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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO. 66 OF 2025

ALONGWITH

INTERIM APPLICATION (ST) NO. 30259 OF 2025

ALONGWITH

INTERIM APPLICATION (ST) NO. 28007 OF 2025

IN

CONTEMPT PETITION NO. 66 OF 2025

Virendra Arvindkumar Desai

...Petitioner

Versus

Rachana Virendra Desai

...Respondent

Mr. Akash Vijay for the Petitioner.

Ms. Racheeta Dhuru a/w Ms. Neeta Solanki, Mr. N.H. Naik
and Ms. Bhavik Lalal i/b Unison Legal for the Respondent.

CORAM : MADHAV J. JAMDAR, J.

DATED : 18th SEPTEMBER 2025

PC:-

1. Pursuant to order dated 11th September 2025 the child has been brought to the Day Care Centre of the Bombay High Court on 12th September 2025. A report has been filed by the High Court Legal Services Committee, Mumbai. The report clearly indicate that the child has been indoctrinated and prejudiced by the Respondent and the Respondent has poisoned and prejudiced the child's mind.

2. The Supreme Court in the case of *Yashita Sahu vs. State of Rajasthan*¹ has observed regarding custody and access as under :

20. *It is well settled law by a catena of judgments that while deciding matters of custody of a child, primary and paramount consideration is welfare of the child. If welfare of the child so demands then technical objections cannot come in the way. However, while deciding the welfare of the child, it is not the view of one spouse alone which has to be taken into consideration. The courts should decide the issue of custody only on the basis of what is in the best interest of the child.*

21. *The child is the victim in custody battles. In this fight of egos and increasing acrimonious battles and litigations between two spouses, our experience shows that more often than not, the parents who otherwise love their child, present a picture as if the other spouse is a villain and he or she alone is entitled to the custody of the child. The court must therefore be very wary of what is said by each of the spouses.*

22. *A child, especially a child of tender years requires the love, affection, company, protection of both parents. This is not only the requirement of the child but is his/her basic human right. Just because the parents are at war with each other, does not mean that the child should be denied the care, affection, love or protection of any one of the two parents. A child is not an inanimate object which can be tossed from one parent to the other. Every separation, every reunion may have a traumatic and psychosomatic impact on the child. Therefore, it is to be ensured that the court weighs each and every circumstance very carefully before deciding how and in what manner the custody of the child should be shared between both the parents. Even if the custody is given to one parent, the other parent must have sufficient visitation rights to ensure that the child keeps in touch with the other parent and does not lose social, physical and psychological contact with any one of the two parents. It is only in extreme circumstances that one parent should be denied contact with the child. Reasons must be assigned if one parent is to be denied any visitation rights or contact with the child. Courts*

¹ (2020) 3 Supreme Court Cases 67

dealing with the custody matters must while deciding issues of custody clearly define the nature, manner and specifics of the visitation rights.

23. The concept of visitation rights is not fully developed in India. Most courts while granting custody to one spouse do not pass any orders granting visitation rights to the other spouse. As observed earlier, **a child has a human right to have the love and affection of both the parents and courts must pass orders ensuring that the child is not totally deprived of the love, affection and company of one of her/his parents.**

24. Normally, if the parents are living in the same town or area, the spouse who has not been granted custody is given visitation rights over weekends only. In case the spouses are living at a distance from each other, it may not be feasible or in the interest of the child to create impediments in the education of the child by frequent breaks and, in such cases the visitation rights must be given over long weekends, breaks and holidays. In cases like the present one, where the parents are in two different continents, effort should be made to give maximum visitation rights to the parent who is denied custody.

25. **In addition to “visitation rights”, “contact rights” are also important for development of the child specially in cases where both parents live in different States or countries. The concept of contact rights in the modern age would be contact by telephone, e-mail or in fact, we feel the best system of contact, if available between the parties should be video calling.** With the increasing availability of internet, video calling is now very common and **courts dealing with the issue of custody of children must ensure that the parent who is denied custody of the child should be able to talk to her/his child as often as possible.** Unless there are special circumstances to take a different view, the parent who is denied custody of the child should have the right to talk to his/her child for 5-10 minutes every day. **This will help in maintaining and improving the bond between the child and the parent who is denied custody. If that bond is maintained, the child will have no difficulty in moving from one home to another during vacations or holidays. The purpose of this is, if we cannot provide one happy home with two parents to the child then let the child have the**

benefit of two happy homes with one parent each.

(emphasis added)

Thus, the Supreme Court has recognized the importance that the child requires the love, affection, company and protection of both the parents and therefore emphasized that even if the custody is given to one parent, the other must have sufficient visitation rights to ensure that the child keeps in touch with the other parent and does not lose social, physical and psychological contact with other parent. It has been further observed that a child has a human right to have the love and affection of both the parents and that the effort should be made to give maximum visitation rights to the parent who is denied custody. It has been further observed that in addition to “visitation rights”, “contact rights” are also important for development of the child and therefore contact by telephone, e-mail or by video calling shall be provided. It has been further observed that courts dealing with the issue of custody of children must ensure that the parent who is denied custody of the child should be able to talk to her/his child as often as possible.

3. The factual position on record shows that the Respondent – Wife has acted contrary to the above observations of the Supreme Court.

4. This Court by an order dated 7th May 2025 has recorded submissions of learned Counsel appearing for the Petitioner –

Father that the Respondent – Rachana Virendra Desai has willfully disobeyed order dated 10th May 2023 passed by the Learned Judge, Family Court below Exhibit – 33 in Petition D-51 of 2020 and also violated the order dated 4th November 2023 passed by Learned Single Judge (Coram : Dr. Neela Gokhale, J) and order dated 22nd December 2023 passed by a Learned Single Judge (Coram : Ms. Sharmila Deshmukh, J). The conduct of the child as reflected in the report dated 16th September 2025 submitted by the High Court Legal Services Committee, Mumbai and more particularly the report of Para Legal Volunteers annexed to the same shows that the child was reluctant to communicate with his father. In the order dated 24th July 2025 this Court has recorded prima facie satisfaction that the Respondent has breached the order of this Court. However, thereafter Ms.Racheeta Dhuru, learned Counsel appearing for the Respondent - Wife assured this Court that corrective steps would be taken and meaningful access of the child would be provided to the Petitioner – Father and therefore this Court has refrained itself from taking any action for breaching the orders passed by this Court. However, the said assurance has also been breached.

5. Accordingly, issue notice under Rule 9 of the *Contempt of Courts (Bombay High Court) Rules, 1994* to the Respondent - Rachana Virendra Desai, returnable on **9th October 2025**. The Respondent - Rachana Virendra Desai is directed to remain present in this Court on the next date i.e. on **9th October 2025**.

6. It is open to the Respondent to take steps for purging the contempt by giving meaningful access of the child to the father, as also video call access.

7. Stand over to **9th October 2025** at **3.00 p.m.**

[MADHAV J. JAMDAR, J.]