



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAN) NO.85 OF 2024
IN
CONTEMPT PETITION NO.149 OF 2024

Sonal Umesh Gyanchandani @ Bhakti Nilesh Ailani
Vs.
Nilesh s/o Kishor Ailani

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P. A. Abhyankar, Counsel for the petitioner.
Mr. N. K. Ailani – in person – respondent.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 06/03/2025

1. Application is for dismissal of contempt petition.
2. This application is filed by the respondent for dismissal of the contempt petition on the premise that i.e. cause of action, as mentioned in para 11 has not arose. It is further submitted by the respondent, who appeared in person that pursis filed by the Counsel of the petitioner along with the petition on 7th May 2024, itself suggests that petitioner was predetermined to file instant case, and therefore, most possibly eagerly waiting for time in notice to expire, the application is filed. He submitted that the contempt petition is filed at premature stage, and therefore, it is to be dismissed.

3. Learned Counsel for the petitioner submitted that in view of the settlement terms both parties have to perform their part in pursuance of the said settlement. Accordingly, the petitioner has filed this petition, but the respondent has not performed his part and thus, he has contravened and not abided the terms and conditions, which are imposed while settling the dispute, and therefore, the contempt petition is rightly filed. He further submitted that at this stage, the Court cannot come to the conclusion whether there is a contempt or not. The opportunity is to be granted to the petitioner as well as the respondent to adduce the evidence. In view of that, the application deserves to be rejected.

4. Heard both the sides. Perused the entire record. There is no dispute as to the fact that the petitioner and the respondent were married on 11.07.2008 and they have been staying separate since March 2015 owing to differences between them. The period since the year 2017 has witnessed numerous litigation between the parties one amongst them was pending i.e. Criminal Appeal No.263/2023. Considering the matrimonial dispute between the parties, this Court referred the matter for mediation and by the efforts of the Mediator, the terms were finalized and as per the wishes of the petitioner and respondent, the matter was settled. As per the terms of said settlement, it was agreed between both parties and both parties shall file a petition under

Section 13-B of the Hindu Marriage Act, for grant of decree and divorce by mutual consent. For the said purpose, both parties shall file a joint petition under Section 13-B of the Hindu Marriage Act, on or before 5th February, 2024 before the learned Family Court at Nagpur and shall obtain decree of divorce in order to dissolve their marriage solemnized on 11.07.2008. It was further agreed between the parties that in case of breach/violation or disobedience of any of the terms of this agreement, the party breaching the term shall be liable for contempt proceeding and the party aggrieved shall be entitled for status-quo including initiating necessary to legal proceedings before the competent Court of law, for restoration of proceeding which are withdrawn in terms of this agreement.

5. Thus, in view of the said terms of the agreement, both parties have to file a petition under Section 13-B of the Hindu Marriage Act, 1951. The roznama of the Family Court No.3, Nagpur is placed on record which shows that on 23.09.2024 the petition was filed and firstly came before the Family Court and it was referred for the report of the marriage Counsellor thereafter certain objections were raised in the said petition. Petitioner No.1 present before the Court made a statement that on the next, he will remain present and will comply the same. However, after sufficient opportunity, he has not complied, not filed an affidavit and also not

signed the petition. On several occasions, this Court as well as the Family Court has directed him to remain present before the Family Court for compliance. But it is apparent that he has not complied with the same. The order passed by this Court on 30.08.2024 also shows that the respondent has shown his willingness to accompany the learned Counsel of the petitioner and sign the relevant documents and cooperate to the learned Counsel to file the application, and therefore the directions were given to the parties to appear before the Family Court on 05.09.2024 at 11.00 a.m. for taking appropriate steps to by this petition and to comply with the necessary compliance, but the said compliance was also not complied by the present respondent. It is specifically agreed by both the parties that in case of breach/violation or disobedience of any of the terms of this agreement, the party breaching the terms shall be liable for contempt proceeding and the party aggrieved shall be entitled for status-quo including initiating necessary to legal proceedings. Thus, both the parties were under obligation to comply with the terms and conditions which they have agreed in terms of settlement before the Mediator. From the order passed by the Family Court as well as from the order passed by this Court, it is apparent that it is the respondent who has not complied with the same. At that stage, at the interim stage, it cannot be

concluded that there is no contempt and the contempt application is to be dismissed.

6. In view of that, the above observations, the application of the respondent is devoid of merits and therefore, liable to be rejected. In view of that, I proceed to pass following order.

ORDER

The application is rejected.

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Matter be listed on 07.04.2025 for framing the charge.

(URMILA JOSHI-PHALKE, J.)