

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.48 OF 2019
IN
CONTEMPT PETITION NO.507 OF 2018**

Atul Arun Gonel	...	Applicant
versus		
Priya Atul Gonel	...	Respondent

Mr. Sidheshwar N. Biradar, for Org. Applicant.
Mr. Ifran A. Shaikh, for Applicant in CAM 48 of 2019/Org. Respondent.
Mr. Ruhas Rohile, Advocate, present.
Mr. Atul Arun Gonel, Applicant Husband present.

**CORAM: AKIL KURESHI &
 S.J. KATHAWALLA, JJ.**

DATE: 26th JULY, 2019

P.C.:

1. This Application is filed by the Respondent of Contempt Petition No.507 of 2018 contending that the statement of undertaking recorded in his name under an order dated 26th June, 2019 is incorrect and that he had never conveyed such an undertaking to the Court. According to him, the undertaking is recorded out of miscommunication between him and his Advocate.

2. On 26th June, 2019 in the said Contempt Petition, the following order was passed :

“1. Pursuant to the undertaking given to this Court by the Respondent and recorded in the order dated 25th June, 2019, the Respondent is present in Court today. He admits that an amount of Rs.4,73,000/- is due and

payable to the Petitioner-wife as per the order of the Family Court dated 19th July, 2018. He undertakes to pay an amount of Rs.2 lakhs to the petitioner by way of Demand Draft as follows:-

(i) Rs.1 lakh on or before 10th July, 2019.

(ii) Rs.1 lakh on or before 24th July, 2019.

2. Stand over to 24th July, 2019, for further orders. On that day Respondent undertakes to remain present. The undertakings are accepted.”

2. In this Application, in order to refute the correct recording of the undertaking, the Applicant has stated as under :

“8. It is seen from the case status, that the Review Petition of the Applicant and the Contempt Petition of the Respondent was listed together on 25-06-2019. The Review Petition was withdrawn on 25-06-2019. Furthermore, in the order dated 26-06-2019 passed in the aforementioned Contempt Petition it has come on record that the Applicant admitted that an amount of Rs.4,73,000/- was due to be paid as per order dated 19-07-2018. Hereto annexed and marked as Exhibit A is the copy of the order dated 26-06-2019.

9. It is submitted that an undertaking was taken from the Applicant wherein the Applicant was required to make part payment of Rs.2,00,000/- in two stages. It is submitted that that the Applicant was not informed properly by his Advocate about the repercussions about the undertaking. The Applicant was informed that if the undertaking is not given then coercive steps will be taken against him. The Applicant was willing to pay an amount of Rs.5,000/- as per the order of the Ld. Family

Court, Pune and that is what he wanted to convey to this Hon'ble Court. Yet the undertaking came to be recorded on behalf of the Applicant. The Applicant did not have any such intention to give such an undertaking because he was aware of his financial capacity and he also knew that he could not in any way fulfil such an undertaking.”

3. In the Contempt Petition, the present Applicant i.e. Respondent was represented by his Advocate S.B.Rohile. This Civil Application is filed by Advocate Irfan Shaikh, replacing the original Advocate of the husband. In view of the factual disputes raised by the Applicant, we had requested his previous Advocate Mr. Rohile, who was present in Court on 26th June, 2019, to remain present.

4. The events of 26th June, 2019 being recent, we precisely remember what had transpired during the proceedings. The Respondent of the Contempt Petition-present Applicant had initially offered to deposit a sum of Rs.1 Lakh. Since prima facie he had committed contempt of the order passed by this Court, looking to the sizeable arrears of maintenance to the wife, we were not inclined to adjourn the proceedings on such offer. He had thereafter, after due deliberations stated before us that he would deposit a sum of Rs.2 Lakhs in two installments which was recorded in the said order dated 26th June, 2019.

5. In order to safeguard against any failure of memory on our part, we had also requested learned Counsel Shri Rohile who was present on 26th June, 2019 and

appeared before us for the present Applicant, to remain present.

6. He confirmed these events as recorded above. There was thus no confusion about what the Applicant had stated before us and was precisely as was recorded in the order. His explanation also is self-contradictory. At one stage, he states that the undertaking of the payment of Rs.2 Lakhs was on account of the Applicant not being informed properly by his Advocate about the repercussions of filing such an undertaking. On the other hand, he blames his Advocate informing that if the undertaking is not given, coercive steps will be taken against him. The Applicant cannot blame his Advocate for a statement which he consciously made before the Court. The record would suggest that even in the Contempt Petition, it was extremely difficult to secure his presence before the Court. He had cited reason of lower back pain preventing him from travelling to the Court. We had requested the public hospital at Pune to assess his health condition. The hospital had certified that he is fit to travel. It was only after such orders that he appeared before the Court. His Application therefore, for allowing him to withdraw the said undertaking is rejected. The Civil Application is accordingly disposed of.

7. Place Contempt Petition for hearing on 2nd August, 2019.

(S.J.KATHAWALLA, J.)

(AKIL KURESHI, J.)