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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CONT.CAS(C) 1277/2023**

CHANPREET SINGH BAMMI

..... Petitioner

Through: Mr. Namit Suri, Ms. Purnima Singh
and Mr. Arjun Kaushal, Advocates.

versus

SUKHMANI KAUR OBEROI

..... Respondent

Through: Mr. Praveen Kumar and Mr.
Labhansh Mittal, Advocates.

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CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

02.04.2024

MINI PUSHKARNA, J:

1. The present petition has been filed alleging willful disobedience by the respondent of the orders dated 10th January, 2023 and 30th April, 2022 passed by the learned Family Court, New Delhi District, Patiala House Court, New Delhi in *HMA No. 696/2019*.

2. Learned counsel appearing for the petitioner submits that by way of the aforesaid orders, the respondent herein had been directed to file a copy of the passport of the minor child along with the reply to the application filed on behalf of the petitioner. In the said application, the petitioner prayed for directions to the respondent to deposit the passport of the minor child in the Court and not to remove the minor child from the jurisdiction of this Court. Since the copy of passport of the minor child has not been filed by the respondent, the present contempt petition has been filed.



3. It is contended by learned counsel appearing for the petitioner that the respondent is habitual of flouting the orders of learned Family Court and resultantly, a Coordinate Bench of this Court vide order dated 18th November, 2022 in *Cont. Cas(C) 1002/2022*, has found the respondent *prima facie* guilty of having violated various orders of the learned Family Court.

4. It is submitted that by order dated 20th April, 2022, the learned Family Court had directed the respondent not to leave the country and to appear before the said Court with the child on the next date. However, the respondent left the country with the child, despite the aforesaid orders.

5. Learned counsel for the petitioner further submits that the respondent has wrongly and deliberately misled the US Embassy to claim sole custody of the minor child and obtain a passport for him. He submits that the respondent has misled the Prevention Branch, Office of Children's Issue, US Department of State and has been successful in changing the citizenship of the child from Indian to US citizen. Thus, it is submitted that the respondent is deliberately disobeying the order dated 10th January, 2023 and 30th April, 2022 and not sharing the information about the status of the citizenship of the minor child with the petitioner and the learned Family Court.

6. Per contra, learned counsel appearing for the respondent has drawn the attention of this Court to the various orders passed subsequently by the learned Family Court to submit that the order dated 30th April, 2022 directing to file a copy of passport of the minor child along with reply, does not subsist any more. He further submits that the various issues pertaining to the custody, visitation of the minor child and other issues between the parties are now pending before the Coordinate Bench of this Court in *CM*



(M) No. 1431/2022 and CM (M) No. 1433/2022. He further submits that the petitioner has raised issues as to how citizenship of the minor child was obtained by the respondent, which is not the subject matter of dispute before this Court.

7. I have heard learned counsels for the parties and have perused the record.

8. At the outset, this Court notes that by order dated 30th April, 2022, the learned Family Court while considering the application of the petitioner, wherein the petitioner prayed for direction to the respondent to deposit the passport of the child in the Court and not to remove him from the jurisdiction of the Court. The learned Family Court directed the respondent to file copy of the passport of the child along with the reply.

9. Subsequently, when the matter was listed before the learned Family Court on 02nd June, 2022, the learned Family Court took note of the apprehension of the respondent and permitted the respondent to file the passport of the child for perusal of the Court in a sealed cover. The relevant extract of the order dated 02nd June, 2022 passed by the learned Family Court in *HMA No. 696/2019* is reproduced hereunder:

“xxx xxx xxx

.....*Ld. Counsel submits that he apprehends making of complaints by the petitioner to the USA embassy if copy of the passport of the child is placed on record. Ld. Counsel seeks permission to produce the copy of the passport of the child in closed envelope for perusal of the court. Objected by the Ld. Counsel for the petitioner. Submissions considered. Without making any observation of the apprehension of the respondent, she is permitted to file the passport of the child for perusal of the court in sealed cover. If the petitioner wants to see the same, he should move appropriate application which will be decided after giving opportunity to the respondent to file reply.*

xxx xxx xxx”



10. The contention of the petitioner that the directions to file copy of the passport before the learned Family Court was reiterated in the order dated 10th January, 2023, is clearly misplaced. When the learned Family Court had in effect already modified the directions passed in order dated 30th April, 2022 by its subsequent order dated 2nd June, 2022, there was no occasion for the learned Family Court to reiterate its earlier directions passed in order dated 30th April, 2022. Rather, by order dated 10th January, 2023, the learned Family Court had directed the petitioner herein to comply with the order dated 30th April, 2022 and clear the arrears of maintenance. The order dated 10th January, 2023 passed by the learned Family Court in *HMA 696/2019*, reads as under:

“Respondent has placed on record copy of order dated 19.12.2022 passed by the Hon’ble High Court of Delhi whereby order dated 17.11.2022 has been stayed on the extent wherein respondent has been directed to produce the child before the Court.

Ld. Counsel for the petitioner submits that arrears of maintenance would be cleared by today, however, with respect to deposit of Rs. 5,00,000/- in the form of FDR as directed by the Hon’ble High Court of Delhi, it is submitted that they have submission to make before the Hon’ble High Court of Delhi and they are in the process of taking legal remedy.

Let Respondent comply (sic) with order dated 30.04.2022 and clear arrears of maintenance by today as submitted.

Put up for PE on 11.04.2023.”

11. Reading of the aforesaid order dated 10th January, 2023 shows that there was a typographical error where in the last paragraph instead of ‘petitioner’, the word ‘respondent’ was typed at the time of making directions for clearing the arrears of maintenance. It is undisputed that the arrears of maintenance were to be cleared by the petitioner as payable to the respondent. Thus, order dated 10th January, 2023 passed by the learned



Family Court cannot be said to reiterate the directions to file a copy of the passport in terms of its earlier order dated 30th April, 2022. Rather, the petitioner is guilty of suppressing the subsequent order dated 2nd June, 2022, with a view to mislead this Court.

12. This Court also notes that by a successive order dated 11th April, 2023, the learned Family Court stated that since the issue of interim custody as well as maintenance of the minor child is pending before this Court, therefore, no further indulgence is required by the said Court in that regard. Order dated 11th April, 2023 passed by the learned Family Court in *HMA No. 696/2019* is reproduced hereunder:

“xxx xxx xxx

Respondent has placed on record order dated 21.03.2023 passed by Hon'ble High Court of Delhi which shows that next date of hearing before the Hon'ble High Court of Delhi is 17.04.2023. As the issue of interim custody as well as maintenance is pending before the Hon'ble High Court of Delhi, therefore, no further indulgence is required by this Court in this regard.

xxx xxx xxx”

13. Thus, it is clear that the order dated 30th April, 2022 passed by the learned Family Court directing the respondent herein to file a copy of the passport of the child in the said Court, no longer subsists or continues. In fact, by its order dated 11th April, 2023, the learned Family Court has refused to pass any further orders with regard thereto on account of the fact that the issue of interim custody and maintenance was pending before this Court.

14. The order dated 30th April, 2022, of which compliance is sought, cannot be said to be enforceable as on date, on account of its subsequent modification and other successive orders and developments in the case. It is



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no longer *res-integra* that contempt proceedings can be maintained only when there is willful disobedience of the judgment and order, compliance of which is sought for. However, when there is no subsisting enforceable order as on date, no contempt proceedings would lie.

15. In view of the aforesaid discussion, no merit is found in the present petition. The same is accordingly dismissed.

**(MINI PUSHKARNA)
JUDGE**

APRIL 2, 2024

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