

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

CONTEMPT PETITION NO.522 OF 2010

Mr.Divyaksh Kapur

... Petitioner

V/s.

Mrs.Priyanka Kapur

... Respondent

Ms.Chitra Phadke for the Petitioner.

Ms.Soma Singh for the Respondent.

**CORAM : AKIL KURESHI AND
SARANG V. KOTWAL, JJ.
DATE : MARCH 15, 2019.**

P.C.:-

1. This contempt petition arises out of matrimonial disputes between the applicant-husband and respondent-wife. The history is long and checkered. We may record relevant facts in brief. For our limited purpose it is not necessary to travel beyond the order dated 8/9th July, 2008 passed by this Court in Contempt appeal No.1 of 2008 in Contempt Petition No.401 of 2007. On the said date, this Court recorded an agreement between the two sides which were reduced in writing as agreed terms.

Following portion of the said order may be noted:-

“The agreed terms are:

(I) The parties would file a mutual consent petition for divorce under section 13B or convert the pending petition by seeking appropriate amendment in accordance with law before the court of competent jurisdiction.

(ii) The parties, thus, would pray for passing of a decree of divorce by mutual consent. They shall withdraw allegations made against each other in pending proceedings.

(iii) The custody of the child shall remain with the mother Ms. Priyanka Kapur but with definite visiting rights in favour of father Mr. Divyaksh Kapur. The visiting rights shall be as under :

(a) As and when the husband(father) visits Dubai or wherever the child is bases, he shall give an advance notice to the mother and he shall be provided visiting rights during his stay at Dubai. The father may take the girl child court, of course, while not taking the child outside the jurisdiction of Dubai. The father can meet the child any time after school hours and be with the child at the week end as well. It is also mutually agreed that they will keep each other informed about the welfare of the child. Liberty to the parties to apply to the Family Court for changes in the present order in accordance with law.

(b) It is agreed that Ms. Priyanka Kapur will visit at least twice a year to India, once for a period of four weeks and on other occasions for a period of two weeks during summer and winter seasons respectively. Regarding the visit for a period of four weeks, at least one month's advance notice to be given to the parents of the respondent as well as to the respondent. Whenever the father and his parents who are settled in Delhi may come to Pune, India,

during that period, they shall have complete visiting rights at Pune to the child and would be able to spend at least 5 to 6 hours with the child from an initial period of one week. Thereafter, he could approach the Family Court and pray for direction to take temporary custody of the child to be taken to Delhi or any other place with himself or with his parents for the remaining period of two weeks. The Family court may be requested to hear the child, talk to the parties and then pass order to grant for temporary custody of the child to the father or otherwise. The parties shall abide by this order and not frustrate the same by avoiding the compliance of the directions in any manner whatsoever. For the remaining period of 10 to 15 days depending on the orders passed by the Family Court, Pune, the mother shall be free to take the child wherever she likes in India or otherwise.

(c) The same process shall be followed in the winter vacation.

(iv) Both the parties shall endeavour their best and in fact, undertake to the court that they would abide by the consent terms and would make no attempt to frustrate the spirit of the consent order. In order to further secure the compliance of the consent terms and the order of the court, it is directed that Priyanka Kapur shall furnish the security bond in the sum of Rs.25 lakhs to the satisfaction of the Registrar General of this court. Her father Mr. Shanti Sarup is present in court and states that along with his daughter Priyanka Kapur, he shall furnish the papers of his residential house at Pune being Flat No. H3, 12B, Pluto Housing Society, Kalyani Nagar, Pune by way of security and in the event of default and any consequences flowing there from, he will have no objection if the flat is attached or even sold in execution of the order of

the court. Till then he undertakes that he will not sell, alienate, transfer the property without the specific orders of the court. Mr. Divyaksh Kapur whenever comes to India and needs to visit the child and/or take the temporary custody of the child, shall deposit his passport with the Family Court at Pune.

(v) Mr. Divyaksh Kapur is liable to pay Rs.15,000/- per month on account of maintenance of Rs.10,000/- towards the wife and Rs.5000/- towards the child. He shall continue to pay the aid amount without default. In order to protect the regular payments as well as to ensure that the father complies with the directions issued by the court in this order or thereafter by the court of competent jurisdiction, he shall also furnish security to the satisfaction of the Registrar General to the extent of Rs.20 lakhs and deposit the original title documents of the house being 2255 Ridgefield, Greenway Richmond, VA 23233 or in any other form furnish security to the extent.

(vi) It is further agreed and clarified that the above house owned by Mr. Divyaksh Kapur, father of the child, is jointly owned by jk Ms. Priyanka Kapur, she shall issue a quit claims deed for enabling Mr.Divyaksh Kapur to facilitate the performance of various acts and deeds solely by himself and to avoid any difficulties with regard to discharge of mortgage or any other requirements in accordance with law of that country but it is made clear that the voluntarily agrees before this court that he would not sell, transfer, alienate the said flat without the specific leave of this court.

(vii) The arrears deposited in the Family Court at Pune shall be paid succeeding month. The money shall be deposited in the account, details of which shall be furnished by Ms. Priyanka

Kapour to Mr. Divyaksh Kapur within one week from today even through the counsel.

(viii) Mr. Divyaksh Kapur would also be entitled to make a request to the Family Court at Pune for temporary custody and taking the child outside the jurisdiction of this court but that shall only be done in the manner subject to the limitations and conditions which the court may impose and Ms. Priyanka Kapur shall be entitled to take up a stand that she would be accompanied with the child as well.

(ix) This child shall be provided the visiting rights at least for three hours every day at Pune in the week and all efforts would be made that the child may have adequate time with the father.

(x) The complaints or any other proceedings of any nature filed by any of the parties before any court or forum against each other shall be deemed to have been withdrawn and parties shall submit application to all those authorities withdrawing the complaints and proceedings.

(xi) All other correspondence which is to be made in different departments should also be made by the parties. Such intimation of all correspondence between the parties will be accepted as served when it is sent by email at the respective addresses exchanged between the parties given to each other and at the address of the respective parents of each of the spouse i.e. for the wife at Pune and for the husband at Delhi.

(xii) Whenever the father meets the child or takes her temporary custody, he shall furnish an undertaking and his parents would also furnish an undertaking before the Family court at Pune or at any other such place wherever they meet the child at Pune under visiting rights restricted to Pune and without prejudice to the

other terms of the consent order.

(xiii) With the above terms which are otherwise just, fair, equitable and in the interest of the parties as well as minor child are accepted by the parties. They shall form part of the court order which is consent order. Undertaking given by the respective parties is accepted. It is made clear that in the event of flouting the terms of the order, they shall be liable to dealt with in accordance with law including the Contempt of courts Act. This order has been passed after the token of acceptance by the counsel and the parties who are present in the court.

4. The matter has more or less has been settled between the parties and consent order was dictated in the open Court. However, the parties want to seek clarification and they pray for adjournment. Stand over to 14th July, 2008.”

2. On 16th July, 2008 the Court passed further order formalizing consent terms recorded earlier. The short order on 16th July, 2018 reads as under:-

“The matter was listed today for final disposal. The parties were given time to pursue the draft of the order dictated in the open court in presence of the counsel and parties. Having accepted the same the counsel and the parties may sign the order as token of acceptance and that they would abide by the terms and conditions stated in the order. The undertaking given by them is accepted by the Court. The appeal is disposed of in Consent order. No order as to costs. The appeal and all the applicants are accordingly disposed of.”

3. The consent terms between the parties included several bilateral obligations which gave rise to more than one proceedings. This contempt petition was filed in the year 2010 complaining of various breaches by the wife, one of them being the inaction on the part of the wife to issue “Quit Claim Deed” in relation to an immovable property situated at Richmond, State of Virginia, USA. This contempt petition contained several other complaints of not adherence to the consent terms by the wife. However, presently as stated by the counsel for the applicant, we are concerned only with this limited aspect of the alleged non-issuance of Quit Claim Deed by the wife. The averments in this respect have been made in this contempt petition and consequent prayer is made for granting compensation and punishing the contemnor for such inaction on her part.

4. We may notice that the present applicant had filed another Civil Application No.2 of 2009 in Contempt Appeal No.1 of 2008, in which while disposing of said application by an order dated 24th July, 2012 in very first paragraph the

Court had recorded as under :-

“1. Heard the learned counsel appearing for the parties. This is an application made by the husband in disposed of Contempt Appeal seeking various reliefs against his wife. **Learned counsel appearing for the Applicant states that separate Contempt Petition has already been filed. Hence, the first prayer in the Application does not survive.**”

5. Thereafter, the Court referred to various prayers made in the said civil application and noted that one of the prayers was for a direction to the respondent to furnish Quit Claim Deed.

6. The Court in the concluding paragraph observed as under :-

“5. Now that binds the parties is the decree passed by the Family Court. If the parties want any modification regarding the arrangement made in the decree passed by the Family Court as regards visitation rights or right of access to the minor child Anoushka, it is for the parties to apply to the Family Court in accordance with the Law. If a case is made out in that behalf and if it is permissible in law, the Family Court will pass appropriate order on such application which may be made by the parties.

6. As regards the prayer for initiating action for the contempt, it is stated that the Applicant has already adopted appropriate remedy. In the

circumstances, it is not necessary to entertain this application. Application is accordingly disposed of by granting liberty to the parties to file appropriate proceedings. All contentions of the parties are kept open.”

7. The applicant herein thereafter moved the Family Court, Pune by filing an application on 22nd August, 2012. In such application he took up the main grievance of the wife not executing and delivering the Quit Claim Deed. He prayed that “-

“9. The J.D. is required to be directed and ordered to:

9.1 To complete, Execute and deliver the QUIT CLAIM DEED, which is annexed herewith, and deliver the same to the D.H. on or before 24.8.12 i.e. within the time frame, as both the D.H. and J.D. are presently in Pune.

9.2 In the event of non-compliance of above, by the J.D., Family Court Counselor be appointed as Court Commissioner, to complete and execute the same, and deliver the same within such time as the Hon'ble Court may so grant and direct.

9.3 Leave be granted to D.H. to sell the said house.

9.4 Leave be granted to the D.H. to furnish security, of Rs.20 Lakhs from the sale proceeds of the said house.

9.5 Or in the alternative and in addition, the present Darkhast itself be transferred to Court of Competent Jurisdiction, in USA, to enable the D.H. to take expeditious steps, in which event, the entire Execution Proceedings along with Certificate of this

Hon'ble Court be kindly given/handed over to the D.H., to prosecute his rights and enforce Consent Terms Decree in USA., under Order 21 Rule 6 of C.P.C.”

8. This application was disposed of by the Family Court by an order dated 4th September, 2013. The Family Court accepted the prayer of the applicant for issuing necessary orders to the respondent-wife to issue the Quit Claim Deed. The relevant portion of the order of the Court reads as under :-

“7. As per the consent terms non (vi) which are reproduced above, the present Decree Holder was directed to issue a Quit Claims Deed for enabling Mr. Divyaksh Kapur to facilitate the performance of various acts and deeds solely by himself and to avoid any difficulties with regard to discharge of mortgage or any other requirements in accordance with law of that country but it is made clear that he voluntarily agrees before this court that he would not sell, transfer, alienate the said flat without the specific leave of this court.

8. Now the Judgment Debtor is bound execute a Quit Claims Deed as per this agreed term. Hence, the application is allowed and proceed to pass the following order:-

ORDER

1. The Judgment Debtor shall issue a 'Quit Claims Deed' in favour of Decree Holder as incorporated the condition mentioned in term (vi) of the Consent Terms executed in Contempt Appeal No. 1/2008 in Contempt Petition No. 401/2007 before the Hon'ble High Court of

**Judicature at Mumbai, Civil Appellate
Jurisdiction.**

2. No order as to costs.

Pune

Date.04/09/2013.

9. The respondent pursuant to the said order of the Family court dated 4th September, 2013 issued a Quit Claim Deed which reads as under:-

“This indenture made this 24th day of August 2013 between PRIYANKA SARUP (earlier KAPUR) of H-3, 12 BA, Pluto Society, Kalyani Nagar, Pune, Maharashtra, India as GRANTOR and DIVYAKSH KAPUR of P.O. Box 5621, Frisco, Texas, USA, as GRANTEE.

WITNESSETH: That PRIYANKA SARUP (earlier Kapur) THE grantor in compliance with the agreed terms of consent signed and submitted in the Honourable High court of Judicature at Bombay, Maharashtra, India in Contempt Appeal No.1 /2008 and by this document does issue

QUIT CLAIM unto Divyaksha Kapur, said GRANTEE, to facilitate the performance of various acts, and deeds, solely by himself to avoid any difficulties with regard to discharge of mortgage and necessary repairs and maintenance of the house or any other requirements in accordance with law of Richmond Virginia, USA.

Divyaksh Kapur voluntarily agrees that he would not sell, transfer, alienate the following described property, which is jointly owned by PRIYANKA SARUP (earlier Kapur), located in country of Henrico, State of Virginia, without the specific leave of High Court, Bombay, India.

Address: 2255, RIDGEFIELD GREEN WAY,
RICHMOND, VA 23233.

IN WITNESS WHEREOF, the said GRANTOR has
herewith set her hand and seal, the day and year
first above written.”

10. The case of the applicant-husband put forth by his Advocate is that the Quit Claim Deed executed by the wife on 24th August, 2013 does not meet the requirements of the consent terms as confirmed by the High Court which became part of the order of the Court. His grievance is that as per the understanding between the parties so recorded by the High Court in the orders dated 8/9th July, 2008 and 16th July, 2008, the wife had to relinquish her rights over the property in question which would enable the husband to sell the property and the husband had undertaken not to divest the property without the leave of the Court. This essential element of the wife relinquishing her right over the property is absent in the Quit Claim Deed executed by her.

11. On the other hand, the case of the respondent wife argued before us through her counsel is that there is no such agreement

flowing from the consent terms. The wife has executed the deed exactly as per the agreement between the parties. This contempt petition is not maintainable, more so since the applicant had already approached the Family Court and which has passed the order in this respect. She also relied on the order of this Court dated 24th July, 2012 in Civil Application No.2 of 2009 recording that it would be open for the applicant to institute separate proceedings.

11. Having heard learned counsel for the parties, we find that the controversy is in narrow compass. Short question is, in view of the facts noted above, whether contempt action should be taken against the respondent. As is well known, contempt jurisdiction of the High Court would rest on asserting whether the alleged contemnor has willfully breached any order or the direction of the Court or defied any writ order or direction of the Court. The element of willful disregard or disobedience is essential.

12. In this respect we may recall, pursuant to the consent terms between the parties which was recorded and become part of the order of the Court, the wife had to issue Quit Claim Deed. What exactly would be the terms of such Quit Claim Deed, would be open to interpretation. The interpretation of the applicant-husband is that respondent-wife was required to relinquish her ownership in such property, may be a plausible one. However, for two fundamental reasons, in the present contempt proceeding we are not inclined to undertake such exercise of interpreting the clauses of the agreement. Firstly, because the contempt jurisdiction of this Court in this respect is narrow. As noted, the question would, be has the respondent willfully defied any order, direction or writ of the Court? Secondly and more importantly, for this very purpose the applicant had moved the Family Court Pune for appropriate directions by filing Darkhast proceedings, order was invited and the order was actually passed. Pursuant to such order the respondent-wife has also issued the Deed. If the applicant is not satisfied with the contents of such deed, his remedies would lie elsewhere and certainly not in arguing the present contempt

petition which was filed long time before the Family Court issued the order in the Darkhast proceedings and long before the wife issued the deed claiming it to be in consonance with the order of the High Court and in terms of the consent terms between the parties.

13. In view of these observations, contempt petition is disposed of. Notice discharged.

(SARANG V.KOTWAL,J.)

(AKIL KURESHI,J.)

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