

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION NO. 507 OF 2018
IN
FAMILY COURT APPEAL NO. 56 OF 2018

Priya Atul Gonel)
Age : 28 years, Occupation : Housewife)
R/at. : C/o. Arun Shivram Ayane)
Goodwill Apartment, Behind Bhavani Market)
Dhanori, Pune)... Petitioner

Versus

Atul Arun Gonel)
Age : 34 years, Occupation : Service)
R/at : Sarthak Niwas, Plot No. 27/6)
Defence Colony, Near Mauli Hospital,)
Bopkhel, Pune – 411 015)... Respondent

Mr.Siddheshwar N. Biradar for the Petitioner.
Mr.Irfan A. Shaikh for the Respondent.

CORAM : AKIL KURESHI &

S.J.KATHAWALLA, JJ.

RESERVED ON : 30TH SEPTEMBER, 2019

PRONOUNCED ON : 11TH OCTOBER, 2019

P.C.: (PER S.J. KATHAWALLA, J.)

1. The above Contempt Petition is filed by the Petitioner-wife – Priya Atul Gonel against the Respondent-husband – Atul Arun Gonel on the ground that the

Respondent-husband has committed willful breach of the Order dated **19th July, 2018** in Civil Application No. 69 of 2018 in Family court Appeal No. 56 of 2018. The Respondent-husband has also committed breach of the undertaking given to this Court and recorded in the Order dated **26th June, 2019** passed in the above Contempt Petition, wherein the Respondent-husband undertook that he would pay an amount of Rs.2 Lacs to the Petitioner by way of demand draft as follows :

- i. Rs.1 Lac on or before 10th July, 2019.
- ii. Rs.1 Lac on or before 24th July, 2019.

The total arrears of maintenance payable by the Respondent-husband to his wife and two minor children is Rs.6,45,000/-.

2. The Respondent-husband who has admittedly on his Facebook post declared with photographs that he has opened Gyms / Fitness Clubs, which were inaugurated at the hands of his parents ; has in the month of December 2017 earned Rs.93,000/- from HERBALIFE NUTRITION ; is the owner of a new Royal Enfield motorbike (photo displayed), has left no stone unturned in depriving his wife and two minor children of their legitimate right to maintenance as ordered by this Court by its Order dated 19th July, 2018 and has also breached the undertaking given by him to this Court to make part payment of Rs.2 Lacs thereby leaving them completely high and dry and at the mercy of others for their survival. In view thereof, it has become necessary for this Court to set out the facts in the matter as well as completely dishonest conduct of the Respondent-husband in some detail.

3. The marriage between the Petitioner-wife and the Respondent-husband was solemnized on 27th November, 2009 as per Hindu rites. From the said marriage, they have two children Haemaksh and Dhruv, who are currently 9 and 5 years old, respectively.

4. Since disputes arose between the couple, the Respondent-husband filed the Petition for divorce under Section 13 (1) (ia) of the Hindu Marriage Act, 1955 seeking dissolution of marriage between him and the Petitioner-wife. When the said divorce proceedings were pending, the Petitioner-wife had applied for interim maintenance for herself and her two minor children. In the said Application, the Petitioner-wife had claimed that she has studied only upto standard tenth, she has no source of income, she is residing in a very small flat alongwith her two children, her parents, her married brother and his family and her younger brother who is engaged to be married. As against this, the Respondent-husband and his family reside in an ownership bungalow/ building named 'SARTHAK NIWAS' consisting of Ground + two floors constructed on 27/6, Defence Colony, Bopkhel, Pune. The Petitioner-wife also claimed that the income of Respondent-husband is Rs.89,000/- per month. However, the Petitioner-wife did not produce any document in support of her claim qua the income of the Respondent-husband. The Respondent-husband contended that his father is retired and is getting pension of Rs.8,000/- per month and the Respondent husband along with his parents survives on the said pension amount of Rs.8,000/- received by his father meaning thereby that he has no income of his own. The Respondent-husband

alleged that the Petitioner-wife was earlier doing the job of interior designing and earning Rs.15,000/- per month. The Respondent-husband also failed to produce any document to show the Petitioner's income.

5. By an order dated 3rd May, 2016, the Family Court, Pune after recording that the Petitioner-wife has failed to prove that her husband has an income of Rs.89,000/- also recorded that the Respondent-husband is an able bodied man, and it is therefore presumed that the Respondent-husband has sufficient means to maintain his wife and two minor children. However, the learned Judge directed the Respondent-husband to pay an amount of only Rs.5,000/- per month as interim maintenance to the Petitioner-wife and the two minor children till the final disposal of the divorce Petition filed by the Respondent-husband.

6. By a Judgment and Decree dated dated 31st October, 2017, the marriage of the Petitioner wife and the Respondent-husband stood dissolved. In view thereof, interim maintenance, which was ordered to be paid to the Petitioner-wife and her two minor children pending the disposal of the divorce proceedings, was discontinued.

7. The Petitioner-wife filed the above Appeal impugning the Judgment and Decree dated 31st October, 2017. The above Appeal is admitted by an Order dated 18th April, 2018. The Petitioner-wife on 6th February, 2018 also filed Civil Application No. 69 of 2018 seeking interim maintenance of Rs.15,000/- per month for herself, Rs.10,000/- each for her two minor children and Rs.8,000/- per month towards house rent for the Petitioner-wife and her two minor children. In the Application seeking

interim maintenance, the Petitioner-wife contended that the Respondent-husband is running the business of Gym Trainer and he runs 3 to 4 fitness clubs in various parts of Pune city; the Respondent-husband has opened a new fitness club at Phulenagar, Alandi Road, Pune and out of the said business the Respondent-husband earns more than Rs.40,000/- per month ; apart from the said fitness club business, the Respondent-husband is also associated with HERBALIFE NUTRITION, a global nutrition company ; the Respondent-husband takes part in various Body Building Shows and film shooting and from all these businesses ; in addition to his income from his Gyms / Fitness Clubs, he earns approximately Rs.25,000/- per month ; the family of the Respondent-husband reside in a bungalow/building named as “SARTHAK NIWAS” consisting of Ground + Two Floors constructed on Plot No. 27/6 in Defence Colony, Bopkhel, Pune, which bungalow / building is of their ownership.

8. The Petitioner-wife also filed a compilation of documents inter alia showing the declarations / admissions along with photographs posted by the Respondent-husband on Facebook, as follows :

(i) Photographs put up on Facebook on **11th November, 2017** by the Respondent-husband showing the Grand opening of his Gym / Fitness Club at **Hadapsar, Pune**, by his parents. Alongwith the photographs the message put up by the Respondent-husband reads thus :

“Grand opening of my new club, opening done by my mom n dad great n Osam day celebrated with them” ;

“My new club with my God Mom and Dad” ;

“It was privilege to open ceremony through my parents at my new club at Hadapsar. They made my day. Thnx to Neelam who supported Me”.

(ii) On 2nd January, 2018, the Respondent-husband has put up unclear photographs/s with a message : *“Frds My new club Grand opening through my mom and dad in **Phulenagar Alandi Road**, Im really proud of it, Thanx to my mom dad for this blessing Will rock 2018”.*

(iii) On 14th October, 2017 a photograph is posted with the caption *“Wow result highest weight loss of under 18 yrs age category 50 kgs loss If ur are facing problems related to weight can call me 8668677979/814823978”.*

(iv) Photographs posted on 27th November, 2017 with captions *“Fitness mantra gym in dhanore”* and *“Workout at 12 in the afternoon”.*

(v) Photographs of brand new Royal Enfield motorbike with the caption *“My new bike bullet. And happy gudi padva.”*

(vi) Message by Respondent-husband thanking Herbalife Nutrition and declaring that his income in the month of December-2017 was Rs.93,000/-.

9. The Respondent-husband filed his Affidavit in Reply to the said Civil Application opposing the interim maintenance. The Respondent-husband denied the allegations made by the Petitioner-wife and stated that he is working as Gym

Instructor with Fitness Zone and earning an amount of Rs.6,500/- per month. He produced a Certificate dated 20th March, 2018 issued by the Proprietor of Fitness Zone stating that he is working in their organization as Gym Instructor since **January, 2015** till date i.e. 20th March, 2018. Interestingly, the Respondent-husband had submitted before the Family Court, which was considering an Application of the Petitioner-wife seeking interim maintenance pending the divorce Petition, that the Respondent-husband is surviving on the pension of Rs.8,000/- received by his father. This submission is recorded in the Order dated **3rd May, 2016** passed by the Family Court. Thus, this is clinching evidence of the Respondent-husband not only suppressing his income but also misleading the Court. Again, in the Affidavit in Reply filed before this Court, the Respondent-husband except general denials chose to maintain complete silence about the Facebook posts, produced before the Court by the Petitioner-wife wherein he has made admissions qua his achievements / income / wealth. Instead, he tried to portray that the family of his wife has many properties in Pune city and they have recently started in Lohagaon, Pune, a new construction of about 2,000/- sq.ft. having ten rooms. The Petitioner-wife filed her Affidavit in Rejoinder reiterating what she had stated in her Application and inter-alia denying the allegations made by the Respondent-husband.

10. On 19th July, 2018, Civil Application No. 69 of 2018 filed by the Petitioner-wife seeking interim maintenance for herself and her two minor children, was taken up for hearing. The Division Bench of this Court sought explanation from the

Respondent-husband with regard to his statement on social media i.e. his income in the month of December – 2017 was Rs.93,000/- from Herbalife Nutrition. The Court was informed by the Advocate for the Respondent-husband that the same was a false statement made by the Respondent husband on social media only for the purpose of garnering business. The Court directed the concerned Police Station, Pune to take action against the Respondent-husband who admittedly had made false and misleading statements on social media with a view to mislead the members of the public and submit its report to the Court. As stated earlier, the Petitioner-wife has taken education only upto Standard Tenth and has no independent source of income, she is staying in a small house with her two minor children, parents, brother with his family and younger brother, who is engaged to be married. The Court after considering the declarations / admissions and the photographs posted on social media by the Respondent-husband himself (i.e. qua his fitness clubs etc.) held that the Court has no hesitation in coming to the conclusion that the Respondent-husband is deliberately not wanting to maintain his wife and his two minor children even though he is in a position to do so. The Court directed the Respondent-husband to pay interim maintenance of Rs.15,000/- per month to the Petitioner-wife and Rs.10,000/- per month to each of his minor children and Rs.8,000/- per month towards house rent to the Petitioner-wife and her two minor children.

11. Despite the above Order, the Respondent-husband failed to make payment as ordered. Since the Court had directed the police authorities to take action against

the Respondent-husband for admittedly making false statements on social media thereby misleading members of the public, the Respondent-husband being aware that he had again made a false statement before the Court, now filed a Review Petition seeking review of the Order dated 19th July, 2018, wherein he now admitted that in December-2017 he had indeed received Rs.93,000/- from Herbalife. However, an amount of Rs.52,000/- therefrom was towards his bonus. Interestingly the man who now admitted having received Rs.93,000/- in the month of December 2017 from Herbalife immediately hastens to add in the Review Petition that he has stopped working with Herbalife from January, 2018 onwards. He however reiterated that his salary as a Gym Instructor is Rs.6,500/- per month. Even in the Review Petition the Respondent-husband did not explain the photographs of his fitness clubs, and the brand new motorbike he had flaunted on his facebook. The Review Petition was withdrawn by the Respondent-husband on 25th June, 2019.

12. Since the Respondent-husband failed and neglected to pay interim maintenance to the Petitioner-wife and their two minor children and thereby breached the order dated 19th July, 2018 passed by this Court, the Petitioner-wife filed the above Contempt Petition.

13. The Respondent-husband filed his Affidavit-in-Reply to the Contempt Petition stating that the contempt was not willful. Now he started playing tricks with the Court by not remaining present in Court. On 12th February, 2019, this Court directed the Respondent-husband to remain present in Court on 6th March, 2019. On

6th March, 2019, a medical certificate was produced on behalf of the Respondent-husband stating that he has Gastroenteritis problem and is advised bed rest for three days. The matter was therefore adjourned. Thereafter, when the matter was called out on 7th June, 2019, neither the Respondent-husband nor his Advocate remained present in court. In view thereof, the matter was adjourned to 11th June, 2019 and the Respondent-husband was directed to remain present on 14th June, 2019. On 14th June, 2019 the Respondent-husband was not present and his Advocate informed the court that the Respondent-husband is suffering from lower back strain due to which he is unable to appear in person. A medical certificate to this effect was produced, which inspired no confidence. This Court therefore passed an Order, the relevant portion of which reads thus :

“.....When the matter was called out, counsel for the respondent claimed that the respondent is suffering from lower back strain due to which he is unable to appear in-person. In support therefore he relies on certificate dated 10 th June, 2019 of one Dr.S.M.Patharkar. Firstly, this doctor is a M.B.B.S. Doctor not an Orthopedic specialist. Secondly, looking to the past conduct of the respondent and the flimsy manner in which the certificate is issued, the certificate simply does not inspire confidence. The respondent is directed to remain present before the Court on 17 th June, 2019 at 11.00 a.m., failing which we would take coercive measures to secure his presence before the Court. This order is passed in presence of the counsel of the respondent. Counsel for the respondent shall communicate the order to him and ensure its compliance. Stand over to 17th June, 2019.”

14. On 17th June, 2019, the Respondent-husband again failed to remain present in Court, on the ground that he is unwell. This Court therefore passed an Order, paragraph 6 of which is reproduced hereunder :

“6. Today again, the Respondent is not present in Court on the ground that he is unwell. Before we issue a warrant of arrest against the Respondent and secure his presence before the Court, we pass the following order :

(i) The Respondent – Atul Arun Gonel, shall present himself before the CEO/Superintendent of Sassoon Hospital, Pune, on 18th June, 2019, at 11.00 a.m.

(ii) The CEO/Superintendent, Sassoon Hospital, Pune, shall get the Respondent examined by medical experts and submit his report to this Court on 19th June, 2019 by 11.00 a.m. He may handover his report in a sealed cover on 18th June, 2019 by 5.00 p.m., to the Petitioner and/or her Advocate by hand delivery.

(iii) Stand over to 19th June, 2019.

All concerned to act on an ordinary copy of this order duly authenticated by the Private Secretary of this Court.”

15. On 25th June, 2019, Sassoon Hospital, Pune submitted its report, wherein the Doctor opined that *“there is no evidence that his orthopedic illness could prevent him from attending the Honourable Court”*. This Court therefore passed an Order on 25th June, 2019 directing the Respondent-husband to remain present in Court on 26th June, 2019 at 11.00 a.m. On 26th June, 2019, the Respondent-husband was present in Court along with his Advocate. The Respondent-husband has admitted that an amount of

Rs.4,73,000/- is due and payable to the Petitioner-wife and her two minor children as per the order of this Court dated 19th July, 2018. He gave an undertaking to pay an amount of Rs.2 Lacs to the Petitioner-wife by way of demand draft as follows :

- (i) Rs.1 Lac on or before 10th July, 2019,
- (ii) Rs.1 Lac on or before 24th July, 2019.

16. The Respondent-husband and his Advocate failed to remain present in Court on 24th July, 2019. Instead, Advocate Shaikh for the first time appeared in Court for the Respondent-husband and tried to submit that the undertaking was given by the earlier Advocate without consent of the Respondent-husband. In view thereof, the earlier Advocate Shri Rohile was directed to remain present in Court on 26th July, 2019. On 24th July, 2019, the Respondent-husband filed Civil Application No. 48 of 2019 contending that the order dated 26th June, 2019 did not correctly record his undertaking. The said Civil Application was dismissed by a detailed Order dated 27th July, 2019, the relevant portion of which is reproduced hereunder :

“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.”

17. On 9th August, 2019, in the above Contempt Petition, the following further facts were recorded :

“3. At the request of the husband, the proceedings were, therefore, adjourned to 24.7.2019. On 24.7.2019, he filed Civil Application No. 48 of 2019 contending that the order dated 26.6.2019 did not record correctly his undertaking. The said application was dismissed by an order dated 26.7.2019.

4. Learned Advocate for the respondent husband stated that the husband has neither paid nor proposes to pay any further sum to the wife. He stated the reason is of his financial inability to do so.

5. It would prima facie appear that the respondent husband has not only breached the directions contained in order dated 19.7.2018 but has also breached his own undertaking recorded by this Court in its order dated 26.6.2019. For the breach of his own undertaking, we put the respondent husband to notice that action for contempt in this respect, is also contemplated. It would be open for him to file reply within two weeks. S.O to 23rd August, 2019. To be placed high on board.”

18. Pursuant to such order, the Respondent has filed an Affidavit in Reply dated 22nd August, 2019, in which he pleaded non-availability of funds for not paying any maintenance amount to his wife and children.

19. This Court therefore by its order dated 9th September, 2019 passed a

detailed order, paragraphs 7 and 8 of which are reproduced hereunder :

“7] Prima facie, mere apology for not complying with the orders of the Court or his own undertaking, cannot be a ground for dropping contempt proceedings against the respondent. He must first purge himself of the contempt. His apology could be considered, subsequently. His plea of non availability of fund shall also have to be examined in light of his own voluntary undertakings given to the Court.

8] Under the circumstances, the following charges are framed against the respondent: (i) The respondent has allegedly committed willful disobedience of the order dated 19.7.2018 passed by the Division Bench of No. 69 of 2018 in Family this Court in Civil Application Court Appeal No. 56 of 2018, for which he is liable to be held guilty and accordingly, punish for contempt of court as defined under Section 2(b) of the Contempt of Courts Act, 1971;

(ii) The respondent has allegedly breached his undertaking recorded in the order dated 26.6.2019 in Contempt Petition No.507 of 2018 and consequently, he is liable to be punished for committing contempt of court as defined under Section 2(b) of the Contempt of Courts Act, 1971.

20. Pursuant thereto, the Respondent has filed an Affidavit in defence stating that he is unable to comply with the order dated 19th July, 2018 since he is earning only Rs.15,000/- per month and has the responsibility of looking after his old parents. He has stated that he intends to examine himself and his wife in support of his defence in the Contempt proceedings.

21. The Respondent-husband on 22nd July, 2019 also filed an SLP before the Hon'ble Supreme Court impugning the Order dated 19th July, 2018 (which is breached by the Respondent-husband) which SLP was dismissed on 26th August, 2018.

22. As stated earlier, the Respondent-husband has in defence submitted that the breach of the Order passed by the Division Bench of this Court dated 19th July, 2018 directing him to pay maintenance of Rs.15,000/- per month to his wife, Rs.10,000/- per month for each of his minor children and Rs.8,000/- per month towards house rent, is not complied with by him since he is earning an amount of only Rs.15,000/- per month. The breach is therefore not willful. The Respondent-husband has submitted that the undertaking given by him to pay Rs.2 Lacs is not willful breach since he is not having enough funds and also for reasons set out in his Civil Application seeking that he be relieved from the undertaking given, to this Court. In support of his submission, he has relied on the decisions of the Hon'ble Supreme Court in case of *Shivdeo Singh V. State of Punjab*¹, *Pushpaben & Ors. V. Narandas V. Badiani and Ors.*², *Mohd.Iqbal Khanday V. Abdul Majid Rather*³ and *Niaz Mohammad & Ors. V. State of Haryana & Ors.*⁴

23. We do not accept the defence of the Respondent-husband that the breach of the Order dated 19th July, 2018 as well as his undertaking recorded in the order dated 26th June, 2019 is not willful. The Respondent-husband has throughout suppressed

1 AIR 1963 SC 1909

2 AIR 1979 SC 1536

3 AIR 1994 SC 2252

4 AIR 1995 SC 308

his income and has made a false statement before the Court knowing the same to be false. This is clear from his dishonest conduct, set out hereunder :

23.1. In the Application filed by the Petitioner-wife before the Family Court seeking maintenance for herself and her two minor children pending the hearing and final disposal of the divorce Petition, the Respondent-husband submitted that he has no income and is being maintained by his father from the meager pension of Rs.8,000/- received by him. This is clear from the Order dated 3rd May, 2016 passed by the Family Court. However, the Respondent-husband in response to the Application filed by the Petitioner-wife before the Division Bench of this Court seeking interim maintenance pending the Family Court Appeal admitted that he is a Gym Trainer with Gym called Fitness Zone and is earning a salary Rs.6,500/- per month. In the certificate produced by him, it is stated that he is working as a Gym Instructor with Fitness Zone at a salary of Rs.6,500/- per month **since June-2015**. This clearly establishes that the Respondent-husband made a false representation before the Family Court, Pune as recorded in the Order dated 27th May, 2016 that the Respondent-husband is surviving on the meager pension of Rs.8,000/- per month received by his father.

23.2. The Respondent-husband continued to take a stand of him earning only Rs.6,500/- per month even in the Review Petition filed by him as late as in September-2018 (later withdrawn on 25th June, 2019). It is only when this Court in the course of hearing remarked that no able bodied person would work for a period of almost five

years as a Gym Instructor at the rate of Rs.6,500/- per month that the Respondent-husband in his Affidavit in Reply dated 22nd August, 2019, now produced a Certificate dated 17th September, 2019 once again from Fitness Zone stating that his net salary per month from the month of July-2019 is Rs.15,000/-. This shows that the Respondent-husband is in a position to produce salary certificates from time to time showing his income as decided by him.

23.3. The Respondent declared on social media that his last month income/salary (December-2017) was Rs.93,000/-. When the Division Bench of this Court whilst passing the Order dated 19th July, 2018 (from which the above Contempt Petition has arisen) inquired from the Respondent-husband about his declaration on social media, he informed the Court that the statement made on social media was a false statement made only for the purpose of garnering business thereby giving impression that the entire statement was false. Since the Court after recording his statement ordered police action against the Respondent husband for misleading the members of the public, the Respondent husband being aware that the statement made before the Court was itself false and if the police were to investigate the matter, it would be revealed that he had indeed received Rs.93,000/- from Herbalife in the month of December-2017, filed a Review Petition in September, 2018 seeking review of the Order dated 19th July, 2018, wherein he now admitted that in December-2017, he had received an amount of Rs.93,000/- from Herbalife Nutrition, however, out of the said amount, a sum of Rs.43,000/- was towards bonus. This again shows that the Respondent-

husband has no respect for law and judiciary and in order to suppress his income is repeatedly making statements in Court, which are false and dishonest to his knowledge. The man who admittedly earned Rs.93,000/- in the month of December-2017, immediately hastened to add in the Review Petition filed by him in September-2018 that from January-2018, he has stopped working for Herbalife.

23.4. The Petitioner-wife produced before the Division Bench of this Court a declaration / admission along with photographs of the Respondent-husband showing that on 11th November, 2017, there was a Grand opening of his new Gym / Fitness Club at Hadapsar, Pune, by his parents. The message posted with the said photographs reads thus :

“Grand opening of my new club, opening done by my mom n dad great n Osam day celebrated with them” ;

“My new club with my God Mom and Dad” ;

“It was privilege to open ceremony through my parents at my new club at Hadapsar. They made my day. Thnx to Neelam who supported Me”.

Again on 2nd January, 2018 the Respondent-husband posted photograph/s of his 2nd Gym / Fitness Club. Though the photograph/s is/are unclear, the message reads :

“Frds My new club Grand opening through my mom and dad in Phulenagar Alandi Road, Im really proud of it, Thanx to my mom dad for this blessing Will rock 2018”.

In the Affidavit filed by the Respondent-husband in response to the Application

seeking interim maintenance by the Petitioner-wife, except for general denials, the Respondent-husband did not give any explanation qua the photographs and the messages posted by him showing the grand opening of his Fitness Clubs by his parents. He also maintained complete silence with regard to the same, in his Review Petition. He once again maintained silence with regard to the same in his Affidavit-in-Reply to the above Contempt Petition. For the first time, he, in his Affidavit in Defence filed on 23rd September, 2019, stated that the Fitness Club in Phulenagar is opened by his brother and he has annexed the Leave and License Agreement in support of his statement. The said Leave and License shows that his brother had taken the premises for his business venture at Alandi, Pune sometime in October-2016, whereas the Respondent husband has declared / announced / admitted on social media on 2nd January, 2018, “*Frd's My new club Grand opening through my mom and dad in Phulenagar Alandi Road, Im really proud of it, Thanx to my mom dad for this blessing Will rock 2018*”. He has also put up the photograph/s of the event, which is / are unclear. In any event, he has till date maintained complete silence qua the opening of his Gym / Fitness Club at Hadapsar, Pune.

23.5. On 14th October, 2017 the Respondent-husband has posted a photograph with the caption “*Wow result highest weight loss result of under 18 yrs age category 50 kgs loss If ur are facing problems related to weight can call me 8668677979/814823978*”. Therefore, even if he is working as Gym Instructor with Fitness Zone, it is now established that he is also freelancing as a Private Gym

Instructor, but has not disclosed his income therefrom.

23.6. Though the Respondent-husband has portrayed himself to be a very poor man, who is unable to maintain his wife and two minor children, he has way back in the year 2014, declared / admitted the fact on social media that he now has a new Royal Enfield motorbike, photograph of which is displayed with the caption “*My new bike bullet.*” *And happy gudi padva.*”

23.7. The Respondent-husband has in his Affidavit-in-Reply to the Application seeking interim maintenance filed by the Petitioner-wife, boldly proclaimed that he and his family members are willing to take the responsibility of maintaining the minor children and in view thereof the Petitioner-wife should not to be granted any maintenance. In his subsequent Affidavit, the Respondent-husband has stated that his mother is suffering from heart disease, his father is paralytic, his brothers have to take care of their own family and therefore, he out of his salary of Rs.6,500/- per month, is taking care of his parents including their medical expenses. This shows that he has enough income (which he has not disclosed) to maintain both his children in all respects, but only to spite his wife, he is not paying the maintenance as ordered, and has left them at the mercy of others. If the Respondent-husband is surviving in the circumstances as alleged, he would not have offered to take the responsibility of looking after and maintaining the minor children in all respects.

23.8. Again if the Respondent-husband was aware that he had no source of income other than Rs.15,000/- he would never have given an undertaking to this

Court as recorded in the Order dated 26th June, 2019 i.e. to pay Rs.1,00,000/- on or before 10th July, 2019 and Rs.1,00,000/- on or before 24th July, 2019. Even thereafter he has not paid any amount towards arrears or otherwise as ordered by this Court.

23.9. In view of the above, it is clear beyond any doubt that the Respondent-husband is determined not to maintain his wife and two minor children. To achieve this end, he has left no stone unturned in suppressing his income from the Family Court as well as this Court. He has in order to suppress his income repeatedly mislead the Courts. Despite orders of this Court, he has willfully breached the same on the pretext of him not earning enough to pay the said maintenance, which statement is false and dishonest to his own knowledge. Whilst he is staying in a family owned bungalow consisting of ground + 2 floors and is enjoying a very good life style as can be seen from the photographs and messages posted by him on Facebook, he has left his wife and two minor children almost roofless and completely at the mercy of others for their survival. He has willfully breached the order passed by this court dated 19th July, 2018 by not paying maintenance as ordered therein. He has willfully breached the undertaking consciously given by him to this Court and recorded in the Order dated 26th June, 2019 in his presence to pay Rs.2 Lacs in installments of Rs.1 Lakh each on or before 10th July, 2019 and 24th July, 2019 respectively. The defence of the breach of undertaking not being willful is not available to him since according to him he had no capacity to pay the same even on the day he gave the undertaking. In any event, the explanation sought to be given by him qua his undertaking is also false and incorrect to

his knowledge and is already rejected by this Court by its order dated 27th July, 2019 which is reproduced hereinabove.

24. We are therefore convinced beyond any doubt that the Respondent-husband has willfully breached the Order dated 19th July, 2018 and also the undertaking given by him to this Court and recorded in the Order dated 26th June, 2019. Since despite the order of this Court and the undertaking given by him, he has willfully breached the same and his wife and two minor children are left completely helpless and dependant on others for their survival, the sentence of fine alone will not serve any purpose and ends of justice require that a sentence of imprisonment be passed. The request seeking his examination and that of his wife is only to delay the hearing of the Contempt Petition and is rejected. In the facts and circumstances recorded herein the case law cited by the Respondent-husband also lends no assistance to him. We therefore hold him guilty of willful contempt of this Court and pass the following Order :

- i. The Respondent-husband – Mr. Atul Arun Gonel is sentenced to undergo six months simple imprisonment in Civil Prison. He therefore be taken into custody and shall be sent to Arthur Road Prison.
- ii. The above Contempt Petition is accordingly disposed off.

(S. J. KATHAWALLA, J.)

(AKIL KURESHI, J.)

After the pronouncement of the Order, the Respondent-husband who is present in Court, through his Advocate, has sought suspension of the Order in order to enable him to test the same before the Supreme Court. He undertakes to pay by way of demand draft to the Petitioner-wife an amount of Rs.1 Lac by 18th October, 2019. The undertaking is accepted. The sentence is suspended for a period of three weeks from today. Stand over to 18th October, 2019 to report compliance.

(S. J. KATHAWALLA, J.)

(AKIL KURESHI, J.)