

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.371 OF 2023

Virendra Arvindkumar Desai

...Petitioner

Versus

HARISH
VITHAL
CHAUDHARI

Rachana Virendra Desai

...Respondent

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by HARISH
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Mr. Akash Vijay for the Petitioner.

Mr. Swanand Ganoo i/b Unison Legal for the Respondent.

Coram : Sharmila U. Deshmukh, J.

Date : August 1, 2023.

P. C. :

1. Heard.
2. The Petition alleges contempt of the order dated 31st October, 2022 passed by this Court in Writ Petition No. 12827 of 2022.
3. Learned counsel appearing for the Petitioner submits that he confines his allegations of contempt only in respect of the order dated 31st October, 2022.
4. Learned counsel appearing for the Petitioner submits that the Guardianship Petition No. D-51 of 2020 was filed by the mother for the custody of the minor boy aged 9 years in which a counter claim was filed

by the father seeking custody. He would further submit that on 21st October, 2022 an order of overnight access for five days during Diwali Vacation was passed by the Family Court which came to be challenged by the mother by way of Writ Petition No. 12827 of 2022. He has pointed paragraph No. 5 and 6 of the order dated 31st October, 2022 in which the submission of the mother was recorded that she has no objection to day time access and the father can take access of the child on 5th November, 2022 from 11.00 a.m. to 6.00 p.m. in the presence of the Marriage Counsellor in the Family Court at Bandra.

5. He would contend that on 5th November, 2022 the mother of the child along with the child was present in the Family Court where the Marriage Counselor was also present. He would contend that initially, the child was ready to go with the father, however there was some whispering by the mother and the child resisted going with the father. It is with this allegation that the contempt is alleged.

6. Considered the submissions.

7. The allegation is that on 5th November, 2022 the child was in fact taken to the Family Court complex where the Marriage Counsellor was present and it was the child who refused to go with the father. The contention of the learned counsel appearing for the Petitioner is that there

was some whispering by the mother after which the child refused to go with the father. There is no report of the Marriage Counsellor which is produced on record to demonstrate that the mother had refused to give access of the child or that at her instigation the access was not given to the father.

8. As per the submissions of the learned counsel for the Petitioner himself, the mother in compliance of the order dated 31st October, 2022 had gone to the Family Court Complex with the child and it was the child who resisted and as such, the access could not be given. In this fact situation it cannot be said that there was any willful or deliberate disobedience of order of this Court or contumacious conduct on part of the Respondent mother which would necessitate even issuance of notice to the mother. The contempt jurisdiction has to be exercised sparingly only in cases where it is shown that there has been willful, deliberate and intentional contempt of the order of the Court and the conduct of the contemner has been shown to be contumacious. In the present case, in fact the Respondent mother had taken the child to the complex as per the order of this Court of 31st October, 2022 and as the child himself resisted to go with the father, it cannot be said that the mother has committed contempt of the order of this Court dated 31st October, 2022.

9. Learned counsel appearing for the Petitioner seeks to rely upon a order of Division Bench dated 13th January, 2023. In that case, there was a report filed by the Senior Police Inspector wherein it was stated that when the police along with the Petitioner went to the house of Respondent No. 1, the boy was not ready and willing to come out of the bedroom and instead started loudly saying he did not want to go with his father. In those facts, the Division Bench has held that there was strong prima facie case for breach of judgment and order and has admitted the petition. What constitutes the binding precedent is a ratio of the decision and not what the Court did in a particular matter.

10. In that view of the matter, there is no merit in the Contempt Petition. The Contempt Petition stands dismissed.

[Sharmila U. Deshmukh, J.]