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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.11.2021

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE Mrs.JUSTICE R.HEMALATHA

Contempt Petition No.965 of 2018

S.Pratyuman Guhan
Door No.8, G.V.Residency,
Sowripalayam, Coimbatore -641 028. .. Petitioner

Vs.

Jenny Nirmala Karuna Manoharan
No.20, Srinivasa Gardens, Indira Gardens Road,
Varadarajapuram, Coimbatore -641 015. .. Respondent

Contempt Petition filed under Section 11 of the Contempt of Courts Act, 1971 to punish the respondent for willful disobedience of the order of this Court passed in H.C.P.No.510 of 2017 dated 18.04.2017.

For Petitioner	: Mrs.D.Kalaivani for Mr.C.Kasirajan
For Respondent	: Mr.C.Harish for Mr.N.Manoharan

ORDER

[Order of the Court was made by P.N.PRAKASH, J.]

For the sake of convenience, the parties will be referred to by their respective names.



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2. Jenny and Guhan got married on 18.01.2013 and through their wedlock, they have a child, Seyon, who was born on 14.04.2014. On account of marital discord, they got estranged and the custody of Seyon was with Guhan. Therefore, Jenny filed H.C.P.No.510 of 2017, for production of her son Seyon from the illegal custody of Guhan. Jenny and Guhan entered into a memorandum of settlement dated 17.04.2017, containing several clauses of which, we are now concerned with clause No.4, which reads as follows :

“4. The petitioner shall bring the child to India twice in a year preferably in the months of December and July for a total period of 40 days and the child will remain with the 3rd respondent during this time, and the 3rd respondent can have the child for a period of 20 days in U.S.A. The airfare for the child's trips to and from India shall be shared equally by the petitioner and the 3rd respondent.”

A Division Bench of this Court, by order dated 18.04.2017, recorded the terms of the said memorandum and closed the habeas corpus petition. Alleging that Jenny has violated clause No.4 of the said memorandum, Guhan has preferred the present contempt petition.

3. Heard Mrs.D.Kalaivani, learned counsel for Guhan and Mr.C.Harish, learned counsel for Jenny.

4. Mrs.D.Kalaivani submitted that after the order dated 18.04.2017 was passed by this Court in H.C.P.No.510 of 2017, Jenny and Guhan filed a joint



application, for divorce by mutual consent in H.M.O.P.No.1100 of 2020 in the Family Court, Coimbatore and in paragraph No.X and XI of the said petition, they have undertaken as follows:

“X.The 1st petitioner submits that he hereby undertakes that he will not file any application in the future for the custody of the minor child Seyon Prathyuman.

XI.The 2nd petitioner submits that she hereby undertakes that she will not claim any maintenance amount from the 1st petitioner either for herself or on behalf of minor child Seyon Prathyuman since she is well settled and working in United States of America.”

Based on the said petition, the Family Court, Coimbatore has also granted divorce on 23.04.2021 and in the order of the Family Court, it is clearly stated as follows :

“Even as regards the custody of the child, the petitioners have amicably resolved that their son who is in the custody of the 2nd petitioner, shall continue to be in her custody. Mutual consent has also not been obtained by force, fraud or undue influence.”

5. When this was brought to the notice of Mrs.D.Kalaivani, she contended that Guhan has only given up his right for asking custody of Seyon, but, had not given up his visitation rights and therefore, she contended that Jenny by not bringing Seyon to India, as agreed to by her in the proceedings in H.C.P.No.510 of 2017, has violated the order and has thereby committed the act of contempt.



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6. We carefully considered the rival submissions. It is true that during the pendency of the habeas corpus petition, Jenny and Guhan had entered into a settlement, under which, Jenny had agreed to bring Seyon, twice a year to India from the United States. However, this condition does not find a place, in the subsequent mutual consent proceedings in H.M.O.P.No.1100 of 2020. That apart, Jenny is settled in the United States and on account of various other intervening factors like the advent of COVID-19 pandemic etc., it would not have been possible for Jenny to travel to India with Seyon. In such view of the matter, it cannot be stated that Jenny has willfully violated the order dated 18.04.2017 and accordingly, this contempt petition stands closed.

SD/-

ASSISTANT REGISTRAR(COMM.CASES)

gya

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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