



Contempt Petition No.1541 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.11.2022

PRONOUNCED ON : 16.11.2022

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

Contempt Petition No.1541 of 2022

D.Suganya

.. Petitioner

Vs.

Nithesh

.. Respondent

Contempt Petition filed under Section 10 of the Contempt of Courts Act, to punish the respondent for his act of breach/violation of the undertaking given in the proceeding of cases in O.P.No.1285/2020, O.P.No.1418/2020 and M.C.No.160/2020 and the joint compromise memo, proof affidavit and during the chief and cross examination held in respectively dated on 10.12.2020, 11.12.2020 and 14.12.2020 and recorded by the V Additional Family Court, Chennai in proceeding of cases in O.P.No.1285/2020, O.P.No.1418/2020 and M.C.No.160/2020 and its common order dated 15.12.2020 under Section 11 of the Contempt of Courts Act.

For Petitioner : Mr.R.Y.George Williams



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ORDER

P.N.PRAKASH, J.

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

2. The facts leading to the filing of this contempt petition are as follows :

2.1. Suganya got married to Nithesh on 28.06.2017 and through the wedlock, they have a son viz., Saathwik, who is now around 3 years old. On account of marital discord, the spouses got estranged and matrimonial proceedings began between them.

2.2. Suganya filed a petition for divorce in O.P.No.1285 of 2020 on the ground of cruelty and also filed a petition in M.C.No.160 of 2020 for maintenance under Section 125 Cr.P.C. Nithesh filed a petition in O.P.No.1418 of 2020 for restitution of conjugal rights and also sought interim custody of Saathwik.



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2.3. The parties were referred for mediation and ultimately, they appear to have entered into a joint memo of compromise, based on which, they sought a consent decree in all the three cases. Accordingly, the V Additional Principal Judge, Family Court, Chennai, passed a common order on 15.12.2020 in O.P.No.1285 of 2020, O.P.No.1418 of 2020 and M.C.No.160 of 2020, the operative portion of which reads as under :

“8. The husband examined himself as RW1 and he submitted Ex.R1. He deposed that he agreed that the child should be in the custody of its mother, that he has no right to visit the child, that he accepted to grant divorce and that he would not interfere in the life of his wife and child.

In the above circumstances of this case, as agreed by both parties order is passed. The husband shall not interfere in the future life of the child, its education and marriage. The Joint Compromise shall be part and parcel of the decree.

In the result, it is ordered that

- i. the marriage held between the petitioner and the respondent on 28.06.2017 at Thangam Maligai, No.11/6, T.H.Road, (Tolgate Bus Terminal), Tolgate, Chennai 600 081, is dissolved.
- ii. the husband is not entitled for visitation rights, and
- iii. the wife and child are not entitled for maintenance and the wife is not entitled for permanent alimony and
- iv. the child shall be in the custody of its mother.”



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2.4. Thereafter, it is alleged that Nithesh filed a petition in G.W.O.P.No.2865 of 2021 seeking custody of Saathwik, which, according to Suganya, is in violation of the undertaking given by him in the earlier proceedings and hence, he has committed contempt of the order dated 15.12.2020 passed by the Family Court.

3. Heard Mr.R.Y.George Williams, learned counsel for Suganya and perused the materials available on record.

4. It is true that Nithesh had given an undertaking before the V Additional Principal Judge, Family Court, Chennai, which has been set out in paragraph 8 of the order dated 15.12.2020 extracted above. If it is alleged that he has been repeatedly disturbing Suganya and the child, there could possibly be a *prima facie* case for action under the Contempt of Courts Act. Even according to Suganya, he has only exercised his statutory right, which is available to him under the Guardians and Wards Act, by filing a petition for custody of the child before the Court of law. When a



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person resorts to a legal remedy that is available to him, it cannot amount to contempt. None can contract out of a statute. On the flip side, if, after having given an undertaking as set out above, Nithesh finds that Saathwik is not being taken care of by Suganya, his remedy to approach the Court of law under the Guardian and Wards Act, in the paramount interest of the child, cannot be set at naught and he be held for contempt.

In the result, this Contempt Petition is dismissed as being devoid of merits.

[P.N.P., J.] [T K R, J.]

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