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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-12219-2023
Date of Decision: 11.08.2023

Jaspal Singh Banwait

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Manoj Kumar, Advocate
for the petitioner.

Mr. Aditya Kapoor, AAG, Punjab
for respondents No.1 and 2/State.

Mr. Amandeep Singh Manaise, Advocate
for respondents No.3 and 4.

HARSH BUNGER J.

1. Petitioner (Jaspal Singh Banwait) has filed the present petition under Section 482 of the Code of Criminal Procedure seeking issuance of direction upon respondents No.3 and 4 to comply with the terms of settlement/agreement dated 23.12.2022 (Annexure P-2), as recorded before the Mediation and Conciliation Centre of this Court.

2. Briefly, the petitioner herein had filed a writ petition bearing CRWP No.10489 of 2022, titled as ***“Jaspal Singh Banwait Vs. State of Punjab and others”***, wherein the petitioner had sought a writ in the nature

of *habeas corpus* or any other writ, order or direction to the private respondents therein to produce Miss. Hargunpreet Banwait (aged about 12 years) and Master Jastegh Singh Banwait (aged about 9 years), who were alleged to be in custody/detention of respondent No.3 (Sarishtipal Singh Dhanjjal) and respondent No.4 (Gurdanish Singh Dhanjjal). Respondents No.3 and 4 are the petitioner's erstwhile father-in-law and brother-in-law, respectively, as the petitioner (Jaspal Singh Banwait) was earlier married to Jagpal daughter of Sarishtipal Singh Dhanjjal on 30.11.2008, however, the petitioner got divorced from Jagpal, which was granted by the Federal Circuit Court of Australia on 30.11.2017. The aforesaid writ petition (CRWP No.10489 of 2022) was filed by the petitioner claiming that he was not being allowed to meet his children and also that the children were not being properly looked after by respondents No.3 and 4 herein. During the course of hearing of the said criminal writ petition, the parties were sent to the Mediation and Conciliation Centre of this Court, where they entered into a settlement/agreement dated 23.12.2022, and accordingly, the aforesaid CRWP No.10489 of 2022 was disposed of by this Court vide order dated 23.12.2022.

3. The instant petition has been filed under Section 482 of the Code of Criminal Procedure on the ground that as per Clause 8 (iii) of settlement/agreement dated 23.12.2022, it was agreed between the parties, i.e. the petitioner and respondents No.3 & 4 herein, that petitioner shall make all efforts to apply for Permanent Residency (P.R.) of both the children in Australia and the second party (respondents No.3 and 4 herein) shall co-operate in all manner in this regard, such as for the preparation/renewal of passports of both the children and change of address in Aadhaar Card, required medical examination appearance before Australian High

Commission and/or any other formality for immigration purpose of both the children. The petitioner alleges that in pursuance of the aforesaid settlement/agreement dated 23.12.2022, the petitioner had got online appointments for renewal/preparation of passports of both the children, regarding which he had duly notified respondent No.3 and had further requested him to provide necessary documents, i.e. Birth Certificates of both the children, passport copy of their mother (Jagpal), Aadhaar Card of Jagpal, consent letter of mother and vaccination certificates of both the children. The petitioner further alleged that he has repeatedly been requesting respondent No.3 to provide necessary documentation and had also asked respondent No.3 to come present with the children at the Passport Office, however, respondent No.3 failed to do so. It is also alleged by the petitioner that respondents No.3 and 4 are not allowing petitioner to meet the children nor they are allowing him to have any interaction, either through video call or audio call, with the children. It is submitted that respondents No.3 and 4 are not abiding by the terms of settlement/agreement dated 23.12.2022 and are unnecessarily causing harassment and humiliation to the petitioner despite the fact that the petitioner has spent around Ten Thousand Australian Dollars for the preparation of *visa*. Accordingly, the petitioner seeks issuance of direction upon respondents No.3 and 4 to comply with the terms of settlement/agreement dated 23.12.2022. In the alternate, a prayer has been made by the petitioner that custody of both the children be handed over to him for the purpose of preparation and renewal of passports and *visa* process.

4. Upon issuance of notice of motion, respondents No.3 and 4 appeared through their counsel and they were afforded opportunity to amicably resolve their issues, however, both the parties have been levelling

allegations and counter-allegations against each other. Both the parties are taking a stand that the other party is not abiding by the term of settlement.

5. Keeping in view the aforementioned circumstances, especially when the parties are alleging non-compliance of terms of settlement on each other; I am of the considered view that once the matter has been settled between the parties by executing an agreement/settlement then in the eventuality of any of the parties not complying with the terms of the said agreement/settlement, the aggrieved party can always avail its remedies for seeking implementation of the terms of the agreement/settlement in question, in accordance with law.

6. As regards the alternate prayer made by the petitioner that custody of both the children be handed over to him, suffice it to say that the said prayer is contrary to the settlement/agreement dated 23.12.2022 arrived at between petitioner and respondents No.3 and 4 herein before the Mediation and Conciliation Centre of this Court, however, it shall be open to the petitioner to take recourse of his other remedies, as may be available to him, in accordance with law.

7. The instant petition is accordingly dismissed.

8. All pending application(s), if any, shall also stand closed.

11.08.2023

Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No