



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CONT. PETITION NO. 511 OF 2024

Mirza Khalid Baig S/o Mustafa Baig Thru General POA Holder
Mirza Mustafa Baig S/o Mirza Ismail Baig

VERSUS

Shaikh Huma Latif D/o Mohammed Abdul Latif @ Huma W/o
Faiz Khot

...

Advocate for the Petitioner : Mr. H.V. Tungar

...

CORAM : S. G. CHAPALGAONKAR, J.

Dated : June 10, 2024

PER COURT :-

1. The petitioner approaches this Court invoking the provisions of Section 10 and 11 of the Contempt of Courts Act, 1971, seeking initiation of the proceedings against respondent for alleged disobedience of undertaking given by her to the Court of the Judicial Magistrate First Class, Aurangabad in Criminal M.A. No.279 of 2016.

2. Mr. Tungar, learned advocate appearing for the petitioner submits that petitioner had married with respondent, however, due to matrimonial discord they took customary divorce and living separately. During the currency of their marriage, they are blessed with three issues.

3. Respondent had filed Criminal Misc. Application No.279 of 2016 in the Court of Judicial Magistrate First Class, Aurangabad under Section 12,17,18,19,20 and 22 of the Protection of Women From Domestic Violence Act, 2005 which

came to be disposed as per settlement. Respondent-wife agreed to hand over custody of children to the petitioner. An affidavit has been tendered by her quoting compromise terms before the Judicial Magistrate First Class, Aurangabad at Exhibit 12 in Criminal M.A. No.279 of 2016, wherein she has specifically averred that she is unable to take care of children and voluntarily handed over custody to the petitioner. The affidavit is made part of the record of the Judicial Magistrate First Class, Aurangabad. Consequently, Cri. M.A. No.279 of 2016 has been disposed off as withdrawn by the respondent vide purshis dated 11.8.2017. Mr Tungar would submit that the petitioner as well as respondent performed second marriage and they are residing with respective spouses. The petitioner resides at Riyadh, Sudi Arabia alongwith children. They are admitted in a reputed school. Respondent married with one Faiyaz Khot and blessed with two children from him.

4. Mr. Tungar, would further point out that on 30.7.2022 the petitioner alongwith his children visited India. Respondent reached to Aurangabad to meet the children. On 16.8.2023, she took them to her house. However, refused to hand over custody of minor son i.e. Mirza Mustafa.

5. The petitioner, therefore, filed a petition D-22 of 2022 before Family Court, which has been dismissed for want of jurisdiction. Even, the petitioner failed in his attempt to recover custody of the child invoking section 97 of the Criminal Procedure Code. Mr. Tungar submits that respondent has intentionally breached her undertaking in form of affidavit dated 11.8.2017 filed before the J.M.F.C. in Criminal M.A.

No.279 of 2016. As such, she is liable to be dealt with under the provisions of the Contempt of Courts Act.

6. Having considered the submissions advanced, apparently, petitioner and respondent had settled the matrimonial dispute in Criminal M.A. No.279 of 2016. Terms of the settlement were filed at Exhibit-12 and custody of the minor children was handed over to the petitioner. Accordingly, Criminal M.A. No.279 of 2016 filed by the respondent/wife was withdrawn and disposed. Apparently, pursuant to subsequent development, petitioner alleges that respondent has illegally retained custody of the minor son Mustafa w.e.f. 16.8.2023. The petitioner resorted to proceedings before the Family Court as well as J.M.F.C. in his attempt to recover custody of the minor. Assuming all contentions raised in the petition to be true and correct, it can be gathered that the petitioner and respondent had placed on record terms of settlement in the form of affidavit in Criminal M.A. No.279 of 2016. Accordingly, petitioner was continued with the custody of minor. Criminal M.A. No.279 of 2016 was ultimately withdrawn by respondent/wife. It is, therefore, evident that neither any undertaking was given to the Court nor has been breached. At the most it was mutual understanding entered by parties in matrimonial dispute.

7. Pertinently, parties acted upon the same. Custody of the children was with the petitioner for more than five years after disposal of Criminal M.A. No.279 of 2016. Later on, when petitioner visited India, respondent-wife retained custody of

the minor. It is, therefore, difficult to accept the contentions raised by the petitioner that any cause of action is made out to invoke jurisdiction of this court under Contempt of Courts Act. Hence, Contempt Petition sans merit and liable to be dismissed. However, it would be open for the petitioner to pursue his remedies as permissible under law without impeded by dismissal of this present petition. Resultantly, Contempt Petition fails and disposed off accordingly.

(S. G. CHAPALGAONKAR, J.)

...

aaa/-f