 states that the custody of their son, Aryan Rajesh Jadhav, shall permanently remain with the Petitioner No.1 **or as per the child's wish with whoever he wants to reside**. It is further agreed by the Petitioner No.1 and Petitioner No.2 that Petitioner No.2 can avail overnight access to her son Aryan Rajesh Jadhav from every Friday evening to Monday morning. The Petitioner No.2 shall be entitled for the custody of Aryan Rajesh Jadhav for half of the vacations. The exact duration & timings of the custody of Aryan Rajesh Jadhav will be mutually decided by the Petitioner No.1 & Petitioner No.2 as per the schedule of school vacations of their son Aryan Rajesh Jadhav.”

5. Clause (a) of the consent terms reads thus,

“a. The Petitioner No.1 & Petitioner No.2 states that the custody of their son, Aryan Rajesh Jadhav, shall permanently remain with the Petitioner No.1 **or as per the child's wish with whoever he wants to reside**. It is further agreed by the Petitioner No.1 and Petitioner No.2 that Petitioner No.2 can avail overnight access to her son Aryan Rajesh Jadhav from every Friday evening to Monday morning. The Petitioner No.2 shall be entitled for the custody of Aryan Rajesh Jadhav for half of the vacations. The exact duration & timings of the custody of Aryan Rajesh Jadhav will be mutually decided by the Petitioner No.1 & Petitioner No.2 as per the schedule of school vacations of their son Aryan Rajesh Jadhav.”

6. Operative part of the order dated 21.05.2013 reads thus,

“The permanent custody of the child shall remain with petitioner No.1 or as per the child's wish.”

7. The petitioner herein was petitioner No.1 and the respondent herein was petitioner No.2 before the Family Court. In view of - (i) paragraph 14 of the Petition, (ii) clause (a) of the consent terms, and

(iii) operative part of the order dated 21.05.2013, I do not find any merit in the submission of Mr. Ranpise that petitioner should not be relegated to file execution proceedings. The petitioner is relying upon part of the paragraph 14 of the Petition, clause (a) of the consent terms and operative part of the order dated 21.05.2013 to contend that permanent custody is given to the petitioner herein. A perusal of clauses extracted hereinabove clearly shows that permanent custody is given to the petitioner herein or it depends upon the wishes of the child where he wants to reside. In view thereof, this is not a fit case for invocation of contempt jurisdiction. Accordingly, Contempt Petition is dismissed reserving liberty to the petitioner to file execution proceedings before the trial Court. It is made clear that I have not examined merits of the case. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab