

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CIVIL APPELLATE JURISDICTION****CONTEMPT PETITION NO. 721 OF 2022**

Rakesh Tulsidas Rathod ... Petitioner  
V/s.  
Jayraj Vishram Vapikar & Ors. ... Respondents

Mr. Akash Vijay for Petitioner.  
Mr. Imran Shaikh a/w. Amreen Shaikh for Respondent Nos.1 & 2.  
Ms. S.D. Shinde, A.P.P. for Respondent No.3-State.  
Sr.PI. Mr.Anil Avhad and PI. Mr.Rushi Inamdar, Kasturba Marg Police Station, Mumbai are present.

**CORAM : A. S. GADKARI AND  
PRAKASH D. NAIK, JJ.**

**DATE : 28<sup>th</sup> February 2023.**

**P.C. :**

1. By Judgment and Order dated 1<sup>st</sup> February 2022 passed in Criminal Writ Petition No. 579 of 2021, the Respondent Nos.1 & 2 herein are directed to handover custody of to the Petitioner in the week commencing from 22<sup>nd</sup> August 2022. Various other directions are also issued by the said Judgment and Order.

2. Respondent Nos.1 & 2 questioned the correctness of said Judgment and Order dated 1<sup>st</sup> February 2022 before the Hon'ble Supreme Court by way of Special Leave to Appeal (Crl.) No. 4377 of 2022. The Hon'ble Supreme Court by its Order dated 16<sup>th</sup> September 2022 was pleased

to dismiss the said Special Leave to Appeal by observing the following :-

“Taking note of the totality of circumstances and more particularly the subsequent event after filing of this petition that the petitioner No.2 (grandmother of the child) expired on 14.05.2022, we do not feel inclined to consider interference in the order impugned, which has been passed by the High Court in a petition seeking writ in the nature of Habeas Corpus. We would, of course, leave the question of law open for examination in an appropriate case.

So far the conditions and stipulations in the impugned order are concerned, we leave it open for the parties to seek their appropriate modification at the appropriate stage but, only after the impugned order has been given effect to.”

Despite the Hon’ble Supreme Court directing that, the Order passed by this Court be given effect to, it is the contention of the Petitioner that the Respondent Nos.1 & 2 are not handing over custody of the minor child namely \_\_\_\_\_ to him. In this brief premise present Petition is filed.

3. Present Petition is being heard since 18<sup>th</sup> November 2022. Various Orders earlier to this have been passed with a view to have smooth transition of custody of \_\_\_\_\_ to the Petitioner, who is his biological father. Since first date of hearing of this Petition various opportunities were granted to the Respondent Nos.1 & 2 to comply with the directions issued by this Court and in particular to hand over custody of \_\_\_\_\_ to the Petitioner.

In para Nos.47 and 48 of Judgment dated 1<sup>st</sup> February 2022, the Co-ordinate Bench has observed as under :

“47. At this stage, it is pertinent to note that the fact that the petitioner and respondent no.1 and his family members were at loggerheads over the custody of \_\_\_\_\_ must have contributed to the further alienation of \_\_\_\_\_. The passage of time and the negative estimation of respondent no.1 and his family members about the petitioner might also have played a significant role. This is recognised as a ‘parental alienation syndrome’.

48. The reluctance to join the company of, or animosity towards, the father does not seem to be based on the experience which \_\_\_\_\_ have had, when the petitioner, Neeta and \_\_\_\_\_ were residing together. The possibility of the perspective of \_\_\_\_\_ being influenced by the views of respondent no.1 and his family members about the character, personality and overall bearing of the petitioner, cannot be ruled out. At a impressionable age such articulation about the opposite party, in a custody battle, often affects the capacity to exercise an intelligible preference. It is quite possible that when a child spends time with a non-custodial parent, he may be disabused of such perception.”

4. In view thereof on earlier occasion to avoid any complications and creation of scene or ruckus while the Petitioner accepts custody of \_\_\_\_\_ from Respondent Nos.1 & 2, we issued various directions and in particular in Order dated 13<sup>th</sup> December 2022, we had directed the Senior Inspector of Kasturba Marg Police Station, Mumbai to depute an Officer not

below the rank of Police Sub Inspector along with a woman Police Sub Inspector to assist the Petitioner to take custody of the said child in the precincts of the building where the Respondent Nos.1 & 2 are residing. The said arrangement was made with a view to avoid any breach of peace or bickering between the Petitioner and Respondent Nos.1 & 2. Subsequently, a report was submitted through the learned A.P.P that, on the said date i.e. on 13<sup>th</sup> December 2022 the police had accompanied Petitioner for taking custody of the minor child namely \_\_\_\_\_ however the said child was not ready and willing to accompany Petitioner and therefore the custody of the said child could not be handed over to the Petitioner. Thereafter on at least two occasions, the learned Advocate appearing for Respondent Nos.1 & 2 had submitted before this Court that, the Respondent Nos.1 & 2 are ready and willing to hand over custody of \_\_\_\_\_ to the Petitioner, however the said could not happen for the reasons known to them. Inter-alia the directions issued by this Court in Judgment dated 1<sup>st</sup> February 2022 and upheld by the Hon'ble Supreme Court by its Order dated 16<sup>th</sup> September 2022 have not been complied with. In this precise background the present Contempt Petition was taken up for hearing yesterday.

5. Yesterday it was agreed between the learned Advocate for the contesting parties that, the Respondent Nos.1 & 2 will hand over custody of \_\_\_\_\_ to the Petitioner in the evening in the precincts of the residential complex where Respondent Nos.1 & 2 are residing. Unfortunately the said

could not happen and today the learned Advocate for Petitioner again made a grievance that, the custody of \_\_\_\_\_ has not been handed over to his client.

6. Today Respondent Nos.1 & 2 have brought \_\_\_\_\_ to the Court though no such directions were issued to that effect. Present Petition was called out for hearing at about 2.45 pm. At that time, this Court suggested Respondent Nos.1 & 2 to hand over custody of \_\_\_\_\_ to the Petitioner in the precincts of this Court and in presence of concerned Police Officers to avoid any bickering or scene being created by either of the parties. It has been informed to this Court that, when the custody of \_\_\_\_\_ was handed over to the Petitioner, he tried to assault him and ran away from his custody. The said fact is reported to this Court at about 3.15 pm.

The fact therefore remains that, the Order passed by this Court dated 1<sup>st</sup> February 2022 and upheld by the Hon'ble Supreme Court by its Order dated 16<sup>th</sup> September 2022 has not been complied with till time.

7. In view of the above, we once again asked the learned Advocate for Respondent Nos.1 & 2 as to when his client will hand over custody of \_\_\_\_\_ in favour of Petitioner, to which he on instructions submitted that, today at about 7.00 pm the Respondent Nos.1 & 2 will hand over custody of \_\_\_\_\_ to Petitioner in the precincts of Kasturba Marg Police Station, Mumbai. The said statement is accepted.

8. In view thereof, the Respondent Nos.1 & 2 are directed to take the child in the precincts of Kasturba Marg Police Station, Mumbai at about 7.00 pm today. We also direct the Senior Inspector of Police, Kasturba Marg Police Station, Mumbai to depute two Police Officers out of which one be lady Police Officer to monitor the handing over of the custody of in favour of Petitioner by Respondent Nos.1 & 2 and to assist in avoiding breach of peace or any scene created by either of the parties, if necessary.

9. Present Order is passed in Open Court and in presence of learned Advocate for both the parties so also in presence of learned A.P.P. and the Police Officer attached to Kasturba Marg Police Station, Mumbai. Therefore all the concerned will not insist for authenticated copy of the present Order for complying with the statement made by learned counsel for Respondent Nos.1 & 2 and the directions noted in para No.7 & 8 above.

10. Stand over to 1<sup>st</sup> March 2023.

To be placed under the caption 'For Compliance'.

[ PRAKASH D. NAIK, J. ]

[ A.S. GADKARI, J. ]