

Arun Malhotra vs Manya Malhotra @ Kanchan Dhakwani And ... on 3 March, 2023

Author: Manmeet Pritam Singh Arora

Bench: Manmeet Pritam Singh Arora

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CONT.CAS(C) 328/2021
ARUN MALHOTRA

..... Pe
Through: Ms. Richa Kapoor, Mr. Kunal An
Mr. Sandesh Kumar and Mr. Jai
Batra, Advocates along
Petitioner in person.

Versus

MANYA MALHOTRA @ KANCHAN DHAKWANI AND ORS.

.....
Through: Mr. Akshay Chaudhary and Ms.
Yogita, Advocates along wit
Respondent No.1 in person.

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA
ORDER

% 03.03.2023 CM APPL. 10629/2023 (seeking modification of the order dt. 23-02-2023)

1. This is an application filed by the Respondent, mother seeking modification of the order dated 23.02.2023 passed in the present contempt petition, wherein the undertaking of the Respondent to hand over the custody of the two minor children to the Petitioner, father, from 03.03.2023 to 05.03.2023 was recorded. The said direction was issued with the consent of the parties and was to seek compliance with the directions in the orders dated 23.12.2020 and 18.03.2021 passed by the Division Bench of this Court in W.P. (Crl.) 2188/2020.

2. Pertinently, prior to 23.02.2023, the minor children were in custody of the Petitioner from 26.11.2022 until 25.02.2023.

3. This matter has a checkered history and the record shows that the Respondent has repeatedly resisted the compliance of the visitation rights of the Petitioner, in violation of the orders of the Court.

4. The brief facts relevant for deciding this application are set out herein below:

5. The two minor children are presently aged 7 years and 5 years respectively. Due to the matrimonial disputes between the parties herein the Petitioner was not permitted visitation with the children since January, 2019. In these circumstances, the Petitioner had filed a habeas corpus petition i.e., W.P. (Crl.) 2188/2020, wherein the Division Bench of this Court after hearing the parties had passed a detailed order dated 23.12.2020, relevant paras of which read as under:-

"6. We are not inclined to get into the disputes related to the past. Respondent no. 2 states that she has no objection to the petitioner meeting the children any time when he desires and she is also willing if the children spend their weekends with the petitioner.

XXX XXXX XXXX XXX XXXX XXXX

9. Respondent no. 2 undertakes to get the children admitted to an appropriate school/play school and states that the petitioner should also cooperate and be present for the purpose of securing admissions and for Parent Teacher Meetings, as and when required. The petitioner is ready and willing to cooperate in all respects and undertakes to do so. Accordingly, we direct that the petitioner shall be entitled to meet the two minor children whenever he desires at the residence of respondent no. 2 i.e., 42/1456, DDA Flats, Madangiri, New Delhi. He shall also be entitled to keep the children with him on the weekends. He shall pickup the children from the residence of respondent no. 2 on Saturday morning at 11:00 A.M. and shall return the children by 5:00 P.M. on Sunday. Both parties and their relatives including respondent No.3 and 4 shall maintain decorum and not resort to quarrel or violence."

(Emphasis supplied)

6. In terms of the aforesaid order, the Respondent was permitted to pick up the children from the residence of the Petitioner on every Saturday morning at 11.00 A.M. and return the children by 5.00 P.M. on Sunday. The said directions passed in the aforesaid order were made absolute by the Division Bench by its subsequent order dated 18.03.2021, which reads as under:-

"1. Having heard learned counsel appearing on behalf of the parties, the only course of action that commends itself to us is to make order dated 23.12.2020 absolute; and to direct the parties to comply with that order without demur.

2. We make it clear that the direction contained in the above order shall operate as an interim arrangement, of which parties are at liberty to seek modification before the court of competent jurisdiction. The above order is made without prejudice to all rights and contentions of the parties.

3. No further directions are called for in the present writ petition; and the same is accordingly disposed of."

(Emphasis supplied)

7. The Respondent, however, failed to comply with the visitation arrangement as directed by the Division Bench in the aforesaid orders. No visitation was permitted to the Petitioner by the Respondent.

8. In these circumstances, on 05.04.2021, the Petitioner filed the present contempt petition for initiation of contempt proceedings against the Respondent for violations of the orders of the Division Bench.

9. Notice was issued in this petition on 16.04.2021, however, despite service, Respondent failed to enter appearance on 21.05.2021. Subsequently, a counsel entered appearance on behalf of the Respondent on 23.09.2021, however, no reply was filed and again there was no appearance on behalf of the Respondent subsequently in these proceedings.

10. In these circumstances, this Court on 02.05.2022 was constrained issued 'bailable warrants' against the Respondent herein. It was thereafter that the Respondent entered appearance on 16.08.2022.

11. The Petitioner filed CM APPL 46688/2022 on 28.10.2022 stating that he has not been permitted to meet the children since 16.01.2021. It was prayed in the said application that the Petitioner be permitted to have the custody of the children for 10 days i.e., from 26.11.2022 to till 05.12.2022. It was stated in this application that as per the directions of the Division Bench, the Petitioner was entitled to meet the children on every weekend. However, until the filing of the said application, 95 weekends have gone by, but the Petitioner had not been permitted visitation of the two minor children by the Respondent in terms of the directions of the Division Bench.

12. The said application was taken up by this Court on 01.11.2022 and notice was issued to the Respondent for 15.11.2022. The said application was listed again successively on 21.11.2022 and 22.11.2022. After a hearing in the said application, the following order was passed by this Court directing the Respondent to hand over the custody of the children to the Petitioner for 10 days, i.e., from 26.11.2022 to till 05.12.2022. The relevant portion of the order dated 22.11.2022 reads as under:

"1. After some hearing, it is agreed between the parties that as an ad-hoc arrangement, without prejudice to the rights and contentions of the parties, that the custody of the two sons of the petitioner and the respondent no.1, shall be handed over by the respondent no.1 to the petitioner for a period of ten days i.e. from 26.11.2022 till 05.12.2022.

2. The custody of the children shall be handed over to the petitioner before the concerned mediator, before whom the mediation proceedings between the parties are stated to be pending, on 26.11.2022 at 04.00 pm. The custody of the children shall be returned to the respondent no.1 on 05.12.2022 at 04.00 pm in the presence of the said mediator.

3. It is further agreed that the petitioner, his mother and his sister will file an affidavit of undertaking, in these proceedings, before 26.11.2022, taking full responsibility for the security and comfort of the two sons during their stay with the petitioner at the petitioner's residence, i.e. A-153, Anupam Garden, Sainik Farms, New Delhi-110068.

4. It is further agreed that during the said period, i.e. from 26.11.2022 till 05.12.2022, the respondent no.1 shall have telephonic access with the children. It is also agreed that virtual/telephonic interaction between the respondent no. 1 and the children during the said period shall take place for a period of 30 minutes, everyday at 05.00 pm, and that the petitioner shall ensure that such interaction is without any hindrance.

5. It is further agreed that the respondent no.1 shall also be entitled to visit the children, if necessary, during the said period after giving advance notice in this regard to the petitioner.

6. The petitioner undertakes to ensure that the children attend their school during the said period and will himself undertake the responsibility of taking the children to the concerned school, and picking them up after school, during the said period.

7. It is clarified that this order shall have no bearing whatsoever on any other legal proceedings pending between the parties which shall continue on their own merit, regardless of this order.

8. With the aforesaid directions, the present application stands disposed of."

(Emphasis Supplied)

13. The Petitioner herein duly filed an undertaking dated 24.11.2022 in compliance with the said order and the same forms a part of the record. There is no dispute that the directions contained in order dated 22.11.2022 were duly followed by the Petitioner.

14. Thereafter, when the matter was taken up on 06.12.2022 before this Court, the parties jointly agreed and stated that the interim arrangement made on 22.11.2022 shall continue until the next date of hearing i.e., 23.02.2023. The order dated 06.12.2022 reads as under:-

"1. The parties agree that the interim arrangement made on 22nd November, 2022 can continue further subject to both the parties abiding by the terms and conditions laid down in the order dated 22nd November, 2022. Both the parties are agreeable to this course of action and are bound down to their statement.

2. Accordingly, list on 23.02.2023.

3. Interim orders to continue."

(Emphasis Supplied)

15. In view of the above orders, the Petitioner continued to have custody of the minor children from 26.11.2022 to 23.02.2023 without any objection from the Respondent.

16. When the matter was next listed on 23.02.2023, the Respondent stated that her brother is getting married on 25.02.2023 and she therefore, sought reversion of the custody of the minor children. Accordingly, after hearing the parties the following order was passed on 23.02.2023.

"1. The two children aged 7 and 5 years respectively are presently in the custody of the Petitioner, father in terms of the consent order dated 22.11.2022, which was extended vide order dated 06.12.2022.

2. It has been agreed between the parties today that the custody of the children will be handed back to the Respondent No.1, mother w.e.f. 25.02.2023.

3. The mother shall pick up both the children on 25.02.2023 from School, which ends at 11:30 am. The Children shall thereafter remain with the mother until 03.03.2023 morning, when she shall drop the children at the School for their classes.

4. On 03.03.2023, the Children will be picked up by the Petitioner, father from the School after the School closes at 11:30 am. The children will remain with the father on 03.03.2023, 04.03.2023 and 05.03.2023. He shall drop the children back at School on 06.03.2023 in the morning to attend their classes.

5. Thereafter, the Children will be collected by the Respondent No. 1, mother on 06.03.2023 from the School after the close of the classes and the children shall remain with the mother thereafter.

6. The aforesaid directions have been passed in the presence of the parties and are in consonance with the order dated 22.11.2020 passed by the Division Bench of this Court.

7. The Petitioner and Respondent No. 1, who is present in Court undertake to comply with the order of this Court passed today.

8. The children have their exams scheduled till 01.03.2023. Respondent No.1 shall make all efforts to ensure that the children duly attend the School and write their exams.

9. Both parties shall have access to the children, when the children are in the custody of the other parent in accordance with the directions contained in order dated 22.11.2022.

10. List the matter before this Court on 07.03.2023 as Item No. 1 for reporting compliance."

(Emphasis supplied)

17. The Petitioner in compliance with the order dated 23.02.2023 duly handed over the custody of the minor children to the Respondent on 25.02.2023 and the children remained in her custody until today.

18. As per the said order 23.02.2023, the custody of the children was to be handed over to the father at 11.30 A.M. on 03.03.2023. However, at this stage, this application which is under consideration has been filed seeking recall of the said direction in the order dated 23.02.2023.

19. The application seeks suspension of the direction issued to the Respondent to hand over the custody of the minor children to the Petitioner, father, for the weekend.

20. The Respondent is present in Court along with the two minor children. The Petitioner is also present in Court.

21. This Court had heard this matter previously on 23.02.2023 and fixed it on a short returnable date on 07.03.2023 to examine if the parties are complying with the orders.

22. The children had admittedly remained in the custody of the father from 26.11.2022 to until 23.02.2023 and there was no complaint or allegation made against the Petitioner by the Respondent during the hearings.

23. The Petitioner, who is present in Court, vehemently disputes the allegations made in the present application and reiterates he shall abide by the undertaking with respect to the assurance of security and comfort of the children as given to this Court vide order dated 22.11.2022 and the undertaking filed on 24.11.2022.

24. The Petitioner's undertaking dated 24.11.2022 that he will ensure the minor children's safety and security is already on record and this Court has also observed the demeanor of the Petitioner on 23.02.2023 and 03.03.2023. The Petitioner has diligently complied with the undertaking given to this Court on 22.11.2022 and on 23.02.2023. He handed over the custody to the Respondent on 25.02.2023 as directed by this Court. The Petitioner herein has been compelled to file repeated petitions before the Court for seeking compliance of the visitation rights.

25. To the contrary, the record of this Court shows that the Respondent has been persistently obstructing the visitation of the father despite orders of the Court. As noted above, in these proceedings, this Court was constrained to issue bailable warrants to secure her presence. The present application and the contents thereof also demonstrate an effort to avoid compliance of the directions of visitation issued on 23.02.2023.

26. The allegations made in the application have to be read in the background of the chronic conduct of the Respondent wherein she has consistently avoided compliance.

27. In these circumstances, this Court declines to modify the order dated 23.02.2023.

28. In view of the facts recorded in this order, this Court is satisfied that the Respondent has been reluctant to comply with the visitation rights of the Petitioner in contravention of the directions passed by the Division Bench and this Court. The Respondent who is present in Court, has been directed to hand over the custody of the two minor children to the Petitioner as per the order dated 23.02.2023. Further, Petitioner has been directed to bring back the children to Court on 07.03.2023 for handing back the custody of the children to the Respondent.

29. As directed above, the Petitioner shall appear before this Court along with the two children on 07.03.2023.

30. The application is disposed of.

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1. The matter is already on board on 07.03.2023, the father who is present in Court undertakes to the Court that the children will be brought back to this Court on 07.03.2023 at 10:30 AM in the morning.

2. List on 07.03.2023, date already fixed.

3. Order Dasti, under the signatures of the Court Master.

MANMEET PRITAM SINGH ARORA, J MARCH 3, 2023 pkv/kv