

Arjun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SUO MOTU CONTEMPT PETITION NO.11 of 2024

High Court on its Own Motion

...Petitioner

Versus

Shardul Pujari

...Respondent

Mr. Vaibhav Joglekar, Senior Advocate a/w Gaurav Sinha, for the Respondent.

**CORAM: MADHAV J. JAMDAR, J.
DATED: 14 JANUARY 2025**

P.C.:

1. A learned Single Judge [Gauri Godse, J.] has passed the following Order on 9th August 2024 in Writ Petition 11569 of 2023 :-

“1. This petition is heard substantially, however, the parties agree that they will make an attempt to explore possibility of amicable settlement. Considering that the minor daughter is six years of age, the parties thus agree that in the interest and welfare of the child they will make a genuine attempt to amicably settle the dispute. Learned counsel for the respective parties also submit that they would assist the parties in arriving at an amicable settlement.

2. With regard to bringing the child to India in compliance of the order passed by the Family Court, learned counsel for the petitioner on instructions submits that the petitioner would file an application for necessary permission within 48 hours from today. He further submits that the petitioner is presently residing in the US on the following address along with his daughter :

11225 Lee Way Apt
16512 San Diego CA 92126

3. *He further submits that the petitioner is presently working from home and is employed with the following office :*

*Duck Creek Technologies
100 Summer St. 8th floor, Suit No. 801
Boston, M.A.
USA 02110*

4. *Learned counsel for the petitioner on instructions further submits that the respondent-mother be permitted to talk to the minor daughter on Whatsapp video call on the following number at 5.30 am tomorrow 10th August 2024 (Indian Time). The respondent-mother is permitted to talk to the child from 5.30 am to 6.00 am.*

Mobile No : +44 7438950113

5. *He on instructions further submits that the petitioner will make all the efforts to see that the child comfortably talks to the mother.*

6. *It is clarified that both the parties shall not discuss about the pending litigation with the child or in the presence of the child.*

7. *The statements made on behalf of the petitioner as reflected above are accepted as an undertaking to this Court.*

8. *Learned counsel for the petitioner submits that he shall place on record an affidavit confirming the particulars regarding making an application for permission for the child to travel to India.*

9. *List the petition on 13th August 2024 at 2.30 pm for "Recording Compliance and for further Directions".*

2. Thereafter, the learned Single Judge passed the following Order

on 13th August 2024 :

“1. By order dated 9th August 2024, the statement made on behalf of the petitioner was recorded that within 48 hours he shall make necessary application for permission to bring the child to India. In view of the statement made, the petitioner was granted time and was also directed to file an affidavit confirming the particulars regarding making an application for permission for the child to travel to India. The petition was directed to be listed today for compliance and further directions.

2. Learned counsel for the petitioner has tendered an affidavit dated 12th August 2024. However, the said affidavit does not contain any particulars regarding making an application as stated on 9th August 2024. In the affidavit the petitioner has annexed certain printouts without any dates. The affidavit does not contain any statement that an application was made within 48 hours as recorded in the order dated 9th August 2024. The affidavit is affirmed by the power of attorney holder of the petitioner. Learned counsel for the petitioner insists that this court should record that the petitioner has made an application by way of email, however, he is unable to state the date of filing an application through email or otherwise.

3. Learned counsel for the respondent has tendered printout of guidelines issued by the Consulate General of India, San Francisco, California. Learned counsel for the respondent relies upon the said guidelines which states as under :

“Q. Can I travel to India with just my OCI Card, or should I also carry the passport which contains the ‘U’ Visa (OCI Visa) ?

A. No need to carry the passport which contains the U visa, Vide circular No. 26011/06/2015-OCI dated 29th January 2015 of the Ministry of Home Affairs,

Government of India has decided that, all immigration authorities in India will not insist on production of the foreign passport containing the 'U' Visa Sticker in the case of OCI Cardholders while they enter/exit India and the immigration clearance will be granted based on production of just the valid OCI card, accompanied by a valid passport (which may not have the U visa sticker)".

4. *By referring to the aforesaid guidelines learned counsel for the respondent submits that the petitioner is unnecessarily giving excuses for not making an application for permission to bring the child to India. She submits that with the child's OCI Card the child will be able to travel to India.*

5. *By order dated 15th September 2023 this court had granted ad-interim relief in terms of prayer clause (c). On 3rd November 2023, the following order was passed :*

"1. Heard.

2. Mr. Sinha, learned counsel appearing for the Petitioner submits that on or before 7/11/2023 an Application will be made in terms of clause (3) of the Guidelines of the Overseas Citizenship of India seeking temporary landing permission in India so as to enable the Petitioner to comply with orders of the Family Court dated 29/8/2023 and 1/8/2023.

3. FRRO/FRO while deciding the Application will take into consideration the order of the Family Court which requires the Petitioner to remain present with his daughter Mihika before the Family Court and is requested to expedite the grant of permissions as contemplated under the Guideline (3) of the Overseas Citizenship of India Guidelines.

4. List the Petition under the caption 'for directions' on 9/11/2023."

6. *The said order records a statement made on behalf of the petitioner that the application will be made in terms of clause (3) of the Guidelines of the Overseas Citizenship of*

India seeking temporary landing permission in India so as to enable the petitioner to comply with the orders passed by the Family Court. In view of the said statement, this court had observed that FRRO/FRO while deciding the application shall take into consideration the orders passed by the Family Court.

7. *On 9th November 2023 an email was tendered, demonstrating that an application was filed on 6th November 2023. On 1st December 2023 direction was issued for adding the Ministry of External Affairs to be made a party to this petition. Accordingly, amendment is carried out by the learned Advocate for the petitioner. On 2nd May 2024 a statement on behalf of the petitioner was recorded that a copy of the petition is served on the newly added respondent no.2. Since none had appeared for respondent no. 2 notice was issued to respondent no. 2 and hamdast was permitted. Office remark indicates that notice issued to respondent no. 2 is still awaited.*

8. *Thereafter, the petition was substantially heard on 9th August 2024 and a statement was recorded regarding making an application within 48 hours for permission to bring the child to India. By order impugned in the petition the petitioner is required to bring the child to India for interaction as directed by order dated 15th June 2023 by the Family Court. The said order is stayed by this court. However, in view of non-compliance on the part of the petitioner with regard to the statement as recorded on 9th August 2024, the ad-interim stay granted by this court on 15th September 2023 is vacated.*

9. *It is necessary to record that the minor daughter who is six years of age has not met her mother since 13th April 2023. The petitioner resides in the US and the present proceedings have been filed through his father who is the power of attorney holder.*

10. *Considering the facts of the case and the statement made on behalf of the petitioner as recorded in order dated 9th August 2024, I am satisfied that the petitioner is*

deliberately avoiding to make an application for permission to bring the child to India. Prima facie, I am satisfied that only to avoid bringing the child to India the petitioner has not complied with the statement made on 9th August 2024. Thus, prima facie I am satisfied that the petitioner has committed deliberate breach of the order passed by this court on 9th August 2024. Hence, office is directed to issue notice as per Rule 9 of the Contempt of Courts (Bombay High Court) Rules, 1994. Notice is made returnable after three weeks. Office is directed to issue contempt notice to the petitioner on the email address of the petitioner which is shardul.pujari@gmail.com. Learned counsel for the petitioner confirms that the aforesaid email address is the official email address of the petitioner. Office is directed to intimate this order to the US Embassy in India for information and necessary action.

11. After the aforesaid order was dictated, learned counsel for the petitioner submitted that the petitioner did make an application on 11th August 2024 at 12.24 pm (Indian Time). He therefore submits that there is a compliance of the statement made by the petitioner. He further submits that he will place this fact on affidavit duly affirmed by the petitioner himself and not by the power of attorney holder, within a week.

12. In view of the aforesaid, learned counsel for the respondent submits that the petitioner is unnecessarily giving excuses for not bringing the child to India. She submits that respondents father has a valid visa to travel to the US. Hence, he may be permitted to bring the child to India on the existing OCI Card. She submits that respondent shall make necessary arrangement including necessary permissions to bring the child to India. She submits that the respondent's father shall bear the expenses for bringing the child to India, however; respondent be permitted to apply for reimbursement of the expenses, from the petitioner.

13. Learned counsel for the petitioner seeks time to take

instructions as to whether the petitioner shall handover the OCI Card and photocopy of the petitioner's passport to enable the respondent's father to seek necessary permission for bringing the child to India.

14. Learned counsel for the petitioner seeks time to take instructions on the aforesaid submissions. In view of the aforesaid, the order issuing contempt notice is kept in abeyance at this stage

15. List the petition on 14th August 2024 at 2.30 pm."

3. Thus, this Court by Order dated 13th August 2024 issued notice as per Rule 9 of the *Contempt of Courts (Bombay High Court) Rules, 1994* to the Petitioner in Writ Petition No.11569 of 2023. However, Paragraph No.14 of said Order dated 13th August 2024 specifies that the Order issuing contempt notice is kept in abeyance.

4. By further Order dated 14th August 2024 passed by this Court it has been observed that since the Petitioner is not willing to co-operate to bring the child to India (Paragraph No.4), the Registry of this Court was directed to issue contempt notice to the Petitioner as directed by Order dated 13th August 2024. Pursuant to above Orders, this Suo-Motu Contempt Petition No.11 of 2024 has been registered.

5. Mr. Joglekar, learned Senior Counsel for the Respondent – Contemnor states that subsequently the child has been brought to India and therefore the Orders passed by the learned Single Judge dated 9th August 2024, 13th August 2024 and 14th August 2024 have been

complied with.

6. Thus, it is clear that, the Orders of the learned Single Judge for the violation of which the Suo-Motu Contempt has been initiated, have been complied with.

7. The Respondent in Suo-Motu Contempt Petition has tendered unconditional apology to this Court by filing Affidavit-in-Reply dated 18th September 2024. As the contempt has been purged by complying with the Orders of this Court, by accepting the said apology, the Suo-Motu Contempt Petition is disposed of.

[MADHAV J. JAMDAR, J.]