

13.10.2023
ct. 236
sk,sl. 2.

C.O. 1389 of 2023
CPAN 915 of 2023
(CAN 3 of 2023)

Rishi Agarwal -vs- Dipika Agarwal nee Khaitan

Mr.Uday Gupta
Ms. Bishalaxmi Ghosh
...for the petitioner.

Ms. Amrita Mitra
Mr. Arindam Paul
Ms. Parna Mukherjee
Mr. A. Bandyopadhyay
Mr. Ankita Sikder
...for the opposite party.

1. Pursuant to the order dated 4th October, 2023, the contemnor Ms. Dipika Agarwal nee Khaitan was supposed to file the undertaking by 9th October, 2023. But it is filed today, having affirmed on 10.10.2023. In Paragraph 9 of the undertaking, it is written that the contemnor received the copy of the order on 9th October, 2023.
2. It is submitted by Ms. Mitra under the instruction of A.O.R Mr. Paul that the order was uploaded on 9th October, 2023.
3. Refuting such contention, Mr. Gupta submits that the order was downloaded by the petitioner on 5.10.2023 itself. Belated filing of the undertaking is nothing but manifestation of the defying attitude of the contemnor.
4. Mr. Paul, learned A.O.R, however, maintains his stance that the order was not uploaded on 5th October, 2023. However, report in this regard is attained from the office of

learned Registrar Listing, which indicates that submission of learned AOR is factually incorrect.

5. Ms. Mitra further submits that on 5th October, 2023 the contemnor affirmed an affidavit in support of her undertaking without going through the direction given on 4th October, 2023 which was not filed and a fresh undertaking was affirmed on 10th October, 2023.

6. According to Ms. Mitra, nothing could be attributed to the contemnor for missing the deadline. Having seen the report Mr. Paul, learned A.O.R. changes his stand to submit that he could not access to the order.

7. It is really unfortunate to see the role played by Mr. Paul, an officer of the Court, who tramples all the ethics. He should be careful in future.

8. Since there is ample reason to presume that the contemnor was presented to comply with the direction given on 4.10.2023, the undertaking submitted is taken on record.

9. The application being C.P.A.N. 915 of 2023 is thus disposed of.

10. It is further submitted by Mr. Gupta that the 10th birthday of the child is on 23rd October, 2023 and the father wants to celebrate the birthday of the child on that day in Kolkata at 11A Ballygunge Circular Road where the father resides. A direction is sought for in modification of order dated 20.06.2023.

11. According to Ms. Mitra since the child has school on 23rd October, 2023 and she wants to celebrate the day with her friends, the father can celebrate the birthday on 22nd

October, 2023 and allow the child to go back to Delhi by late evening of 22nd October, 2023. Since 23rd October is the birthday of the child and father wants to celebrate the day in Kolkata, let it be decided by the child and her father. If the child wishes to she will stay back for the celebration, if she does not want, she will not be forced to.

12. The order dated 20.6.2023 is thus, modified.

13. Liberty is given to the petitioner to press CAN 3 of 2023 before the Hon'ble Court having determination.

14. Department is directed to place the file before the appropriate Bench having determination.

(Siddhartha Roy Chowdhury, J)