SUPREME COURT OF INDIA

Meenal Bhargava

Vs.

Naveen Sharma

C.A.No.1606 of 2018

(A.K.Sikri and Ashok Bhushan,JJ.,)

09.05.2018

JUDGMENT

A.K.Sikri, J.,

1. These are the cross-appeals, filed by both the parties challenging different parts of the orders dated January 9, 2018 passed by the High Court of Judicature at Rajasthan in D.B. Civil Contempt Petition No. 1846 of 2017. The parties are husband and wife. After their marriage in the year 2007, the wife joined her husband in the United States of America (USA). Their child, named Pranav, was born out of this wedlock in August, 2009 at Baltimore, USA. In 2010, they migrated to Canada. For certain reasons, the matrimonial relations became strained and the wife viz. Meenal Bhargava (hereinafter referred to as the 'appellant'), left the company of her husband Naveen Sharma (hereinafter referred to as the 'respondent') and on July 26, 2013, went away from her husband, taking Pranav with her. Initially, for some time, she stayed in Buffalo, New York and thereafter came to India in August, 2013.

2. The respondent filed a case for custody of Pranav in a Canadian Court. Vide order dated October 29, 2014, the Court granted temporary custody of Pranav to the respondent. By that time, appellant had brought Pranav to India i.e. on August 4, 2013. After order dated October 29, 2014 granting temporary custody of Pranav was passed in favour of the respondent, the mother of the appellant filed a motion in a Court at Canada stating that the said Court at Canada had no jurisdiction in the matter. This contention was, however, rejected by the Court and, thereafter on April 2, 2015, another order was passed directing the appellant to return Pranav to its jurisdiction and appear before the Court on April 16, 2015. The appellant did not comply with this order, which led to issuance of red corner notice by the FBI/Interpol against the appellant.

3. Since the appellant had travelled out of territorial jurisdiction of the Canadian Court and had come to India with Pranav, finding no other alternative, the respondent herein filed a Habeas Corpus Petition in the High Court of Judicature at Rajasthan. In the said petition, notice was issued to the appellant herein. Having regard to the nature of dispute, the High

Court deemed it proper to explore the possibility of settlement in the first instance. Thus, by order dated December 17, 2015, the parties were referred to mediation. This effort bore fruits as the respondent and appellant settled the matter.

4. The appellant agreed to come back to USA and join the company of the respondent along with Pranav. Consent terms were recorded and on the basis thereof, the High Court disposed of the Habeas Corpus Petition vide order dated December 17, 2015 incorporating those terms of settlement in its order and directing the parties to abide by the same. These consent terms are as under:

> "(1) Both the parties will withdraw their respective cases within 4 months from today.
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> (2) Mr. Naveen Sharma will find out 3-4 flats for choice of Smt. Meenal and Smt. Meenal will then go to U.S.A. to select one of them. This process should complete within 18 months.
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> (3) In the meantime Mr. Naveen Sharma will come to India to meet Mrs. Meenal and Pranav at least for 3 time. Similarly Mrs. Meenal will go to U.S.A. along with her son under the security with condition that Mr. Naveen will arrange all their expenses including travelling expenses and will undertake that if both of them desire to return India then Mr. Naveen will arrange their safe return to India.
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> (4) The flat which is going to purchase by Mr. Naveen Sharma should be in joint name of both party. None of the party will entitle to sale this flat or it's any part independently. Mr. Naveen Sharma will arrange collateral security against loan and in no case the flat should be taken from ownership and possession of Mrs. Meenal Sharma. In case any mis-happening the flat will remain in ownership of Mrs. Meenal Sharma.
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> (5)Mr. Naveen, Mrs. Meenal and Pranav will live jointly at U.S.A. after purchase of flat. None of the family member of both parties will disturb and interfere in their lives."

5. For certain reasons, the laudable settlement, hoping to achieve win-win situation, did not turn into reality. As per the respondent, it is the appellant who committed breach of the said settlement and also violated the directions contained in the order of the High Court to comply with these terms. As she failed to adhere to the settlement and did not comply with the directions of the High Court in this behalf, the respondent herein filed Civil Contempt Petition in the High Court seeking execution of the consent terms and punishment to the appellant under the Contempt of Courts Act, 1971 (hereinafter referred to as the 'Act'). The appellant also, thereafter, filed application in the High Court seeking recall of the consent order dated December 17, 2015. The High Court has, by impugned judgment dated January 9, 2018, found the appellant to be in contempt and award maximum punishment of six months civil imprisonment under Section 12(1) read with Section 12(3) of the Act with direction to the appellant to surrender within four weeks. The High Court has also dismissed

the application preferred by the appellant for recall of order dated December 17, 2015. However, it has not accepted the request of the respondent to give him the custody of Pranav pursuant to the Canadian Court's order dated April 16, 2015 and, instead, permitted the respondent to seek execution of the said order.

6. The appellant has challenged the aforesaid order against the findings of the High Court holding her to be in contempt of its order and awarding the said punishment. The respondent feels aggrieved by that part of the order whereby the High Court has refused to grant him the custody of Pranav and showed him the route of execution. This, in nutshell, is the scope of two appeals before this Court.

7. As noted above, Pranav was born in Baltimore, USA on August 22, 2009. He is having US citizenship. Both the parties, after their marriage, have resided in America or Canada. They have also became Permanent Residents of Canada as well as America. From the date of his birth in August, 2009, Pranav remained with their parents, initially in America and thereafter in Canada till July 26, 2013, when the appellant went away with him to Buffalo, New York and thereafter came to India on August 4, 2013. Pranav stayed with his father, along with her mother, for four years and since then he is living with her mother to the exclusion of the respondent. He was 4 years of age when he was brought to India by the appellant and is in India now for more than 4^ years. Another pertinent fact which is to be noted is that the respondent has got orders from the Canadian Court giving custody of Pranav to him and has directed the appellant herein to return the child back to Canada.

8. In the aforesaid background, the respondent had filed petition for Habeas Corpus. However, the said petition was not heard on merits inasmuch as parties were relegated to mediation where they settled the matter leading to disposal of the Habeas Corpus petition vide order dated December 17, 2015 on the consent terms which were made part of the order with specific directions to both the parties to adhere to those conditions. We have already noted the consent terms as per which the parties had to withdraw their respective cases against each other within 4 months from the date of the order of the High Court. The respondent was obligated to find out 3-4 flats for choice of the appellant. After having chosen these flats, he was to show the same to the appellant. The appellant, at that stage, was supposed to go to USA to select one of the said flats. On this selection, she was to join the respondent with Pranav, thereby achieving again the matrimonial alliance and Pranav having benefit of the company of both his parents. This entire process was to be completed within 18 months. During the aforesaid period of 18 months which was given to the respondent to find out flats in USA, the respondent was permitted to come to India, at least three times, to meet the appellant and Pranav. Likewise, the appellant and Pranav were also supposed to go to USA under security and for such visits, it was the responsibility of the respondent to arrange all their expenses including travelling expenses. During such visits, they were entitled to remain in USA as per their choice and as and when they desired to return to India, the respondent had to arrange their safe return to India.

9. Three main obligations, as per the consent terms, were foisted upon the respondent, viz.:

(i) To find 3-4 flats in USA to enable the appellant to select one of them. The chosen flat was to become abode of the family.

(ii) To withdraw the cases filed against the appellant. This included complaint filed with Police and also take steps to ensure that warrants/red-corner notice issued by the FBI/Interpol also stands withdrawn. This was necessary for smooth entry of the appellant in USA.

(iii) After the selection of the flat by the appellant, the respondent was obligated to purchase the said flat in joint names.

10. Likewise, the appellant was bound to carry out the following tasks as per the aforesaid statements:

"(i)To withdraw all the cases filed by her against the respondent.

(ii) After earmarking of 3-4 flats by the respondent, to go to USA to select one of them.

(iii) On selecting the flat and purchase thereof by the respondent in joint names of the appellant and respondent, she was to go to USA along with Pranav and stay there with the respondent.

11. For certain reasons, the parties fell apart and the settlement terms could not be fructified leading to the unfortunate situation. As per the respondent, he had played his part by complying with the said terms inasmuch as he withdrew the illinois police complaint, warrants/red-corner notice issued by FBI/Interpol on February 12, 2016. He also visited India three times i.e. in August, 2016, December, 2016 and August, 2017. During these visits, the respondent had shown to the appellant various flats selected online by him with request to the appellant to make her choice. However, on his third visit in August, 2017, the appellant did not allow Pranav to meet the respondent as a result of which police complaint was filed with the SHO, Ajmer on August 26, 2017. The respondent also sent air tickets to the appellant on August 31, 2017 for travel on September 3, 2017 to enable her and Pranav to visit USA. The respondent further claims that he had also planned a trip to Disney World, Florida for Pranav along with the appellant. According to the respondent, in spite of all the efforts made by the respondent, it is the appellant who backed out and resiled from the settlement as she failed to perform her role.

12. The appellant, on the other hand, blames the respondent which led to the aforesaid failure. Her accusation is that after the Habeas Corpus Petition was disposed of vide order dated December 17, 2015, she filed following three petitions on April 12, 2016 seeking to withdraw the following cases filed by her:

"(i) Custody Petition filed by her before the Family Court, Ajmer.

(ii) Maintenance case filed by her before the Family Court, Ajmer.

(iii) Divorce case filed by her before the Family Court, Ajmer.

13. It is further claimed by the appellant that even the criminal proceedings launched by her under Section 498-A IPC etc. were quashed by the High Court on a petition filed by the respondent under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) which happened because of her no objection as per the settlement. Pointing the finger at the respondent, her imputation is that he did not withdraw the custody case filed by him in the Canadian Court and/or sought vacation/rescinding of order dated April 16, 2015 by which custody of Pranav was ordered in favour of the respondent. She also alleges that the respondent failed to send a list of flats to her within the stipulated 18 months time which was mentioned in the consent terms. Thus, according to the appellant, it is the respondent who has not fulfilled his obligations under the settlement. In fact, she even filed miscellaneous application in the petition that was filed by the respondent under Section 482 Cr.P.C. and was allowed by the High Court on April 12, 2017, seeking recall of the said order on the ground that it was the respondent who had committed breach of the settlement. High Court, however, rejected the said application vide order dated May 9, 2017 on the ground that the said order had been passed after issuance of notice to the appellant.

14. With this kind of impasse, the respondent filed a miscellaneous application in the Habeas Corpus Petition seeking revival thereof on the ground that the appellant had breached the consent terms. This application was, however, not accepted by the High Court on the ground that if there was any breach or disobedience on the part of the appellant herein, there was an alternative remedy available to the respondent to file contempt petition. This application was, thus, dismissed as withdrawn by order dated October 5, 2017 with liberty to the respondent to file the contempt petition. Thereafter, the respondent filed the contempt petition on November 7, 2017 which has culminated in the impugned judgment dated January 9, 2018.

15. We may mention at this stage that when the notice of the contempt petition was served upon the appellant, she filed reply thereto stating that she had taken requisite steps under the settlement and it is the respondent who failed to get orders dated April 16, 2015 passed by Canadian Court nullified thereby disabling her to go to America inasmuch as she could be arrested immediately on landing in USA/Canada in view of the aforesaid order. She also alleged that list of flats was not sent to her. Moreover, conduct of the respondent, post-settlement, was not good. She had also filed additional reply dated December 11, 2017 contending (i) pursuant to High Court orders, she had gone to Delhi hotel to meet respondent and his mother but she was publicly humiliated there, (ii) she had found that the respondent had been fired by his employer IBM for taking bribes and he had not been truthful to the Government also and (iii) respondent had not paid a single penny as maintenance. This was followed by application dated December 19, 2017 by the appellant seeking recall of order dated December 17, 2015.

16. The aforesaid stand of the appellant has been taken note of with a specific purpose, namely, it is the contention of Mrs. Anjana Prakash, learned senior counsel appearing for the

appellant, that the High Court has, in the impugned judgment, not even discussed and dealt with the submissions of the appellant that she had not committed any breach of the order or consent terms and on the contrary, it is the respondent who failed to fulfil his obligations thereunder. She submitted that from the reading of the impugned order, it can be discerned that the High Court Bench kept on insisting the appellant to join the company of the respondent along with Pranav and on her refusal to do so, the High Court has taken the view that appellant has shown strong defiance to the orders of the Court. In the process, the High Court has not even cared to examine who was at fault insofar as adherence to the consent order is concerned. She also submitted that the High Court took into consideration another extraneous factor. It has noted in the impugned judgment that statement was given in the Court by the father of the appellant that the application for recall of order dated May 9, 2017 passed in petition filed by the respondent under Section 482 Cr.P.C., was moved by the counsel for the appellant without her instructions. That, however, was found to be false assertion inasmuch as the High Court called for the record of that case and found that each page of the application was signed by the appellant and on realising this, it was conceded that lawyer was instructed to make such an application. It was contended by the learned senior counsel that even if this was correct, it has no bearing insofar as the contempt case is concerned.

17. Mr. Jauhar, learned counsel appearing for the respondent, on the other hand, put entire blame upon the appellant who, according to him, took summersault with intention to commit breach of settlement terms as there was change of heart and she decided not to join the company of the husband. He took pains to demonstrate that respondent had took all the necessary steps in terms of the settlement. He still wanted the appellant to resume matrimonial alliance for the sake of saving the family ties and also to enable Pranav be in the company of both the parents.

18. We have duly considered the submissions of counsel for both the parties. As noted in detail above, both the parties are blaming each other for the failure of settlement terms. In this backdrop, we have gone through the impugned order passed by the High Court. In the entire judgment, the High Court has not adverted to the important aspect that needed attention in such a case, namely, whether it was the appellant who was responsible for not adhering to the terms of the consent order and thereby violated the directions issued by the High Court in in its orders dated May 09, 2017. After all, the respondent had filed the contempt petition attributing breach of the directions on the part of the appellant. In reply, the appellant had taken up the stand that she was not responsible for the happenings and squarely blamed the respondent therefor. The High Court has not discussed these aspects. On the contrary, the approach of the High Court was to insist the appellant to adhere to the settlement terms even at that stage and on her refusing to do so it arrived at a finding that she had committed the contempt of the court's order as the aforesaid conduct was found to be abhorrent. It is, thus, the stubborn attitude shown by the appellant during the hearing of the contempt petition which has weighed by the High Court. That, according to us, was not the correct approach for punishing the appellant for contempt of court. The contempt petition was filed by the respondent alleging that the appellant had not fulfilled her obligations under the consent terms and the directions given by the High court in this behalf. It was, thus,

necessary for the High Court to discuss and consider, in the first instance, as to whether these allegations of the respondent were correct.

19. There is another way of looking into the matter. The consent terms on which the parties settled the matter contained an important part of agreement, namely, both the parties decided to live together again. This happened in the proceedings which essentially related to the custody of child. No doubt, when the parties agreed to resume the matrimonial relations and decided to live again as husband and wife, the problem of custody of Pranav got automatically solved thereby as it brought about an ideal situation where Pranav could have the company of his both the parents. Unfortunately, this did not materialise. In a case like this whether the High Court could force the appellant to join the company of the respondent and live with him, if he had decided for certain reasons not to do so? Even when a decree of conjugal rights is filed by a competent court of law in favour of one of the spouses, such a decree cannot be executed and the other spouse who is directed to resume the conjugal relations, cannot be forced to do so. It is a different matter that for not obeying such a decree, other consequence follow including right to the decree holder to seek divorce. When that is the position even in respect of a decree passed by competent court of law forcing the appellant to join the company of the respondent and on her failing to do so punishing her in committing contempt of the court's order, that too by awarding maximum civil imprisonment in law cannot be countenanced. In a matter like this, the focus of the High Court should have been on the custody of the child, which was a subject matter of the Habeas Corpus petition. However, as far as that aspect is concerned, the High Court simply stated that it would be open to the respondent to execute the order of the Canadian Court dated April 16, 2015. Here again the High Court has fallen into error. In fact, in a matter like this, the High Court should have restored the Habeas Corpus Petition and decided the same on merits. However, when application for this purpose was filed by the respondent, instead of doing so the High Court passed the orders dated October 05, 2017 giving liberty to the respondent to file the contempt petition.

20. Having regard to our aforesaid discussion, we allow the appeal filed by the appellant and set aside the order of the High court whereby the appellant is punished for contempt. It would be open to the respondent to press the contempt petition before the High Court and if he so choses the High Court shall decide the contempt petition in the light of the aforesaid observations made by this Court, namely, to first find out as to whether the appellant is correct in her submissions that it is the respondent who did not take necessary steps to ensure that the appellant joins the company of the respondents along with Pranav in USA. We also allow the appeal of the respondent partly by setting aside the direction of the High Court permitting the respondent to file the execution petition. Instead with the consent of both the parties, order dated October 05, 2017 passed in Miscellaneous Application filed by respondent in Habeas Corpus petition is set aside and her Habeas Corpus petition is revived which shall be dealt with by the High Court on merits in order to decide as to whether custody of Pranav is to be handed over to the respondent. Before us, both the parties have advanced arguments on this aspect whereas the appellant submitted that the welfare of Pranav lies in continuing his custody with his mother. The respondent had made a fervent plea to claim the custody on the basis of the order of the Canadian Court. However, we are

deliberately not dealing with this aspect as this aspect is the subject matter of Habeas Corpus Petition pending in the High Court and it is the High Court which has to deal with and decide this question, in the first instance.

21. Both the aforesaid appeals are allowed on the aforesaid terms, without any orders as to costs.

22. Before we part with, we are constrained to make few comments about the conduct of the parties who are not fully acknowledging the truth and reality of the situation. It is either the appellant or the respondent or may be, to some extent, both of them, who are to be blamed for the egoist approach. No doubt, on an earlier occasion, some differences arose between them which led to strained relations and the appellant even came back to India. Legal battles of all kinds started with both the parties filing multiple proceedings against each other. In these dark clouds enveloping the relationship between the parties, a silver lining emerged in the form of mediation. As both the parties acted with wisdom and maturity, mediation exercise was successful. Both the parties not only buried their acrimony against each other but decided to have a new beginning. The magic of mediation worked at that moment. The consent terms which were recorded in the settlement arrived at during mediation proceedings brought about the resolution which could truly be levelled as 'win-win' situation. The accord was aimed at reuniting the two spouses with the aim of bringing happiness in the matrimonial relationship. More importantly, paramount interest of Pranav as a child was acknowledged by the parties as any child, particularly at this age, needs the company of both the parents for him/her to bloom and for ideal bringing up. In fact, as is clear from the events noted above, both the parties even took initial steps to make this settlement a success. However, before it could be seen as 'happy ending' and parties could reach that end of the road where they could find their final destination as envisaged in the settlement, they encountered a road block. Whether it happened due to the fault of the appellant or that of respondent, we are not commenting about the same. Unfortunate part is that instead of acknowledging the truth, parties are grumbling continuously and complaining against each other. This accusation, castigation, chargeability and dilation, depicting deviation from rectitude is a mindless exercise and, in the process, true welfare of Pranav is sought to be sacrificed. We are compelled to express these sentiments because of the reason that things have still not gone beyond repair. Had the parties shown positive and cooperative attitude (which, we are sure, they had demonstrated during mediation talks) they could still achieve an amiable resolution, inasmuch as it is even now possible to work out the terms of the compromise that was entered into between them. In fact, the respondent had expressed his willingness to go an extra-mile to save the settlement and the matrimonial home. However, the appellant stood firm in her attitude as she kept on saying that she could no longer repose confidence and trust in the respondent. She has a grudge that respondent lured her into the settlement with selfish motive to take away the custody of Pranav with no love towards her and his moves lack bona fides. The respondent, on the other hand, maintained the position that appellant was resorting to falsehood because of her selfish motives which were kept higher in priority, even at the cost of family life. However, we may re-emphasise that all is not lost and situation can still be brought under control if there is a dispassionate and objective thinking by both the parties, keeping aside their ego. Life has problems.

Parties have to understand those problems and to reflect on the reasons why these problems have arisen leading to such kind of disputes. Both the parties have also to reflect on the future and to make up their mind on that basis as to whether it would be in their interest, as well as in the interest of Pranav to bury the hatched and have a new beginning. We say no more.