

**IN THE SUPREME COURT OF INDIA  
INHERENT JURISDICTION**

**Contempt Petition (C) No 687 of 2020**

**In**

**Special Leave Petition (Criminal) No 1342 of 2020**

**Mahendra Ramesh Thanai**

**...Petitioner(s)**

**Versus**

**Namita Mahendra Thanai**

**...Respondent(s)**

**ORDER**

1 On 28 February 2020, an order was passed by consent by this Court, in the following terms:

- “(i) The petitioner and the first respondent shall have shared custody of the child;
- (ii) The child shall reside with the first respondent between 4 pm on Thursday until 6 pm on Sunday;
- (iii) The child shall be exclusively with the petitioner between 6 pm on Sunday until 4 pm on the following Thursday of every week;
- (iv) The child shall not be removed from the custody of the Family court at Mumbai, without the prior permission of the Principal Judge of the Family Court;
- (v) **The above arrangement shall continue to remain in operation pending the disposal of the custody proceedings which are pending before the Family Court.**

The impugned order passed by the High court of Judicature at Bombay dated 15 January 2020 is accordingly set aside and shall stand substituted in terms of the above consensual arrangement, which has been arrived at by the parties.” **(emphasis supplied)**

- 2 Subsequently, in contempt proceedings initiated by the respondent against the petitioner, this Court by an order dated 21 July 2020, while disposing of the contempt proceedings directed the Family Court to dispose of the guardianship proceedings. Paragraph 6 of the order of this Court reads as follows:

“We direct the Family Court to dispose of the Guardianship proceedings, being Petition No A-2279 of 2019, within a period of three months of the date on which a certified copy of this order is placed on the record of the Family Court. **In order to obviate the parties being required to move this Court in future, we direct that in the event of an unforeseen emergency warranting urgent orders, it would be open to the parties to apply before the Family Court for necessary directions in that regard.**” **(emphasis supplied)**

- 3 On 17 October 2020, the respondent moved the Metropolitan Magistrate, 17<sup>th</sup> Court, Borivili, Mumbai in CC No 129/DV/2020 *ex parte* with the proceedings under the Protection of Women from Domestic Violation Act, in which the following order was passed:

“The respondent is directed to hand over the custody of minor son namely Krishang to applicant forthwith before this Hon'ble Court.

The respondent to bear the cost of this application.

The copy of this order be given to the both parties free of cost.”

4 Subsequently, on 25 November 2020, the Family Court, which was seized of Petition No A-2279/2019, has disposed of the proceedings in the following terms:

- “1. The petition is allowed.
2. The counter claim is dismissed.
3. The marriage between Mahendra (petitioner-husband) and Namita (respondent-wife) which was held on 18.04.2008 is hereby dissolved by decree of divorce that effect from the date of decree.
- 4 . The petitioner and respondent shall have shared custody of the child.
5. The child shall reside with the respondent between 4 pm on Thursday until 6 pm on Sunday. The child shall be exclusively with the petitioner between 6 pm on Sunday until 4 pm on the following Thursday of every week. The child shall not be removed from the custody of the Family Court at Mumbai, without the prior permission of this Court. Both the parties are directed to see that their conduct shall not affect adversely on child during handing over the custody, as above and even thereafter.
9. The petitioner is directed to pay Rs.7,000 per month to the respondent towards maintenance of child from filing petition till further order.
10. The petitioner shall deposit amount of maintenance, as above, in the designated account of the respondent on or before 10<sup>th</sup> day of each month as per English calendar.
11. A cop of decree, at once, shall be given free of cost to the parties as per Section 23(4) of the Hindu Marriage Act, 1955.
- 12 The respondent shall bear her own cost and shall pay cost to the petitioner.
13. Decree be drawn accordingly.”

- 5 The submission of the petitioner, in the present contempt proceedings, is that the respondent, in breach of the order of this Court dated 28 February 2020, moved the Metropolitan Magistrate *ex parte* and secured an order for the custody of the child, as a result of which since 28 October 2020, the petitioner has had no access to the child. Mr Siddharth Dave, learned senior counsel appearing on behalf of the petitioner submitted that such a direction is *ex facie* be contrary to the terms of the order of this Court under which the agreement, by which the parties were to have shared custody, was to continue to operate until the guardianship proceedings were disposed of by the Family Court.
- 6 At this stage, in order to obviate a further delay which may be occasioned by the court entertaining the contempt proceedings, we are of the view that the ends of justice would be met if a direction is issued to the Court of the Metropolitan Magistrate, 17<sup>th</sup> Court, Borivili, Mumbai to take up the application which has been filed by the petitioner for modification and/or vacating the order dated 17 October 2020 expeditiously. Since this Court is informed the the courts are likely to be closed over Christmas for a period of one week, we direct that the Metropolitan Magistrate shall take a final decision no later than by 11 January 2020. It would be open to the petitioner who has appeared before the Metropolitan Magistrate to point out all the relevant orders including the orders of this Court dated 28 February 2020 and 21 July 2020 and the order of the Family Court dated 25 November 2020. The Metropolitan Magistrate shall submit a report of compliance.

7 The Contempt Petition is accordingly disposed of.

8 Pending applications, if any, stand disposed of.

.....J.  
[Dr Dhananjaya Y Chandrachud]

.....J.  
[Indu Malhotra]

.....J.  
[Indira Banerjee]

New Delhi;  
December 14, 2020  
CKB

ITEM NO.16

Court 6 (Video Conferencing)

SECTION II-A

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

CONMT.PET.(C) No.687/2020 in S.L.P.(Cr1) No.1342/2020

MAHENDRA RAMESH THANAI

Petitioner(s)

VERSUS

NAMITA MAHENRA THANAI & ORS.

Respondent(s)

(FOR ADMISSION IA No. 127199/2020 - EXEMPTION FROM FILING O.T. AND  
IA No. 127197/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/  
ANNEXURES)

Date : 14-12-2020 These matters were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD  
HON'BLE MS. JUSTICE INDU MALHOTRA  
HON'BLE MS. JUSTICE INDIRA BANERJEE

For Petitioner(s) Mr. Siddhartha Dave, Sr. Adv.  
Mr. Manohar V. Shetty, Adv.  
Ms. Pallavi Pratap, Adv.  
Ms. Prachi Pratap, Adv.  
M/s Pratap and Co.

For Respondent(s)

UPON hearing the counsel the Court made the following  
O R D E R

- 1 The Contempt Petition is disposed of in terms of the signed order.
- 2 Pending applications, if any, stand disposed of.

(CHETAN KUMAR)  
A.R. -cum-P.S.

(SAROJ KUMARI GAUR)  
Court Master

(Signed order is placed on the file)