



Cont.P.No.1648 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>31.07.2024</i>
<i>Pronounced on</i>	<i>02.08.2024</i>

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Cont.P.No.1648 of 2024

Issac Sam Dinakaran

... Petitioner

Vs.

M.Senduravalli @ Evangeline

... Respondent

PRAYER: Contempt Petition filed under Section 11 of the Contempt of Courts Act, 1971, praying to punish the respondent for her willful disobedience and violation of the order dated 11.03.2024 passed in H.C.P.No.2455 of 2023 on the file of this Court.

For Petitioner : Mr.P.Munuswamy

For Respondent : Mr.S.Rajasekar



Cont.P.No.1648 of 2024

ORDER

M.S.RAMESH,J.

Through final orders passed in H.C.P.No.2455 of 2023 dated 11.03.2024, touching upon the custody of the minor child of the petitioner/father and the respondent/mother, we had directed the parties to approach the concerned Family Court, seeking to resolve their matrimonial dispute, as well as the guardianship of their minor child. However, we have made certain arrangements with regard to the petitioner's visitation right over the minor child in the following manner:-

..... *“4. Since we have also intervened through interim orders with regard to the petitioner's visit of the child, to which, both the parties have expressed certain inconvenience for arrangement, it would be appropriate if the petitioner is granted liberty to have the interim custody of the child on every Saturday from 10 a.m. to 5p.m till any interim or final orders are passed by the concerned family court with regard to the visitation rights. We hasten to add here that, without reference to the present arrangement, the Family Court would be at liberty to pass such orders, modifying the visitation conditions, in case any of the parties express their inconvenience with the present arrangement.”....*



Cont.P.No.1648 of 2024

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2. The present Contempt Petition has been filed with the allegations that the respondent/mother had disobeyed the aforesaid arrangement, as extracted above and forcefully took the child from the school on 06.04.2024 and has not returned the child. Pending the Contempt Petition, we had called upon the parties to explore the possibility of settlement and on their acceptance, we referred them to mediation through an interim order passed on 05.07.2024 which reads as follows:-

“Today when the matter was taken up in our Chambers, we had interacted with the petitioner, the respondent, as well as the minor child and have advised them to explore the possibility of an amicable settlement by taking into account the welfare of the child.

2. Both the parties are called upon to be present before us on 11.07.2024 at 4.45 PM in the Chambers. The parents of the petitioner, as well as the brother of the respondent shall also be present before this Court on the next hearing date.

3. Though we are of the prima facie view that our earlier order dated 11.03.2024 passed in HCP.No.2455 of



Cont.P.No.1648 of 2024

2023 has been disobeyed, we shall take a final call in this aspect at a later stage. However, by taking into account the fact that the child is admittedly been in the custody of the respondent/mother for the past 2 months, the same shall be continued till the next hearing. In the meantime, the petitioner/father is at liberty to have the interim custody of the child on Saturday i.e. on 06.07.2024 from 10.00 A.M. to 5.00 P.M. and visitation rights on any other days, either at the respondent's house or at his child's school premises. It is made clear that the respondent's family members shall not create any sort of obstruction when the petitioner visits his child, as aforesaid.

4. Call on 11.07.2024.”

3. After mediation, there appears to be some progress with regard to the estranged relationship of the couple and hence, the following order came to be passed on 11.07.2024:-

“Today when the matter was taken up in our Chambers, we had interacted with the petitioner, the respondent, as well as their minor daughter. After counseling them, both the husband/petitioner and the



WEB COPY



Cont.P.No.1648 of 2024

wife/respondent agreed to live together, along with their daughter, peacefully in a cordial relationship.

2. Further, we had also interacted with the parents of the petitioner/ husband, who had expressed that they have no objection on their son living with his wife and daughter. The petitioner/husband also stated that he need a couple of days to make arrangements of their matrimonial house.

3. Hence, call the matter on 18.07.2024. Till such time, both the paternal, as well as maternal grandparents, are at liberty to visit their grand-daughter.”

4. In continuation of the aforesaid order, we had felt that further mediation may be required in the interest of the minor child and thus, on 18.07.2024, the following order came to be passed:-

“During the course of earlier hearings, we had interacted with the petitioner as well as the respondent herein, along with their minor daughter. Though, in principle, it was mutually agreed that both the husband and wife along with minor child would live amicably



WEB COPY



Cont.P.No.1648 of 2024

under one roof and continue as a family, it is now represented that the interim arrangement that was agreed upon earlier, is not now feasible. We had already interacted with their minor daughter and we could find that she showered equal love and affection towards both her mother and father. In the interest of the minor child, we deem it appropriate to refer the parties for mediation once again.

2. Accordingly, Registry is directed to place this matter before Mrs.S.Thenmozhi Saravanan, learned Mediator who is at liberty to have the mediation on 22.07.2024 at 11.00 A.M and on any further subsequent dates, which the learned Mediator may deem it fit and proper.

3. Post this matter on 31.07.2024.”

5. Though the mediation talks were once again conducted, the parties could not arrive at an amicable settlement. The only allegation made against the respondent/mother is that she has forcibly taken away her minor child from the petitioner/father's custody. This fact is not denied by the respondent/wife.



Cont.P.No.1648 of 2024

WEB COPY

6. However, it is stated by the learned counsel for the respondent/mother that the minor child had developed certain medical complications which has constrained her to retain the child and there was no intention to violate or disobey the orders of this Court.

7. Even though such a medical situation may have arisen, which may have prompted the respondent/mother to retain the child against the directions issued by us, the appropriate course of remedy available to her would be to approach this Court, seeking for permission or modification of the interim order.

8. Thus, on a *prima facie* view, the conduct of the respondent/mother in retaining the child, would amount to disobedience of the Court orders only. Whether such disobedience could be termed to be wilful, is the consequential aspect?

9. On this aspect, during the pendency of the contempt proceedings, we had also interacted with the minor child, who showed



Cont.P.No.1648 of 2024

WEB COPY

immense love and affection towards her mother. We have now realised that after the mother had retained the child, she has been under her mother's care and protection for the past 4 months continuously. The respondent/mother has also been cooperating and appearing before us during all hearings, even without being summoned and had also participated in the mediation proceedings regularly. All these aspects would reflect that the disobedience of the Court orders may not have been wilful. Thus, we are inclined to condone her act of retaining the custody in the best interest of the child.

10. It is represented by both the parties that they have already filed a petition in G.W.O.P.No.5040 of 2023, seeking for custody of the child and the same is pending before the learned III Additional Family Court, Chennai.

11. In the earlier order passed in H.C.P.No.2455 of 2023 dated 11.03.2024, we had granted liberty to the parties to work out the remedies, which they have already invoked. Now that we have found that the disobedience alleged by the respondent/mother may not be wilful



Cont.P.No.1648 of 2024

in nature, the respondent/mother is permitted to retain custody of her minor child, till the conclusion of the proceedings in G.W.O.P.No.5040 of 2023. The petitioner, being the father of the child and his parents/grandparents of the child, are at liberty to visit the minor child at the respondent's residence, as and when they require and during such visit, the respondent/mother shall not cause any obstruction or any other inconvenience to them.

12. With the above observations and arrangement, this Contempt Petition stands closed.

[M.S.R.,J.] [S.M.,J.]
02.08.2024

Index:Yes
Speaking order
Internet:Yes
Neutral Citation:Yes

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Cont.P.No.1648 of 2024

M.S.RAMESH, J.
and
SUNDER MOHAN, J.

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order made in
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