

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

CONTEMPT PETITION NO.178 OF 2019

Mrs.Sweta Milind Hoble

.. Petitioner

vs.

Mr.Milind Anil Hoble

.. Respondent

Mr.Manoj Pandit I/b Ms.Shradha Bane for the petitioner

Mr.Saurabh Bhutal a/w Mr.Yashwant Apte for the respondent

**CORAM : K. K. TATED, J
DATE : AUGUST 7, 2019**

P.C.:

. Heard.

2 By this Contempt Petition, petitioner wife is seeking to take action against the Respondent husband for violating the order dated 2.8.2018 passed by this court in Misc. Civil Application (ST) No.15901 of 2018 and order dated 29.3.2019 by which this court allowed the Application filed by the Petitioner under section 24 of the Code of Civil Procedure, 1908 for transferring the matters from Ad-hoc Civil Judge, Senior Division at Panjim, Goa to Family Court at Bandra, Mumbai.

3 During the course of argument the learned counsel for the Petitioner makes a statement that he received instruction not to press the present Contempt Petition in respect of prayer clause (b) which reads thus:

“b) Issue such directions to Civil Judge Senior Division and JMFC to strike of the proceedings in Matrimonial Petition No 53 of 2018 (CNR No GANG020022772018) which has taken on record after 02.08.2018 and bring the records back to the position as it stood on 02.08.2018.”

4 In the present proceeding, the Respondent husband filed Civil Misc. Application No.73 of 2017 for custody of child and petitioner wife filed Civil Misc. Application No.77 of 2017/B for interim maintenance before Civil Judge, Senior Division, Panaji.

5 In the present proceeding, Petitioner wife filed Misc. Civil Application No. (ST) No.15901 of 2018 for transfer of petition filed by Respondent husband for custody of child and the Petition filed by her for maintenance from the court of Panaji to Family Court at Bandra.

6 Advocate appearing for Respondent husband made a statement before this court on 21.6.2018 in Misc. Civil Application (ST) No.15901 of 2018 that Respondent will not proceed with the matters in Trial Court, till next date. In that

proceeding, under section 24 of the Code of Civil Procedure, 1908, this court passed order on 2.8.2018 and appointed Mediator to help the parties to arrive at an amicable settlement of dispute between them. This court further directed parties, meanwhile not to proceed in the trial court. Respondent appeared before this court and made a statement on 2.8.2018 that he will not proceed with the matters in the Trial Court.

7 It is the contention of the learned counsel for the Petitioner that, though the order was passed by this court on 2.8.2018, restraining both the parties not to proceed with the matter in the Trial Court, Respondent proceeded before the Civil Judge, Senior Division, Panaji and obtained orders on 15.1.2019, 5.2.2019, 16.2.2019, 2.3.2019, 30.3.2019 and 9.4.2019. Those orders read thus:

“Daily Status
Civil and Criminal Courts, Panaji
In The Court Of :Ad-hoc Civil Judge Senior Division and JMFC
CNR Number :GANG020022772018
Case Number :MP/0000053/2018
XXXXXXXXX Versus XXXXXXXXX
Date 15-01-2019

Business : Called out Today. Adv S. Naik present for the Petitioner. Respondent absent despite due opportunity given, hence suit to proceed exparte against the respondent. Matter adj for inquiry at 2.30 p.m.

Next Purpose :INQUIRY
Next Hearing Date :05-02-2019

Ad-hoc Civil Judge Senior Division and JMFC”

“Daily Status
Civil and Criminal Courts, Panaji
In The Court Of: Civil Judge Senior Division and JMFC

CNR Number GANG020022772018

Case Number :MP/0000053/2018

XXXXXXXXX Versus XXXXXXXXX
Date 05-02-2019

Business : Called out Today. Petitioner present with Adv S. Naik. Respondent exparte. C/7 Dep of Pwl Milind Hoble recorded. C/8 Affidavit in Evidence Certificate. C/10 colly Birth Certificates of Mast Shaunak and Miss Shrishti. C/11 colly- WhatsaoO conversation a/w Certificate u/s 65B of Indian Evidence Act. C/12 Complaint dated 29.8.2017. C/13 colly- Reply dated 31.8.17 a/w NC Complaint dtfd. 31.3.3017. C/14 Dep of Pw2 Mrs Sandhya Hoble recorded. C/15 Affidavit in evidence. C/16 Dep of Pw3 Ketan Golatkar recorded. D/17 Appln filed by petitioner for issue of summons to PI Sandhya Gupta. op issue. Matter adj for further inquiry at 2.30 p.m

Next Purpose : INQUIRY
Next Hearing Date : 16-2-2019

Civil Judge Senior Division and JMFC”

“Daily Status
Civil and Criminal Courts, Panaji

“In the court of : Civil Judge Senior Division and JMFC
CNR Number GANG020022772018
Case Number MP/0000053/2018
XXXXXXXXX Versus XXXxxxxx

Date : 16-02-2019

Business : Called out Today. Petitioner present with
Adv Ms S. Naik. Respondent exparte.
C/18 Dep of Pw4 Anil Hoble recorded C/19
Affidavit in evidence. C/20 Dep of
Pw5 Kum. Hinakousar Kradagi recorded.
C/21 Affidavit in evidence. Concerned
clerk to issue notice as per Exh D/17.
Matter adj for further inquiry at 2.30 p.m.

Next Purpose : INQUIRY
Next Hearing Date : 02-03-2019

Civil Judge Senior Division and JMFC”

“Daily Status

Civil and Criminal Courts, Panaji

In The Court Of Civil Judge Senior Division and JMFC

CNR Number GANG020022772018
Case Number MP/00000532018
XXXXXXXXXX Versus XXXXXXXX
Date : 02-03-2019

Business : Called out today. Adv. A.Govekar
present for the Plaintiff. Defendant
exparte. C/22 Dep of Pw6 Suphal
Naik recorded. C/23 Affidavit in
evidence. Matter adj for further
inquiry at 2.30 p.m.

Next Purpose : INQUIRY
Next Hearing Date : 30-03-2019

Civil Judge Senior Division and JMFC”

Daily Status
Civil and Criminal Courts, Panaji
In The Court of Civil Judge Senior Division and JMFC
CNR Number GANGO20022772018
Case Number MP/0000053/2018
XXXXXXXXXX Versus XXXXXXXXX
Date : 30-03-2019

Business : Called out Today. Adv Ms V
Kudchadkar present for the
Petitioner. Respondent
exparte As the Honble Presiding
Judge is nominated for nomination
of Master
Trainers Judicial officers for one day
preparatory Training at the MJA,
Uttan, thane,
and as per the instructions of the
incharge judge, matter adj. for
inquiry at 2.30 p.m.

Next Purpose : INQUIRY
Next Hearing Date : 09-04-2019

Civil Judge Senior Division and JMFC”

Daily Status
Civil and Criminal Courts, Panaji
In The Court of Civil Judge Senior Division and JMFC
CNR Number GANGO20022772018
Case Number MP/0000053/2018
XXXXXXXXXX Versus XXXXXXXXX
Date : 09-04-2019

Business : Called out Today. Petitioner present with Adv.S.Naik. Respondent exparte. Petitioner closes his evidence. Matter adj. For Final Args at 2.30 p.m.

Next Purpose : INQUIRY
Next Hearing Date : 22-04-2019

Civil Judge Senior Division and JMFC”

8 The learned counsel for the petitioner submits that though this court by order dated 2.8.2018 restrained both the parties from proceeding with the matter in Panaji court, Respondent proceeded with the matter and obtained favourable orders. In this way, Respondent committed contempt of court by not obeying the order passed by this court dated 2.8.2018.

9 The learned counsel for the Petitioner submits that during the hearing of Misc. Civil Application (ST) No.15901 of 2018, Applicant learnt that the Respondent also filed Marriage Petition No.53 of 2018 for divorce before the Civil Judge, Senior Division, Panaji on 29.6.2018 for divorce. Hence, the Petitioner made oral Application before this court in Misc. Civil Application (ST) No.15901 of 2018 on 26.9.2018 for carrying out appropriate amendment. This court after hearing both the sides permitted Petitioner to carry out amendment by adding third Marriage Petition No.53 of 2018 in that application under section 24 of the

Code of Civil Procedure. This court also directed Petitioner to serve the amended copy of Misc.Civil Application on Respondent so that Respondent can file their Affidavit-in-Reply if any, within two weeks and thereafter, matter was adjourned to 17.10.2018.

10 The learned counsel for the Petitioner submits that thereafter matter appeared before the Panaji Court on 9.4.2019. On that date also, Respondent filed praecipe for closing his evidence in Marriage Petition No.53 of 2018. Hence, Trial Court kept the matter for final arguments on 22.4.2019. This court, by order dated 29.3.2019 in Misc. Civil Application No.265 of 2018 with Misc. Civil Application (ST) No.32454 of 2018 passed final order and transferred the matters pending before the Panaji court to the Family Court at Bandra for hearing and final disposal on its own merits. Operative part of this order reads thus:

“30. Thus, following order:

(a) Miscellaneous Civil Application No.265 of 2018 is allowed and following proceedings are transferred from the Court of Ad-hoc Civil Judge, Senior Division and Senior Civil Judge at Panjim, Goa to the Family Court at Bandra, Mumbai:

- (i) Civil Miscellaneous Application No.73 of 2017;*
- (ii) Civil Miscellaneous Application No.77 of 2017/B;*
- (iii) Marriage Petition No.53 of 2018/B*

(b) Miscellaneous Civil Application (St) No.32454 of 2018 is dismissed.

(c) Parties to appear before the learned Judge, Family Court, Bandra on 22d April, 2019 either personally through their advocate.

(d) The parties, as well as, the learned Judge, Family Court, Bandra to act on an authenticated copy of this order.”

11 The learned counsel for the Petitioner submits that in this way, Respondent violated the orders passed by this court on 2.8.2018 and 29.3.2019 in Misc. Civil Application No. 265 of 2018 and Misc. Civil Application No. (ST) 32454 of 2018.

12 On the other hand, the learned counsel for the Respondent vehemently opposed the present Contempt Petition. He filed his Affidavit-in-Reply dated 23.7.2019. The learned counsel for the Respondent submits that in the present proceedings, initially the Petitioner filed Misc. Civil Application No. 265 of 2018 under section 24 of the Code of Civil Procedure, 1908 for transfer of Misc. Civil Application No. 73 of 2017 filed by husband for custody and Misc. Civil Application No. 77 of 2017(B) filed by Petitioner wife for interim maintenance from Civil Judge, Senior Division, Panaji to Family Court at Bandra, Mumbai. In that proceeding, Respondent appeared through his advocate and

made a statement before this court that he will not proceed in the trial court. At that time, this court by order dated 2.8.2018 directed parties not to proceed before the Trial Court. He submits that order dated 2.8.2018 was only in respect of Misc. Civil Application No. 73 of 2017 and Misc. Civil Application No. 77 of 2017(B).

13 The learned counsel for the petitioner submits that during the pendency of the said Application, Petitioner made oral request before this court, for allowing her to carry out amendment in her Application under section 24 of the Code of Civil Procedure, 1908, to added Marriage Petition No.53 of 2018 filed by Respondent for divorce before the Civil Judge, Senior Division, Panaji on 29.6.2018. Oral request made by the Petitioner was allowed by this court by order dated 26.9.2018. He submits that thereafter the matter appeared before the Panaji Court on 9.4.2019. On that date, Respondent only filed their praecipe that he wants to close his evidence. That was taken on record by the Trial Court and matter was adjourned for final arguments. Before the final arguments before the Trial Court, this court passed order on 29.3.2019 allowing Petitioner's Application for transfer of all the matters from Panaji court to Family Court at Bandra. He submits that all these facts, clearly show that when order was passed by this court on 2.8.2018, that was only in respect of two matters i.e. Misc. Civil Application No. 73 of 2017 and Misc. Civil Application No. 77 of 2017(B) and not in respect of Marriage Petition No.53 of 2018. Therefore, there is no question of committing any contempt of court by the

Respondent. He submits that in view of these facts, Contempt Petition is required to be dismissed with costs.

14 I have heard both the sides at length. It is to be noted that in the present proceedings, initially the Petitioner by Misc. Civil Application No.265 of 2018 under section 24 of the Code of Civil Procedure, 1908 for transfer of Misc. Civil Application No. 73 of 2017 filed by Respondent husband for custody of child and Misc. Civil Application No. 77 of 2017(B) filed by Petitioner wife for interim maintenance before the Civil Judge, Senior Division, Panaji to Family Court at Bandra, Mumbai for hearing and final disposal on its own merits. In that Application, this court by order dated 2.8.2018 directed parties not to proceed with those two matters till next date, and that order was continued from time to time.

15 During the pendency of the said Application, Petitioner learnt that the Respondent also filed one more Marriage Petition No.53 of 2018 on 29.6.2018 before Civil Judge, Senior Division, Panaji for divorce. Hence, petitioner made oral Application before this court for adding Marriage Petition No.53 of 2018 in his transfer Application. That was allowed by this court by order dated 26.9.2018. Thereafter, matter appeared before the Panaji court on 9.4.2019. That time, Respondent filed his praecipe to close his evidence and matter was posted for final hearing on 22.4.2019. This itself shows that earlier when the matter appeared before the Civil Judge, Senior Division and JMFC, Panvel on 15.1.2019, 5.2.2019, 16.2.2019 and 2.3.2019, there

was High Court order only in respect of two matters i.e. Misc. Civil Application No. 73 of 2017 and the Misc. Civil Application No. 77 of 2017(B) and not in respect of Marriage Petition No.53 of 2018. First time, Petitioner added Marriage Petition No.53 of 2018 in his Application as per order dated 26.9.2018 and thereafter Respondent did not proceed before the Trial Court. He further submits that even this court has not passed any order in respect of Marriage Petition No.53 of 2018. In any case, it is to be noted that on 9.4.2019 matter was posted for final hearing on the basis of praecipe filed by the Respondent that he wants to close his evidence. This itself shows that there was no order from this court against Respondent from proceeding with the matter in Marriage Petition No.53 of 2018. In view of these facts, I do not find any reason to entertain the present Contempt Petition to take action against the Respondent under the Contempt of Court Act.

16 Apart from that, now in view of passing of order dated 29.3.2019, all three matters are transferred to Family Court at Bandra, Mumbai for hearing and final disposal on its own merits. Hence, in the interest of Justice, liberty may be granted to the Petitioner, if she so desires to make appropriate Application before the Family Court, Bandra for re-hearing of Marriage Petition No.53 of 2018 on its own merits allowing her to file written statement and evidence and also allowing her to cross-examine the Respondent husband. That application, if filed, be decided by the Family Court on its own merits. Hence, following order is passed:

- a. Contempt Petition is rejected.
- b. Liberty granted to the Petitioner, if she so desires, to make appropriate Application before the Family Court at Bandra, Mumbai in Marriage Petition No.53 of 2018 for re-calling the earlier orders and allowing Petitioner to file written statement as well as evidence and allow her to cross-examine the Respondent and is witness, if he so desires, and that Application be decided on its own merits.
- c. No order as to costs.

(K.K. TATED, J.)