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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on : 24.08.2020

Pronounced on: 18.09.2020

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CONT. CAS(C) 1017/2019 & CM Nos.7482/2020 and 12348/2020

GEETA VOHRA @ GEETA CHOPRAPetitioner
Through **Mr. Rajnish Ranjan, Advocate with**
Petitioner in person
versus

NITIN CHOPRARespondent
Through **Mr. Rattandip Singh, Advocate**
with Respondent in person

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

J U D G E M E N T

1. Present Contempt Petition has been filed alleging wilful violation and breach of the Order dated 06.06.2019 passed by the Trial Court granting visitation rights to the Petitioner.
2. Petitioner herein is the mother of a 10 years old son who is presently in custody of his father, the Respondent herein. Petitioner and Respondent were married on 22.11.2008 and are blessed with two children, a son aged about 10 years and a daughter aged 6 years. Disputes and differences having arisen between the parties, Petitioner left the matrimonial home on 07.12.2018 with her minor daughter, while the minor son continued to stay with the Respondent.
3. On 11.02.2019, Petitioner filed a complaint with Women's Cell as according to her she was being prevented from meeting her son. On

23.03.2019 Respondent filed an Application before the Mediation and Conciliation Centre, Delhi High Court for settlement of the matrimonial dispute. On 09.04.2019, a Complaint was filed by the Petitioner under the Domestic Violence Act, which was registered as Complaint No. 4388/2019. Notice was issued and protection order was passed by the Court. On 22.04.2019, Petitioner filed an Application for grant of visitation rights in the Petition under the DV Act. On 13.05.2019, Court passed an order holding that it had jurisdiction to pass orders for visitation and directed the parties to bring the children for interaction on 25.05.2019. Court observed that the child being 15 years of age is assumed to be mature enough to take a decision to visit his mother or decline to do so. Respondent filed an Application under Section 91 CrPC and Petitioner was directed to file a reply. Application was adjourned for 23.08.2019.

4. On 25.05.2019, Court interacted with the children and after observing the child as well as due to the child agreeing to meet the mother on Sundays granted permission to the Petitioner to visit the child. Relevant part of the order is as under:

“...After 10 minutes I have returned to dais. During interaction with the children in my chamber, Master Aarush agreed to meet his mother. I also asked the child if he has been influenced by any person to meet or not meet his mother, he has replied in negative. When I asked the child as to why he expressed not to meet his mother while in the court room, the child did not reply. The child however himself agreed to meet his mother on Sundays. Ms. Aadhya voluntarily expressed her wish to meet her father on Monday and also expressed about her wish to meet two other babies in the house of her father. Both the children hugged each other and got emotional for each other. In view of my

interaction with the child, I do not find a reason to prevent a willing child to meet his mother which is ultimately for the benefit of any child to have the love and affection of both the parents. I accordingly permit the complainant to meet and visit master Aarush, even if such inclination of the child to meet his mother has developed in few hours of meeting her, without prior permission of the court to meet...”

5. Petitioner assailed the said order in appeal on 30.05.2019 and also sought a direction that the child be permitted to spend 50% of the vacation with the Petitioner.

6. Appellate Court remanded the matter back to the Trial Court as the Trial Court had interacted with the children. Vide order dated 06.06.2019, the Court granted visitation rights as follows :-

“This order is in compliance of order dated 30.05.2019 of Ld. Appellate Court directing this court to elaborate upon the mode and manner of exercising of visitation right by the complainant (granted vide order of this court dated 25.05.2015).

Upon hearing the parties and seeking their suggestions on the possible modalities, this court deems it feasible and appropriate (owning to the utterly non amicable and hostile attitude of the parties towards each other) that the visitation rights be exercised at Children’s room at Family Court complex, Saket District Court, either in supervision of some staff already deputed for management of such room or under CCTV surveillance, in order to fix accountability for any un contemplated situations. As the Ld. Family Court shall remain closed during vacations till 29.06.2019, the first visitation shall be exercisable on first working day immediately after reopening of District Courts i.e. on 01.07.2019 from 03:00 PM to 05:00 PM (office timings) and thereafter on every Monday from 03:00 PM to 05:00 PM, except in case of unavoidable exigent circumstances such as

ailment of the child or his exams etc., in case of which the respondent shall Inform the complainant at least an hour in advance. Respondent is directed to observe punctuality in dropping the child to children's room for visitation with complainant. Time of entry /exit of child and complainant at children's room be recorded by concerned staff. As these visitations are only a temporary arrangement, the same shall continue only till disposal of the case, unless relinquished before by complainant. Complainant is also warned that in case she conducts herself in any manner detrimental to the well being (physical / mental / emotional) of the minor child, such visitation order shall be liable to be vacated. Continuance of the order is further subject to the continued consent of the child, in view of detailed order passed in this regard on 13.05.2019. This order be read in continuance of order dated 25.05.2019.

Now put up the matter on date already fixed i.e. 23.08.2019.

Copy of this order be given dasti to both the parties.”

7. Respondent thereafter filed an Application for vacation of the Order dated 06.06.2019. In the said Application it was averred that visitation would not be possible on 08.07.2019, which was a Monday. As per the Petitioner, after 01.07.2019 Respondent never brought their son to the Children's Room, Family Court, Saket.

8. Learned Counsel for Petitioner submits that on the date fixed by the Trial Court for meeting the child i.e. 01.07.2019, Respondent did not come for the meeting and the child was brought by other relatives. Post this meeting, on 08.07.2019, Respondent's counsel sent an e-mail stating that the child will not be brought to the Family Court and ever since, despite an order of the Court, Petitioner has been unable to meet her son. It is contended that this is in clear violation and willful disobedience of the order passed by the Trial Court on 06.06.2019.

9. It is argued that the defense of the Respondent in the present petition is three-fold: (a) the child does not want to meet the Petitioner; (b) the order granting visitation is subject to continued consent of the child and is thus conditional and (c) Respondent had informed the Trial Court before he stopped getting the child to the Children Room at Family Court, Saket. It is argued that the Respondent is clearly in contempt, as he has not permitted the Petitioner to have access to the child after the first meeting in the Children Room. By merely filing an application for vacation of the order dated 06.06.2019, Respondent cannot be permitted to flout an order of the Court. Contempt of Courts Act, 1971 has been engrafted in the Statute to ensure that the Majesty of Law is upheld and to instill confidence in the people that judicial orders shall be complied with so that relief granted by the Court is not meaningless.

10. It is argued that the Respondent is repeatedly taking a defence that the order passed by the Trial Court is a conditional order, dependent on the continued consent of the child and if the child refuses to meet the Petitioner, Respondent cannot be held guilty of contempt, but the said defence cannot be sustained. It is submitted that when the order was passed on 06.06.2019, the child was nearly 9 years and with the gap of interaction between him and the Petitioner, it is only natural that he may be expressing some reservation in meeting the Petitioner. At this vulnerable age the child is not mature enough to give consent as he does not even understand the intricacies of the matter and being in the custody of the father, to the exclusion of the mother, it is only natural that the Respondent would have poisoned his mind against the Petitioner. It is pertinent to note that during the chamber interaction with the Trial Court

on 25.05.2019, the child had himself agreed to meet the mother and had hugged his sibling, leading to the Court, observing that both had become emotional. Thus, the condition of the continued consent of the child is meaningless.

11. It is further argued by the learned counsel for the Petitioner that it is in the best interest of the child to interact with the Petitioner, as there can be no alternate, for a healthy upbringing of the child, to a schedule of shared parenting. Courts have repeatedly emphasized on co-parenting and its importance for a proper growth and development of children. Time and again, Courts have elaborately dealt with the Parental Alienation Syndrome and its impact on children. The intensity of the negative feelings of the Respondent towards the Petitioner has had an obvious effect on the psyche of the child, who has remained in his company, to the exclusion of the mother since February, 2019. Clearly, during this period the Respondent would not have narrated positive facets/ characteristics and incidents relating to the Petitioner and the child is thus bound to show reservation in meeting her. It is obvious that the child has given up his positive perceptions about the Petitioner and only once the interaction takes place, the bond between mother and son will be rebuilt.

12. Learned counsel relied on a judgement of a co-ordinate Bench of this Court in ***D.K.C. vs. K.C. & Ors., 2016 SCC Online Del 185***, wherein the Court has held that no litigant can be permitted to defy or decline adherence to an order of the Court merely because he/she is of the opinion that the order is incorrect or cannot be implemented. The Court was of the view that the act of the Respondent therein of removing the minor child from the jurisdiction of the Court was in direct contravention

of the assurance given by him to the Guardianship Court. Reliance was placed by the learned counsel on the observations of the Court in paragraph 58 of the said judgement, wherein the Court observed that the plea of the Respondent that he cannot be held guilty of contempt as the minor child is unwilling to stay with the Petitioner was rejected in similar facts by the Supreme Court in *Hoshiam Shavaksha Dolikuka vs. Thrity Hoshie Dolikuka*, (1982) 2 SCC 577. Reliance was also placed on paragraph 63 of the said judgement wherein the Co-ordinate Bench observed that even though it is true that taking the child out of the father's custody may cause some problem, but difficulty in implementation of an order passed by the Court is no answer to its non-implementation.

13. Learned Counsel also placed reliance on the judgement of the Supreme Court in *Gaurav Nagpal vs. Sumedha Nagpal*, (2009) 1 SCC 42, where the Court had upheld the order of the High Court granting custody to the mother and also upheld the finding of guilt for disobeying Court's order and committing contempt of Court, while restricting, however, the sentence to the period already undergone.

14. Learned counsel also lays emphasis on the observations in the judgement of the Supreme Court in *Vivek Singh vs. Romani Singh*, (2017) 3 SCC 231, where the Supreme Court was examining the legality of the order of the High Court which had observed that role of the mother in the development of a child's personality can never be doubted. The company of the mother is the most natural thing for a child and neither the father nor any other person can give the same kind of love, affection, care and sympathy to a child as that of a mother. Supreme Court concluded that the observations of the High Court applied with greater

force when the matter before the Court was where the girl child was 8 years old. In the considered view of the Supreme Court, in order to ensure that the child achieved stability and maturity and is able to deal with complex emotions, it was necessary that she be in the company of the mother as well.

15. Learned counsel for the Respondent, Mr. Rattandip Singh, *per contra*, vehemently argues that the order of visitation dated 06.06.2019 was a conditional order, dependent on the consent of the child as well as behavior of the Petitioner towards the child. He points out that during the first visitation itself, on 01.07.2019, when the child was accompanied by his grandparents and paternal aunt, the child requested the Petitioner after one hour to allow him to go for his abacus class. On this request of the child, the Petitioner not only scolded him but also contacted the abacus teacher and pushed her to change the timings of his class. The child was deeply hurt by this incident and was in tears when he returned home as he was scared to face his teacher. Respondent had to apologize to the teacher. Moreover, it is contended that the child was extremely troubled by the incident and became apprehensive about continuing with the classes, in future.

16. Mr. Singh further argues that after the first visitation meeting got over, Petitioner and her family members fought with the paternal grandparents of the child in front of him, which traumatized the child and he refused to go for future meeting(s) with the Petitioner. This was communicated to both, the Petitioner and her counsel. The child has witnessed several incidents of violent behaviour of the Petitioner. This has had a bad effect on his psyche and he often weeps at night and feels

insecure that he would be taken away from his father. Learned counsel for Respondent contends that as a consequence of the Petitioner's conduct, the child had to be taken to a psychologist, which is why an application was moved before the Trial Court narrating the incidents that transpired during the visitation. The child has had regular visits to the Psychologist till December, 2019 and is slowly showing signs of recovery and recuperating from the trauma.

17. It is further submitted that the child is almost ten years of age and understands the nature of the litigation between his parents. Respondent and his counsel both have made several attempts to convince the child to meet his mother, but he resists every such effort. Mr. Singh submits that being conscious of these facts and keeping the welfare of the child in mind, the Appellate Court did not grant interim visitation to the Petitioner for celebrating the birthday of the child on 13.09.2019. Even during the hearing before this Court on 12.06.2020, Respondent tried his best to make the child speak to the Petitioner through electronic mode but the child outrightly refused. Efforts of the counsel were unsuccessful as the child expressed his unwillingness to interact or speak with his mother. He submits that in these circumstances, it is not in the interest of the child to force him to meet the Petitioner and since the order was conditional upon his consent, there is no willful disobedience by the Respondent and therefore, no contempt is made out.

18. Learned counsel for the Respondent relies on the judgement of the Madras High Court in ***Dr. V. Sridevi vs. Dr. C.S. Mani, CMA No.2249/2015, M.P. No.1/2015, decided on 29.04.2019***, wherein the Court observed that notwithstanding the individual opinion of the

Presiding Officers, the opinion of the Expert on the psychological report of the child should have been considered for arriving at a decision as to what is in the best interest of the child. Expert opinion having been called for could not be ignored by the Court. The Court in the said case had not only gone through the report of the Psychologist but had also interacted with the child. Finally the Court came to a conclusion that the child was not inclined to meet his father. The Expert Report had also indicated that the child was not prevented by the mother to meet his father. After a detailed analysis, the Court came to a finding that interest of the minor child would be best served if the custody remained with the mother and that the aberration in visiting rights had not affected the welfare of the child. To sum up, it is contended that the child is in a comfortable environment with the Respondent and in case he is forced to meet his mother, it could have an adverse effect on his psyche. It is a settled law that if there is no willful disobedience of the order of the Court, contempt is not made out. Not only for the reason that it is not in the interest of the welfare of the child to force him to meet the Petitioner, but also for the reason that the order granting visitation rights to the Petitioner was a conditional order, the present petition deserves to be dismissed.

19. I have heard the learned counsels for the parties and examined their rival contentions.

20. It is undisputed between the parties that vide order dated 06.06.2019, Trial Court had granted visitation rights to the Petitioner for meeting the child on every Monday from 3 p.m. to 5 p.m. at the Children's Room at Family Court Complex, District Court, Saket. As per the order, the first effective date for visitation was 01.07.2019. The order

was subject to a caveat that in unavoidable circumstances such as the ailment of the child or his exams etc., visitation right of the Petitioner could be deferred, with prior intimation of the same to the Petitioner. It is also undisputed that barring the first date of visitation i.e. 01.07.2019, no meeting took place between the Petitioner and the child and the order of the Trial Court was never complied with, thereafter.

21. While the main contention of the Petitioner is that the Respondent's father has poisoned the mind of the child, the defence of the Respondent is that the minor child does not wish to interact with the Petitioner and the continuance of the order of the Trial Court was conditional and subject to the consent of the child. I may note here that on account of the Pandemic COVID-19, hearings in the present case before this Court were conducted through Video Conferencing. The Court therefore did not have the benefit of physical interaction with the child. With the assistance of the counsels for the parties, Court had on a few occasions directed the parties to organize a meeting between the child and the Petitioner through a virtual medium, only to be informed by the Respondent and his counsel that the child expressed his unwillingness to meet the Petitioner. In fact the Court was also informed that on one occasion when the child was connected to the Petitioner through electronic medium, he did not interact with the Petitioner and told his sister, who lives with the Petitioner, that she should inform 'her mother' that he was not willing to interact with her. The incident is a pointer to a reality that the child at this stage is alienated from the mother and this is only natural considering that the minor, who is about 10 years of age, has been living in the company of his father, to the exclusion of the mother

and due to the strained relationship of the parents, he may have inhibitions in meeting the mother. It cannot however be overlooked that the Respondent is under an obligation to comply with the order of the Trial Court and not frustrate it and more importantly he needs the love and care of the mother. The Trial Court has observed in one of the orders that the child had agreed to meet the mother on Sundays and was happy and emotional on meeting his sibling. Extra efforts are thus required to be undertaken by the Respondent to create an environment so that the child interacts with the Petitioner.

22. There cannot be a doubt on the proposition of law that in matters relating to custody or guardianship or visitation rights, the paramount consideration, while adjudicating the matter, is the welfare of the child and the Court in such matters exercises *parens patriae* jurisdiction. This jurisdiction, which is of ancient origin, has been aptly described by Lord Eldon L.C. as under :-

“it belongs to the King, as parens patriae, having the care of those who are not able to take care of themselves, and is founded on the obvious necessity that the law should place somewhere the care of individuals who cannot take care of themselves, particularly in cases where it is clear that some care should be thrown round them.”

23. Lawrence Jay Braunstein in one of his articles titled “*Children as Pawns: Who Determines Custody ?*” published in “*The Matrimonial Strategist*” (October 2003) stated the following :-

“The division of assets in a divorce is a process rife with potential conflict, which varies according to the value of the assets and relative worth of the parties. More painful and much more difficult, however, is the determination of

custody. Children are not assets to be divided. Their lives, already affected by the divorce, will be further impacted by the custody situation. Attorneys and Courts struggle with ways to determine which parent would be the better primary caretaker. If only there were a test ... Because there is not such a determining factor, the legal system has come up with many tests – and people to evaluate them. Rather than simplify the decision, this process may have further complicated it. In addition to the question of objectivity raised about the tests themselves, there are the questions raised about the individuals who evaluate them.”

24. There also cannot be a quarrel that an ideal situation for the child would be when the parents themselves come forward, despite their personal differences, to draw co-parenting schedules for the children and share the responsibilities for bringing up the child. However, it is most unfortunate that it is the Court which has to continue to dabble with the process of custody and visitation rights. The genesis of most of the cases relating to custody and visitation rights is in a regime concerned with the rights of the parents over the child rather than their responsibilities towards the child. The Hague Convention, 1996 attempted to shift the ‘rights’ regime to a regime of the ‘responsibilities’. The Convention also requires the child to be treated as an individual and not as the property of the parents, merely used by the parents to settle scores with each other.

25. It is true that if the minor is old enough to make an intelligent preference, the Court must consider the preference and respect it and the ultimate decision would always be based on a singular factor i.e. the welfare of the child. In doing so, however, Court would have to consider whether the child has the maturity to make an intelligent preference and at that stage the immediate past and present circumstances and events

must be kept in mind, including the fact that the child has been in the exclusive custody of one parent to the exclusion of the other. Relevant in this regard would be to quote a passage from *Diane Q. Brown v. George C. Brown*, 362 SC 85 (2004), which is as follows :-

“In determining the best interests of the child, the Court must consider the child's reasonable preference for custody. The Court shall place weight upon the preference based upon the child's age, experience, maturity, judgment, and ability to express a preference”. S.C. Code Ann. § 20-7-1515 (Supp. 2003); see also Moorhead v. Scott, 259 S.C. 580, 585, 193 S.E. 2d 510, 513 (1972) (holding the wishes of a child of any age may be considered under all the circumstances, but the weight given to those wishes must be dominated by what is best for the welfare of the children). The significance to be attached to the wishes of children in a custody dispute depends upon the age of the children and the attendant circumstances. See Smith v. Smith, 261 S.C. 81, 85 : 198 S.E. 2d 271, 274 (1973). The child's preference will be given little weight where the wishes of the child are influenced by the permissive attitude of the preferred parent”.

26. Defence set up by the Respondent to the present petition that the order of the Trial Court is conditional and dependent on the consent of the child and the child is unwilling to meet the Petitioner, will have to be examined keeping in the background that the child has been in the exclusive custody of the Respondent and alienated from the mother, not privy to the best of her traits and her love and affection for the child. In my view, Respondent cannot be permitted to use the words ‘continued consent’ by the trial court, as a trump card to flout the orders of a Court. In a contempt proceeding, it is not open to the Respondent to urge that the order is non-est or cannot be complied with or is incorrect. Supreme

Court in *Union of India vs. Subedar Devassy PV*, (2006) 1 SCC 613, held that if any party is aggrieved by an order, or its implementation is not practicable or feasible according to the party, it can approach the Court for variation of the order or invoke the jurisdiction of an Appellate Court, but flouting the order would render the party liable for contempt. Relevant para of the said judgement is as under:

“6. If any party concerned is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practicable nor feasible, it should always either approach the court that passed the order or invoke jurisdiction of the appellate court. Rightness or wrongness of the order cannot be urged in contempt proceedings. Right or wrong, the order has to be obeyed. Flouting an order of the court would render the party liable for contempt. While dealing with an application for contempt the court cannot traverse beyond the order, non-compliance with which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible.”

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27. Relying on the following passage of the judgement of the Supreme Court in *Tayabhai M. Bugasarwalla v. Hind Rubber Industries Pvt. Ltd.*, AIR 1997 SC 1240, a coordinate Bench of this Court in *D.K.C. (supra)* observed that if violation of Court orders is not viewed seriously, it will have widespread effect on the authority of Courts to implement orders or compel their adherence. Passage from the judgement in *Tayabhai (supra)* is as under :-

“16. ... The question is whether the said decision of the High Court means that no person can be punished for flouting or disobeying the interim/interlocutory orders while they were in force, i.e for violations and disobedience committed prior to the decision of the High Court on the question of jurisdiction. Holding that by virtue of the said decision of the High Court (on the question of jurisdiction), no one can be punished thereafter for disobedience or violation of the interim orders committed prior to the said decision of the High Court, would indeed be subversive of rule of law and would seriously erode the dignity and the authority of the Courts. We must repeat that this is not even a case where a suit was filed in wrong court knowingly or only with a view to snatch an interim order. As pointed out hereinabove, the suit was filed in the Civil Court bonafide. We are of the opinion that in such a case the defendants cannot escape the consequences of their disobedience and violation of the interim injunction committed by them prior to the High Court's decision on the question of jurisdiction.”

28. In ***D.K.C. (supra)***, the Court, in a contempt petition, was faced with a similar plea by the defaulting parent that the minor was unwilling to stay with the Petitioner. Court refused to accept the said plea and held the father guilty of contempt of the order of the Court. Similar plea of a parent opposing a contempt petition that he cannot be held guilty of contempt as the minor child was unwilling to stay with the petitioner, was rejected in similar facts by the Supreme Court in ***Hoshiam Shavaksha (supra)***. Relevant portion of the said judgement is reproduced hereinbelow:-

“6. The main defence of the husband in the contempt replication is that he was not in a position to carry out the said orders and to comply with his undertakings, as the daughter Gospi was unwilling to go to her mother's place. It is his defence that in spite of his best endeavours he could

not persuade the daughter Gospi to go to her mother's place, and in view of the attitude of Gospi and taking into consideration the question of Gospi's health and welfare, he was prevented from taking Gospi to her mother's place and the violation is, therefore, unintentional and for reasons beyond his control.

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10.The defence sought to be put forward on behalf of the appellant that the appellant was unable to comply with the said orders and to carry out the undertakings in view of the attitude of the minor girl does not impress us. If there had been any truth in the case sought to be made by the appellant, it would have been clearly the duty of the appellant, to apply to the Court, drawing the notice of the court to this aspect and to ask for appropriate directions.It, however, appears that the appellant took no such steps in the present case when the appellant felt that he would not be in a position to carry out the orders of the Court and to comply with the undertakings given by him. The fact and circumstances of this case go to suggest that the appellant was not willing to part with the company of his daughter and to allow her to stay with her mother. We are, therefore, of the opinion that the High Court was right in coming to the conclusion that the appellant has committed acts which amount to contempt of court.”

29. Supreme Court in **Gaurav Nagpal** (*supra*) refused to accept the argument of the father that as the minor child was living with him since long, the arrangement should not be disturbed. Relevant portion of the said judgement is reproduced hereinbelow:-

“52. The trump card in the appellant's argument is that the child is living since long with the father. The argument is attractive. But the same overlooks a very significant factor. By flouting various orders, leading even to initiation of

contempt proceedings, the appellant has managed to keep custody of the child. He cannot be a beneficiary of his own wrongs.....”

30. In *D.K.C. (supra)*, Court also made observations with respect to the duty of a Contempt Court to ensure compliance of Court orders. The observations in my view are very useful and read as under:

“Duty of Contempt Court to ensure compliance of orders.

61. It is the obligation of this Court to uphold the majesty of law and to ensure that judicial orders are not flouted by a party who believes that it shall be the judge of its own case. This Court is of the view that it is the duty of contempt court to ensure compliance of orders and if the respondent no.1's conduct is not reprimanded, there shall be no rule of law. The Supreme Court has held so in the following judgments:-

A) Bank of Baroda v. Sadruddin Hasan Daya, (2004) 1 SCC 360 wherein it has been held as under:-

“16.the court should act with seriousness and severity where justice is jeopardized by a grossly contemptuous act of a party. If the judiciary is to perform its duties and functions effectively and true to the spirit with which they are sacredly entrusted, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise, the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society.

B) Anil Ratan Sarkar v. Hirak Ghosh (2002) 4 SCC 21 wherein it has been held as under:-

22.there cannot be any laxity, as otherwise the law courts would render themselves useless and their order to utter mockery. Feeling of confidence and proper administration of justice cannot but be the hallmark of Indian jurisprudence and contra-action by courts will lose its efficacy. Tolerance of law courts there is, but not without limits and only up to a certain point and not beyond the same.

C) *Murray & Co. v. Ashok Kr. Newatia*, (2000) 2 SCC 367 wherein it has been held as under:-

“.....The Contempt of Courts Act of 1971 has been engrafted in the statute-book for the purpose of bringing in a feeling of confidence of the people in general for due and proper administration of justice in the country. It is undoubtedly a powerful weapon in the hands of the courts and as such it must be exercised with due care and caution and in cases of larger interest for due administration of justice.

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9. The right to inflict punishment for contempt of court in terms of the Act of 1971 on to the law courts has been for the purposes of ensuring the rule of law and orderly administration of justice. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law since the image of such a majesty in the minds of the people cannot be led to be distorted. The respect and authority commanded by courts of law are the greatest guarantee to an ordinary citizen and the entire democratic fabric of the society will crumble down if the respect for the judiciary is undermined. It is true that the judiciary will be judged by the

people for what the judiciary does, but in the event of any indulgence which can even remotely be termed to affect the majesty of law, the society is bound to lose confidence and faith in the judiciary and the law courts thus, would forfeit the trust and confidence of the people in general.”

As there is a clear breach of the undertaking appropriate directions have to be issued to close the breach.

62. *The facts narrated above would clearly indicate that the respondent No. 1-father is squarely responsible for removal of the child from the jurisdiction of the Indian Court. As there is a clear breach of the undertaking given by the respondent No. 1-father, this Court is of the opinion that appropriate directions have to be issued to close the breach. The Supreme Court in Mohammad Idris v. Rustam Jehangir Babuji, (1984) 4 SCC 216 has held as under:-*

“4. On merits, the learned counsel submitted that the undertaking given was not in respect of the property concerned and that in any case the learned Single Judge was not justified in giving certain directions in addition to punishing the petitioners for contempt of court. We find no substance in the submissions made by the learned counsel. There was a clear breach of the undertaking given by the petitioners and we are of the opinion that the Single Judge was quite right in giving appropriate directions to close the breach. The special leave petition is, therefore, dismissed.”

63. *It is true that taking the child out of the father's custody may cause some problem, but difficulty in implementation of an order passed by the Court, is no answer for its non-implementation. The Supreme Court in Arathi Bandi (supra) has held as under:-*

“.....All said and done, in such circumstances, the Court is left with making a very unpleasant decision. Either way, certain collateral damage being caused to the child cannot be avoided. The facts narrated above would clearly indicate that the mother is singularly responsible for removal of the child from the jurisdiction of the US courts.”

64. Consequently, the respondent-father is directed to return the minor child to the petitioner-mother forthwith. If the respondent-father is of the view that consensual parenting plan is not working in the interest of the minor, he is given liberty to seek variation, modification and/or recall of the order dated 01st October, 2014. The rights and contentions of all the parties are left open.”

31. I may at this stage also refer to a few passages from the judgement of the Supreme Court in ***All Bengal Excise Licensees' Assn. v. Raghendra Singh, (2007) 11 SCC 374***, which are as follows:

“28. In our opinion, a party to the litigation cannot be allowed to take an unfair advantage by committing breach of an interim order and escape the consequences thereof. By pleading misunderstanding and thereafter retaining the said advantage gained in breach of the order of the Court and the wrong perpetrated by the respondent contemnors in contumacious disregard of the order of the High Court should not be permitted to hold good. In our opinion, the impugned order passed by the High Court is not sustainable in law and should not be allowed to operate as a precedent and the wrong perpetrated by the respondent contemnors in utter disregard of the order of the High Court should not be permitted to hold good.

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32. *Law on the subject*

1. *Kapildeo Prasad Sah v. State of Bihar* [(1999) 7 SCC 569 : 1999 SCC (L&S) 1357] , SCC p. 570e-h

“For holding the respondents to have committed contempt, civil contempt at that, it has to be shown that there has been wilful disobedience of the judgment or order of the court. Power to punish for contempt is to be resorted to when there is clear violation of the court's order. Since notice of contempt and punishment for contempt is of far-reaching consequence, these powers should be invoked only when a clear case of wilful disobedience of the court's order has been made out. Whether disobedience is wilful in a particular case depends on the facts and circumstances of that case. Judicial orders are to be properly understood and complied with. Even negligence and carelessness can amount to disobedience particularly when the attention of the person is drawn to the court's orders and its implications. Disobedience of the court's order strikes at the very root of the rule of law on which Indian system of governance is based. Power to punish for contempt is for the maintenance of effective legal system. It is exercised to prevent perversion of the course of justice. Jurisdiction to punish for contempt exists to provide ultimate sanction against the person who refuses to comply with court's order or disregards the order continuously. No person can defy court's order. Wilful would exclude casual, accidental, bona fide or unintentional acts or genuine inability to comply with the terms of the order. A petitioner who complains breach of the court's order must allege deliberate or contumacious disobedience of the court's order.”

32. It has been held in several judgements that an order of the Court, even though interim in nature, is binding till set aside by a Competent Court and cannot be ignored or disobeyed on the ground that it is not feasible to implement it. When a Court intends or directs a particular state of affairs to exist while it is seized of a *lis*, the said state of affairs are required to be maintained by the parties concerned and it is the duty of

the Court to guard against violation of its orders. The Full Bench of the High Court of Madras in ***Century Flour Mills Ltd. vs. S. Suppiah*** AIR 1975 Mad 270(FB), held as under:

“9. In our opinion, the inherent powers of this Court under Section 151 CPC are wide and are not subject to any limitation. Where in violation of a stay order or injunction against a party, something has been done in disobedience, it will be the duty of the court as a policy to set the wrong right and not allow the perpetuation of the wrong doing. In our view, the inherent power will not only be available in such a case, but it is bound to be exercised in that manner in the interests of justice. Even apart from Section 151, we should observe that as a matter of judicial policy, the court should guard against itself being stultified in circumstances like this by holding that it is powerless to undo a wrong done in disobedience of the court's orders. But in this case it is not necessary to go to that extent as we hold that the power is available under Section 151 CPC.”

33. In the judgement in ***All Bengal Excise Licensees' Assn. (supra)***, Supreme Court also observed as under:

“34. In view of the clear finding of the Court, the respondent had acted in clear violation of the order made by the High Court. It is settled law that a party to the litigation cannot be allowed to take an unfair advantage by committing breach of an interim order and escape the consequences thereof by pleading misunderstanding and thereafter retain the said advantage gained in breach of the order of the Court. Such violations should be put an end to with an iron hand.

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39. As rightly observed by the Full Bench of the Madras High Court in Century Flour Mills Ltd. [AIR 1975 Mad 270 (FB)] that as a matter of judicial policy the court should guard against itself being stultified in circumstances like this

by holding that it is powerless to undo a wrong done in disobedience of the Court's orders.”

34. The totality of facts, in the present case, in my view, are a pointer to the fact that the Respondent made no serious efforts to abide by the interim order of the Trial Court dated 06.06.2019. Not only does it undermine the majesty of a Court but also, sadly, leads to a situation when the child, who is only 10 years of age, is deprived of not only the love and care of the mother but also the values that she may inculcate in him, which are crucial to his upbringing. Parental alienation is a concept which has been strictly commented upon by various Courts and relevant in this regard is to quote some paras from the judgement in **Vivek Singh** (*supra*), which are as follows:

“17. While coming to the conclusion that the respondent as mother was more appropriate to have the custody of the child and under the given circumstances the respondent herein was fully competent to take care of the child, the High Court proceeded with the following discussion: (Romani Singh case [Romani Singh v. Vivek Singh, 2013 SCC OnLine Del 1264 : (2013) 136 DRJ 675] , SCC OnLine Del paras 31-32)

“31. The role of the mother in the development of a child's personality can never be doubted. A child gets the best protection through the mother. It is a most natural thing for any child to grow up in the company of one's mother. The company of the mother is the most natural thing for a child. Neither the father nor any other person can give the same kind of love, affection, care and sympathies to a child as that of a mother. The company of a mother is more valuable to a growing up female child unless there are

compelling and justifiable reasons, a child should not be deprived of the company of the mother. The company of the mother is always in the welfare of the minor child”.

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18. The aforesaid observations, contained in para 31 of the order of the High Court extracted above, apply with greater force today, when Saesha is 8 years' old child. She is at a crucial phase when there is a major shift in thinking ability which may help her to understand cause and effect better and think about the future. She would need regular and frequent contact with each parent as well as shielding from parental hostility. Involvement of both parents in her life and regular school attendance are absolutely essential at this age for her personality development. She would soon be able to establish her individual interests and preferences, shaped by her own individual personality as well as experience. Towards this end, it also becomes necessary for parents to exhibit model good behaviour and set healthy and positive examples as much and as often as possible. It is the age when her emotional development may be evolving at a deeper level than ever before. In order to ensure that she achieves stability and maturity in her thinking and is able to deal with complex emotions, it is necessary that she is in the company of her mother as well, for some time. This Court cannot turn a blind eye to the fact that there have been strong feelings of bitterness, betrayal, anger and distress between the appellant and the respondent, where each party feels that they are “right” in many of their views on issues which led to separation. The intensity of negative feeling of the appellant towards the respondent would have obvious effect on the psyche of Saesha, who has remained in the company of her father, to the exclusion of her mother. The possibility of appellant's effort to get the child to give up her own positive perceptions of the other parent i.e. the mother and change her to agree with the appellant's viewpoint cannot be ruled out thereby diminishing the affection of Saesha towards her mother. Obviously, the appellant, during all this period, would not have said anything about

the positive traits of the respondent. Even the matrimonial discord between the two parties would have been understood by Saesha, as perceived by the appellant. Psychologists term it as “The Parental Alienation Syndrome” [The Parental Alienation Syndrome was originally described by Dr Richard Gardner in “Recent Developments in Child Custody Litigation”, The Academy Forum, Vol. 29, No. 2: The American Academy of Psychoanalysis, 1985.]. It has at least two psychological destructive effects:

(i) First, it puts the child squarely in the middle of a contest of loyalty, a contest which cannot possibly be won. The child is asked to choose who is the preferred parent. No matter whatever is the choice, the child is very likely to end up feeling painfully guilty and confused. This is because in the overwhelming majority of cases, what the child wants and needs is to continue a relationship with each parent, as independent as possible from their own conflicts.

(ii) Second, the child is required to make a shift in assessing reality. One parent is presented as being totally to blame for all problems, and as someone who is devoid of any positive characteristics. Both of these assertions represent one parent's distortions of reality.

19. The aforesaid discussion leads us to feel that continuous company of the mother with Saesha, for some time, is absolutely essential. It may also be underlying that the notion that a child's primary need is for the care and love of its mother, where she has been its primary care giving parent, is supported by a vast body of psychological literature. Empirical studies show that mother-infant “bonding” begins at the child's birth and that infants as young as two months old frequently show signs of distress when the mother is replaced by a substitute caregiver. An infant typically responds preferentially to the sound of its

mother's voice by four weeks, actively demands her presence and protests her absence by eight months, and within the first year has formed a profound and enduring attachment to her. Psychological theory hypothesises that the mother is the centre of an infant's small world, his psychological homebase, and that she "must continue to be so for some years to come". Developmental psychologists believe that the quality and strength of this original bond largely determines the child's later capacity to fulfil her individual potential and to form attachments to other individuals and to the human community.

20. No doubt, this presumption in favour of maternal custody as sound child welfare policy, is rebuttable and in a given case, it can be shown that father is better suited to have the custody of the child. Such an assessment, however, can be only after level playing field is granted to both the parents. That has not happened in the instant case so far.

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22. We, thus, find that the factors in favour of respondent are weightier than those in favour of the appellant which have been noted above. It is a fit case where respondent deserves a chance to have the custody of child Saesha for the time being i.e. at least for one year, and not merely visitation rights."

35. It is also relevant to note that the sibling of the child is in the custody of the Petitioner. The alienation of the child from the mother and lack of interaction is also resulting in sibling alienation and it is unfortunate that the two children are also unable to interact with each other in times, when they should be growing and playing together. The order of the Trial Court dated 25.05.2019, extracted above, reflects that the child is not averse to meeting his mother, as is being made out by the

Respondent and on the contrary, records that the child was willing to meet her on Sundays. In my view the Respondent is not making enough efforts to create a comfort zone and remove inhibitions in his mind, if any, to pave the way for successful interaction with the Petitioner.

36. Supreme Court in the case of ***Ruchi Majoo vs. Sanjeev Majoo (2011) 6 SCC 479***, clearly held that one parent should not insulate the minor from the parental touch and influence of the other parent as co-parenting is imperative for healthy growth of the minor and development of his personality. It is important that the minor has the care and guidance of both the parents at the formative and impressionable stage of life. The ratio of the judgement is that the role of neither of the parents can be undermined in upbringing and grooming the child to face the realities of life. As the Court observed, visitation rights of the non-custodian parent will enable the child and the parent to stay in touch and share moments of joy, learning and happiness with each other.

37. While it is evident that the act of the Respondent amounts to disobedience of the Court order, but in my view, holding him guilty of contempt and passing any sentence will not subserve any useful purpose and may not even be in the interest of the child. However, the Court does take note of the fact that there is a willful disobedience of the Court order and therefore, warns the Respondent that in case the order is flouted in the future, stricter view would be taken. Having said that, the Court cannot overlook the order passed by the Trial Court and the rights of the Petitioner to visit her child emanating therefrom.

38. The Court is also conscious of the fact that in the prevailing circumstances on account of Pandemic COVID-19, it is not possible for

the child to have physical interaction with the Petitioner or with the sibling and given these circumstances, even the Trial Court may not be in a position to physically interact with the child. Keeping the circumstances in mind, the following directions are issued to the Respondent:

- i. Respondent shall make a sincere endeavor to ensure that the child interacts with the Petitioner and his sibling, as directed by the Trial Court, through a virtual medium. The time of the meeting shall be fixed with mutual convenience of the parties and the schedule of the child, keeping in mind the regime of his studies and/or any other curricular activity, one day before the meeting day, as due to online classes there may be a different regime of studies etc.
- ii. If the Trial Court is holding proceedings through a virtual medium, it shall continue to make efforts to interact with the child, as and when feasible.
- iii. As soon as things normalize, the Respondent shall hire the services of a child counsellor so that there is a smooth transition and the child interacts with the Petitioner more frequently.
- iv. Last but not the least, Respondent shall ensure that the child cooperates and the meetings, between the child and the Petitioner, are carried out successfully, in compliance of the directions of the Trial Court, in letter and spirit, through a virtual medium, till physical interaction is not feasible.

39. Contempt petition along with the accompanying pending applications is disposed of with the aforesaid observations and a warning to the Respondent not to disobey the order passed by the Trial Court and the directions passed by the Court today.

JYOTI SINGH, J

SEPTEMBER 18th , 2020/yg

