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DAVID JUDE

v.

HANNAH GRACE JUDE AND ORS.

JULY 30, 2003

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[M.B. SHAH AND ARUN KUMAR, JJ.]

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*Contempt of Courts Act, 1971—Litigation with regard to custody of child—Supreme Court granting interim custody to the mother—Permission to take child abroad on condition of furnishing an undertaking to bring back the child to India before Family Court when required—Breach of undertaking/direction/notice—Contempt petition—Held: the mother and grand-mother guilty of committing contempt of Court as they played with the Court in not abiding with the undertaking—Thus, on account of their defiant and contemptuous attitude no lenient view could be taken—Order of conviction and sentence passed.—Constitution of India, 1950—Articles 129 and 142.*

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Litigation arose between the applicant-husband and respondent-wife with regard to the custody of their child. This Court granted interim custody of the child to the wife with permission to take the child abroad on the condition of furnishing a written undertaking that she will appear before Family Court in India as and when required. Meanwhile, she filed petition for divorce and custody of the child in U.S.A. Thereafter, she failed to appear before the Family Court. Court passed various orders but she remained absent. Hence the present contempt petition against her and her mother for violating the undertaking given by them before this Court and order passed by this Court.

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Court issued notice in the contempt petition. Respondent No. 2-child's grandmother appeared and she was directed to abide by the undertaking given to this Court. Respondent No.1 did not appear and the matter was adjourned number of times. Thereafter notice was issued as to why respondents should not be punished for contempt of court. Even then respondent No. 1 remained absent and the matter was repeatedly adjourned. Subsequently respondent No. 1 filed an affidavit stating that Court in U.S.A. has granted full custody of the child to her and her job precludes her from coming to India. Applicant-husband contended that

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breach of undertaking given before this Court by respondent No 1 amounts not only to a civil contempt but also to criminal contempt; that this Court's jurisdiction under Articles 129 and 142 of the Constitution is not restricted by the Contempt of Courts Act, 1971 and the Court may award even higher punishment than which is provided under the Act; and that one of the primary objects of a proceeding for contempt is to see that the order/undertaking which is violated by the contemnor is effectuated, thus, besides punishment, Court may issue such directions to restore the custody of the child to the applicant-husband. A B

Respondent No. 2-child's grandmother contended that it is a fit case for showing mercy; that she is aged about 65 years; that she has been taking enough steps to secure the presence of respondent no.1 and to abide by the undertaking given by her; and that in any case considering her age, sentence of imprisonment may not be imposed upon her. C

Disposing of the contempt petition, the Court D

HELD: 1. Respondent nos.1 and 2 are guilty for committing contempt of this Court and it is not a fit case for showing mercy and not imposing sentence of imprisonment. [985-F]

2.1. On facts, it is apparent that respondent no.1 is well educated and is serving in prestigious institution-World Bank. Respondents were given custody of the minor child on the condition of filing undertakings before this Court to bring the child back to India when so ordered by the Family Court and the respondents played with the Court, by giving unconditional undertaking and not abiding by it. Also the mother of respondent No. 1 has stated before this court that respondent No. 1 is now not abiding by the instructions given by her to produce the child before this Court and the Family Court. Thus, the attitude of the contemnors is undoubtedly defiant and contemptuous. [986-B; 985-D-E; 985-D] E F

2.2. It is also clear from the conduct of respondent no.1 that she has no regard for the notices issued by this Court. If the notice issued by Apex Court of this land is wilfully disobeyed, it would send a wrong signal to everybody in the country. It is a sad experience that due regard is not shown even to the undertakings/order/notice issued. [985-E-F] G

3. Respondent no 1 does not deserve mercy because of her motivated H

A behavior yet only three months simple imprisonment is imposed and a fine of Rs. 50,000 in default simple imprisonment for one month. With regard to respondent no.2 even though she has played major part in the aforesaid episode, considering her age and the fact that she has an old husband to look after, fine of Rs.50,000/- is imposed, in default three months simple imprisonment. Also her passport would be seized for five years.

[986-C; 986-A-B]

CIVIL APPELLATE JURISDICTION : Contempt Petition No. 261 of 2000.

IN

Civil Appeal No. 4797 of 1998.

From the Judgment and Order dated 1.9.1998 of the Andhra Pradesh High Court in C.R.P. No. 3229 of 1998.

P.S. Misra, Ms. Indira Jai Singh, Y. Ramesh, Ms. Sasmitha Tripathy, Y. Raja Gopala Rao, Sanjay Ghosh, S.R. Setia, Ms. Neeru Vaid, Ms. N. Annapoorani, A. Subba Rao, K. Subba Rao and Guntur Prabhakar for the appearing parties.

The Judgment of the Court was delivered by

**SHAH, J.** This petition for contempt is filed by the applicant-husband with a prayer for punishing the respondents - wife and mother-in-law for the breach of undertaking given by them and also for breach of directions issued by this Court.

By order dated 15th September, 1998, this Court permitted respondent no.1- wife to take the child to USA on the condition that respondents would file undertaking before the Court to the effect that wife will appear before the Family Court as and when required, and it would be open to the applicant-husband to visit the child in USA after making prior arrangement with the

wife.

The brief facts of this case are that - applicant and respondent no.1 were married on 7.2.1989 at Hyderabad according to Christian rites. Soon after marriage, the couple left for America. On 2.5.1997, a son was born out of this wedlock. Because of strained relationship between the wife and husband, both started living separately. Wife approached the Circuit Court, Maryland

in USA and got issued a protective order against the husband on condition that the child will not be taken out of the jurisdiction of that court. The wife, however, brought the child to India on 14.4.1998 and after keeping him in the care and custody of her mother - respondent no.2, she left India. On knowing this, husband dashed back to India on 23rd April 1998 and on 30th April, 1998 he took over the custody of the child from respondent no.2 for celebrating the birthday of the child which was on 2.5.1998.

Thereafter, on 1.5.1998, the husband filed O.P. No.300 of 1998 before the Family Court at Hyderabad under Sections 7, 10 and 25 of the Guardians and Wards Act, 1890, seeking an order appointing him as guardian of the minor child. Respondent No. 2-grand-mother also moved the same Court for restoring the custody of the child to her. The Family Court by order dated 19.8.1998 dismissed the application of the husband and directed him to restore the custody of child to the grandmother. Aggrieved thereby, the husband filed Civil Revision Petition No.3229 of 1998 before the High Court of Andhra Pradesh at Hyderabad, which was allowed and the custody of the child was given to the husband with visiting rights to the wife.

Being aggrieved by the said order, respondents No.1 and 2 filed S.L.P. No.15185 of 1998 before this Court. This Court by order dated 15.9.1998 granted interim custody of the child to the wife with permission to take the child to USA on the condition of furnishing a written undertaking to bring the child back to India and disposed of the matter by passing the following order:-

“Special leave granted.

Looking to the age of the child, the interim custody of the child is given to the 1st appellant - mother. She will be at liberty to take the child to USA on condition that both the appellants file undertakings before this Court on or before 25th of September, 1998 to bring the child back to India when so ordered by the Family Court and the 1st appellant will also file an undertaking to the effect that the 1st appellant will appear before the Family Court as and when required by the Family Court. If during the interregnum the respondent wants to visit the child in USA, he can do so after making prior arrangement with the 1st appellant to see the child. Passport of the child should be released on the filing of the undertaking. The impugned order of the High Court is accordingly set aside. The Family Court should dispose of the matter as expeditiously as possible, preferably within 18 months.

A The appeal is disposed of accordingly.”

After passing of the aforesaid order, both the respondents submitted their undertakings by way of affidavits in this Court. The relevant portion of the undertakings is as under: -

B **“By Respondent no. 1 (Wife)**

As directed by this Hon’ble Court in the order dated 15.9.1998, I hereby undertake to bring the child back to India when so ordered by the Hon’ble Family Court and further undertake to appear before the Hon’ble Family Court, Hyderabad, as and when required by the Hon’ble Family Court.

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**By Respondent no.2 (Mother of Respondent No.1)**

As directed by this Hon’ble Court, I undertake to bring the child back to India as and when required by the Hon’ble Family Court, Hyderabad.”

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Meanwhile, respondent No.1 filed Case No. 5249 of Family Law before the Circuit Court for Montgomery Country, Maryland inter alia for divorce and custody of the child.

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Thereafter, the Family Court at Hyderabad proceeded with the trial and examined the husband. The matter was kept for evidence on behalf of the wife but she failed to appear before the Court on 7.2.2000. Various orders were passed by the Family Court, but she remained absent from the proceedings. Finally, on 11.4.2000, the Family Court passed the following order:-

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1. The husband is appointed as the guardian of the minor child;
2. The wife is directed to restore the custody of the minor child to the husband within one month from the date of the order;
3. The wife is permitted to take interim custody of the minor child whenever she comes to Hyderabad and hand over the minor to the husband while she leaves the country;
4. The wife is not entitled to remove the custody of the minor child out of the jurisdiction of the Family Court at Hyderabad at any time;

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5. The husband is directed not to handle the amounts lying in FDR of Rs. 5,00,000 including the interest accrued thereon till the minor attains the age of majority. A

Being aggrieved by the aforesaid order, the respondents/ contemnors filed appeal before the High Court of Andhra Pradesh, which is still pending.

Meanwhile, the husband moved this Court for initiating contempt proceedings against the respondents/contemnors for violating the undertakings given by them before this Court and the order passed by this Court in Civil Appeal No.4797 of 1998. B

Further, in the execution petition filed before the Family Court, the Family Court passed an order holding that the failure to restore the custody of the minor child to the husband amounts to breach of the undertakings given and ordered the arrest of respondent No. 2 (mother of respondent No. 1) to serve civil imprisonment for a period of six months. Appeal filed by respondent No. 2 against the above arrest order before the High Court was also dismissed. Against that order, she has filed SLP No.22990 of 2001 before this Court. C D

The instant Contempt Petition was first listed on 28.9.2000 and notice was issued for 8.1.2001. Respondent No.2, mother of respondent No.1, was present. She was directed to abide by the undertaking given to this Court. On the next date, i.e. on 12.3.2001, learned counsel for respondent No. 1 sought eight weeks time so as to enable her to remain present with the child. Respondent No. 2 was directed to deposit her passport with the Registrar (Judicial). On 8.5.2001, respondent No. 1 did not appear but learned counsel for respondent no.1 assured that she would remain present before this Court with child on 6th August, 2001. On 6th August 2001 also respondent No. 1 remained absent. On that day, at the instance of applicant, leave was granted to add the Union of India as a party respondent. Thereafter, on 17th September, 2001, the Court directed the concerned officer of Union of India to write a letter to the employer of respondent No. 1 about the undertaking given before the Apex Court and breach of undertaking and also the fact that despite the service of notice, she was not remaining present before this Court. On 7th January, 2002, Mr. Y. Raja Gopala Rao, Advocate appeared on behalf of respondent No. 1 and stated that he would file necessary reply. On 6th February, 2002 an order was passed to the effect that respondent No. 1 and 2 have committed breach of unconditional undertakings and notice was issued as to why they should not be punished for contempt of this Court. Relevant E F G H

A part of the said order is as under:

B “In our view, considering the unconditional undertakings given by the respondents to this Court there is no question of not taking further action against them for not bringing the child back to India as directed by the Family Court. In this view of the matter, prima facie, we are of the view that respondents have committed the contempt of this Court and appropriate action is required to be taken under the Contempt of Courts Act for committing breach of unconditional undertaking. Therefore, we direct that notice be issued as to why they should not be punished for contempt of this Court.”

C When the matter came up for hearing on 6th March, 2002, at the request of the learned counsel for the respondents, the matter was further adjourned for four weeks. On 3rd April, 2002, counsel appearing for respondent No. 2 stated that respondent No. 1 would remain present with the child without fail, on 30th July, 2002. On 30th July, 2002, matter was again adjourned. On 29th August, 2002, the Court directed that respondent No. 1 shall remain present before this Court with her child on 13th November, 2002. On 14th November, 2002, respondent No. 1 remained absent and, therefore, direction was issued to the Union Government to take necessary steps for securing her presence with child in this Court. Thereafter, matter was repeatedly adjourned to see that the wisdom prevails with respondent No. 1 to abide by the undertaking given to this Court. Subsequently, respondent No. 1 filed an affidavit on 13th November, 2002 wherein she has stated that Maryland Circuit Court has granted full custody of the child to her in October, 2000 and that her job precludes her from being able to travel to India. She has further stated that even though she was unable to appear in person, she always retained a legal representative on each and every date of hearing of the case and submitted that taking into consideration her previous affidavits, petition against her be dismissed. Finally, in the affidavit which was tendered by her on 6th May, 2003, it is stated that petitioner had threatened her in past by saying that he is going to show her how he intends to use the Indian Courts to get back at her, and it is her belief that her husband is now using the system against her family.

H At the time of hearing, written submissions were filed by the parties. It is the contention of the learned counsel for the applicant that breach of undertaking given before this Court by the wife amounts not only to a civil contempt but also to criminal contempt. It is submitted that this Court's jurisdiction under Articles 129 and 142 of the Constitution is not restricted

by the Contempt of Courts Act, 1971 and the Court may award even higher punishment than which is provided under the Act. It is the submission of learned counsel for the applicant that one of the primary objects of a proceeding for contempt is to see that the order or undertaking which is violated by the contemnor is effectuated. Thus, besides punishment, the Court may issue such directions to restore the custody of the child to the applicant-husband.

It is to be stated that High Court had directed that the custody of the child be given to the husband because respondent No. 1 gave the custody of the child to her mother and that she was staying in United States and serving in the World Bank at Washington, D.C. The Court also considered the age of the child who at the relevant time was of one year and four months and the fact that as respondent No. 1 was serving and staying alone in United States, it would be difficult for her to take care of the minor child. To see that the aforesaid order is set at naught, respondent Nos. 1 and 2 gave unconditional undertakings to this Court and obtained favourable order.

From the facts stated above it is apparent that the attitude of the contemnors is without any doubt defiant and contemptuous. They were given custody of the minor child on the condition of filing undertakings before this Court to bring the child back to India when so ordered by the Family Court. Respondent Nos. 1 and 2 have played with the Court, by giving unconditional undertakings for securing the custody of the child. It is true that respondent No. 2, the mother of respondent No. 1 has stated before this Court that respondent No. 1 is now not abiding by the instructions given by her to produce the child before this Court and the Family Court.

Further, it is also clear from the conduct of respondent No. 1 that she has no regard for the notices issued by this Court. If the notice issued by Apex Court of this land is wilfully disobeyed, it would send a wrong signal to everybody in the country. It is a sad experience that due regard is not shown even to the undertakings/order/notice issued.

Hence, we hold that respondent Nos. 1 and 2 are guilty for committing contempt of this Court. Further, we do not think that this is a fit case for showing mercy as contended by learned senior counsel, Ms. Indira Jaisingh, appearing on behalf of respondent No. 2. Learned counsel for respondent No. 2 further submitted that respondent No. 2, who is aged about 65 years, has taken enough steps to secure the presence of respondent No. 1 and to abide by the undertaking given by her. On the question of punishment, learned senior counsel submitted that in any case considering the age of respondent

- A No. 2, sentence of imprisonment may not be imposed upon her. In our view, even though respondent No. 2 has played major part in the aforesaid episode, considering her age and the fact that she has an old husband to look after, we think that imposition of fine would meet the ends of justice. Hence a fine of Rs. 50,000 is imposed upon her, in default three months simple imprisonment. It is also ordered that her passport would be seized for a period of five years.
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- C For respondent No. 1 considering the fact that she is well educated, serving in prestigious institution, namely, the World Bank and her totally defiant attitude, we do not think that this would be a fit case for taking a lenient view and not imposing sentence of imprisonment. Even though she does not deserve mercy because of her motivated behaviour yet we impose only three months simple imprisonment and a fine of Rs.50,000/- and in default of payment of fine, she shall further undergo simple imprisonment for one month. Fine to be paid within one month.

- D Respondent - Union of India is directed to take appropriate steps to ensure compliance of this order qua respondent No.1.

Contempt Petition stands disposed of accordingly.

N.J.

Petition disposed of.