* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**Judgment reserved on: 20.12.2011**

**% Judgment delivered on: 21.02.2012**

\+ **CONT.CAS(C) 815/2011 and C.M. No. 20360/2011**

DOUGLAS BRECKENRIDGE ..... Petitioner
Through: Mr. Neeraj Kishan Kaul, Senior Advocate, with Mr. P. Banerjee & Mr. Atreyi Chatterjee, Advocates.

versus

JHILMIL BRECKENRIDGE ..... Respondent
Through: Ms. Geeta Luthra, Senior Advocate, with Mr. Harish Malik, Advocate.

**CORAM:**
**HON'BLE MR. JUSTICE VIPIN SANGHI**

**J U D G M E N T**

**VIPIN SANGHI, J.**

1. The present petition has been preferred under Sections 10 and 12 of the Contempt of Courts Act, 1973 read with Article 215 of the Constitution of India, with the allegations to the effect that the respondent has deliberately and willfully disobeyed the orders dated 30.09.2010 and 05.04.2011 passed by the Guardianship Court, Saket Courts, New Delhi,

passed in Guardian Case No.66/2010 and also the orders of the Metropolitan Magistrate dated 13.10.2011 in CC No.332/1, and of the Additional Sessions Judge dated 19.10.2011 passed in Protection of Women from Domestic Violence Act, 2005 (DV Act) proceedings.

2. The petitioner and the respondent are husband and wife. Out of their wedlock, they have four sons. The petitioner has preferred a divorce petition against the respondent.

3. The petitioner filed a custody petition before the Guardianship Judge, Saket, New Delhi. In the petition the petitioner stated that he resides with his three elder children at C-87, Anand Niketan, New Delhi, of whom he has custody, whereas the respondent resides with her parents at 68, Friends Colony (West), New Delhi. According to the petitioner, the respondent abandoned the matrimonial home on Raksha Bandhan day, i.e. 24.08.2010. She left the three elder children with the petitioner, and took away the youngest child Liam with her. The custody petition had been preferred to seek custody of the youngest son Liam from the respondent wife. The petitioner also moved an application in those proceedings to seek interim custody under Section 12 of the Guardians and Wards Act, 1890.

4. The petitioner apprehended that the respondent would take the child Liam with her to U.K., where she was allegedly having an adulterous relationship with one Dr. Nooruddin Ahmed of Aylesbury, U.K. On 09.09.2010, the Guardianship Judge recorded the undertaking of the respondent that she shall not take the child Liam from the territorial jurisdiction of the Court, without the permission of the Court.

5. The proceedings before the Guardian Court were fixed on 30.09.2010. The respondent had, in the meantime, left for U.K. to allegedly meet her alleged paramour. She could not take the child Liam with her on account of her undertaking given to the Guardianship Judge on 09.09.2010. According to the petitioner, the child Liam, who was left by the respondent with her parents in Friends Colony, was handed over by his parents-in-law to him.

6. Accordingly, on 30.09.2010, the child Liam was produced by the petitioner before the Court. The learned Guardianship Judge saw for himself that the petitioner had the custody of the child Liam, who was produced in Court by the petitioner. Consequently, the learned Guardianship Judge, upon consideration of the matter and looking to the facts and circumstances of the case, that the custody of the child Liam had come into the hands of the

petitioner, disposed of the application under Section 12 of the Guardian and Wards Act., 1890.

7. The order dated 30.09.2010 is relevant and, therefore, reproduced herein below:

> "G No 66/10
>
> *30.09.2010*
>
> *Present: Sh.P. Banerjee and Liza Baruah advocate for petitioner with petitioner.*
>
> *None for respondent.*
>
> *In the morning one advocate appeared on behalf of respondent and filed reply to the petition of the petitioner along with extra copy for the petitioner. The copy of the petition has been supplied to petitioner.*
>
> ***It is informed by counsel for petitioner that respondent left Delhi and went to U.K. On 16.09.2010 by leaving the child Liam at her father's home. It is further submitted that the parents of respondent dropped the child at the residence of petitioner and since, then the child in the custody of petitioner. It is further submitted that since the child has already come in the custody of petitioner, therefore, the application for interim relief may kindly be disposed of. Considered. The petitioner is present with the child in the court. Keeping in view the fact that the child whose custody was sought by the petitioner has already come in his custody therefore the prayer made in an application under Section 12 of the Guardian and Wards Act stands satisfied, thus, the application under Section 12 is disposed of.***

> *Petitioner seeks time for filing rejoinder to the reply of the respondent. Heard. Allowed. Let the same be file within three weeks from today with advance copy to opposite party. Be put up for rejoinder the petitioner, if any, otherwise admission denial of documents and framing of issues on 27.11.2010*." (Emphasis supplied)

8. In December 2010, the respondent moved an application before the Guardianship Judge. In this application, the respondent contended that the petitioner had, inter alia, *"barred access of the applicant to all four children of the parties….. ….. ….."* She complained that she is denied the use of any room in the matrimonial house, and she is forced to stay only in the living room. She also complained that the keys of the house are not provided to her. She also complained that she is not allowed to join her children and the petitioner on family outings. The prayer made by the respondent in this application was to seek a direction "*that the children of the parties are allowed to access to the Applicant and be permitted to interact with her and that no inconvenience, interference or annoyance be caused in her relationship with their children and that the Non-Applicant not assume to himself the unilateral authority to decide how the children should behave or when and which manner the Applicant, subject to his absolute discretion, associates and interacts with them*".

9. While this application was pending, the matter again came up before the learned Guardianship Judge on 05.04.2011. The parties, with a view to amicably settle their disputes, agreed to refer the matter to the Mediation Centre, Delhi High Court, New Delhi. The Court, inter alia, gave the following directions on the said date:

> "*Heard. Till the parties explore the possibility for amicable resolution of dispute before the Mediation Centre,* ***the following arrangement is made with respect to the visitation rights of the respondent with the minor children without prejudice to the rights and contentions of both the parties.***
>
> *1. The petitioner has agreed that he will hand over the key of the house to the respondent for having free access to the house.*
>
> *2. It has been agreed between the parties that the respondent will have free access to all the minor children so that she may have healthy relationship with the children and she may offer motherly affection to them.*
>
> *3. The respondent is not permitted to take the minor children out of NCR.*
>
> *The aforesaid arrangement shall continue till further orders.*
>
> *Matter be put up for compromise between the parties, if any, otherwise for arguments on application under Order 7 Rule 11 CPC moved by the respondent and other pending applications of parties, if any, on 20.05.2011. Copy of order be given dasti to both the parties*." (Emphasis supplied)

10. While the aforesaid orders were holding sway, the respondent, it is alleged, picked up Liam from the school on 13.10.2011 at about 1:30 p.m. and disappeared without intimating as to where she was taking Liam. Upon enquiry, it transpired that Liam had been taken by the respondent to her place of residence, i.e. 68, Friends Colony (West), New Delhi.

11. The respondent, it appears, instituted proceedings under Section 12 of the DV Act on 12.10.2011, and moved an interim application in those proceedings to seek a restraint against the petitioner from interfering in the respondent's custody of the minor son Liam. The definite case of the respondent was that she had the actual custody of child Liam.

12. This petition under Section 12 of the DV Act was registered as CC No.332/1 and came up before the learned Metropolitan Magistrate on 13.10.2011. The respondent/complainant was represented through her senior counsel Ms. Geeta Luthra with Mr. Sanjeev Sahay, Advocate. The petition had been filed by Sh. Shashank Kumar Lal, Advocate on behalf of the respondent. The learned Metropolitan Magistrate, after hearing the arguments of the respondents counsels, passed, inter alia, the following order:

"*Present; Complainant and child with Sr. Adv. Geeta Luthra and Sanjeev Sahay, Adv.*

*Arguments heard. It is stated by Sr. counsel that there is imminent apprehension that the respondent may remove the youngest child namely Liam from the custody of aggrieved person unlawfully.*

*I have gone through the petition filed by the complainant as well as considered the submissions carefully. In para no. 68 of the petition filed by the aggrieved person there is reference to the proceedings filed by the respondent herein with regard to the youngest child Liam in Guardianship court.* ***However, the language used in the said para is ambiguous and does not reflect clearly the orders passed by the Ld. Judge in the Guardianship court. Counsel for complainant seeks time to file amended petition and also seeks liberty to file orders passed in the Guardianship court in the petition filed by the respondent****.*

*Put up for consideration on 14.10.2011 at 3:00 pm.*"
(emphasis supplied)

13. From the aforesaid, it is clear that the learned Metropolitan Magistrate noticed the averment made in para 68 of the petition preferred by the respondent under Section 12 of the DV Act and, as the same appeared to be ambiguous, granted time to the respondent/complainant to file an amended petition, and also to file orders passed in the guardianship petition by the Guardianship Court.

14. It appears the respondent filed an application to seek amendment, inter alia, in para 68 of the petition under Section 12 of the DV Act. After incorporating the aforesaid corrections, the corrected para 68 of the said petition reads as follows. For the sake of better understanding, the words which have been replaced have also been incorporated, but have been struck of.

> "*68. In order to succeed in his purpose to discredit the complainant by fabricating and creating evidence, the respondent had filed two petitions against the complainant (1) guardianship of the youngest child under Section 7 and 10 of the Guardians and Wards Act. The said child was of around 4 years of age and the petition was filed in August, 2010. Although the respondent had sought directions for handing over the custody of the child Liam* ~~***to***~~ ***from*** *the complainant, no such Order was made however, the* ~~***respondent***~~ ***complainant*** *did not have any objection to the Order regarding* ***Non*** *removal of child Liam from the territorial jurisdiction of the Hon'ble Court as the complainant is residing and has been working for gain within the territorial jurisdiction of the Hon'ble Court. (2) Petition under Section 27(1) (d) (e) of the Special Marriage Act for Decree of Divorce of Marriage on the alleged ground of cruelty, unsoundness of mind and adultery. The said petition was filed on 07.01.2011*". (amended words have been shown in bold)

15. It appears, the respondent produced only an uncertified copy of the statement made by her on 09.09.2010 in the guardianship proceedings, before the learned Magistrate dealing with the D.V. Act proceedings. The

respondent/complainant did not file the order dated 09.09.2010, and also did not file the subsequent orders passed in those proceedings, including the orders dated 30.09.2010 and 05.04.2011, as aforesaid.

16. On 14.10.2011, the learned Metropolitan Magistrate passed the order, the relevant extract whereof reads as follows:

> "*C.C. No.332/1*
>
> *14.10.2011*
>
> *Present;* *Complainant with Sr. Adv. Ms. Geeta Luthra along with Adv. Jatin Sehgal, Shashank Kumar Lal.*
>
> *An application has been filed now on behalf of complainant seeking permission to correct the typographical errors in the petition filed by the complainant under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as DV Act). It is stated by counsel for complainant that due to inadvertence, certain typographical errors have occurred in the petition which are stated in the instant applications. The counsel for complainant further requests that correct complaint may be taken on record. Heard. The errors stated by the complainant in the instant application appear to be only typographical errors and do not change the cause of action in any manner. Therefore, application is allowed. Amended/corrected petition under Section 12 of DV Act is taken on record.* ***Counsel for complainant has also filed uncertified copy of statement dated 09.09.2010 made by the complainant in the court of Ms. Ravinder Bedi, JSCC CUM ASJ Guardian Judge. However, the complainant has not filed any order dated 09.09.2010 passed by Ld. Guardian Judge.***

*File perused. Arguments heard. This is a petition under Section 12 of DV Act. There are sufficient grounds to summon the respondent.*

*xxxxxxxxxx xxxxxxxxxxxxx xxxxxxxxxxxxx*

***At this stage, it is stated by counsel for complainant that complainant and respondent are residing together presently at C-87, Anand Niketan, New Delhi. It is also stated by counsel for complainant that there is imminent apprehension that the respondent, who is a US citizen, may remove the youngest child of the parties namely Liam Dorje Breckenridge outside the territorial jurisdiction of the court. Therefore, counsel for complainant has sought ex-parte interim protection to the respondent not to interfere in the custody of minor son Liam Dorje Breckenridge aged about 5 years with the complainant.***

*xxxxxxxxxx xxxxxxxxxxxxx xxxxxxxxxxxxx*

*I have bestowed my careful consideration to the submissions of Ld. Sr. Adv. for complainant and also perused the petition filed under Section 12 of DV Act along with documents.* ***The respondent has already filed petition before the Guardianship court under Section 7 and 10 of Guardians and Wards Act with regard to the custody of minor son Liam Dorje Breckenridge, which is pending consideration before Ld. Guardian Judge. In the circumstances of the case, I am of the opinion that the aggrieved person is entitled for some ex-parte interim protection order under Section 21 of DV Act. Accordingly, respondent is restrained from removing the child Liam Dorje Breckenridge from the territorial jurisdiction of this court till further orders. No ground is made out for passing any other order at this stage.*** *The applicant is directed to serve the instant ex-parte order passed today on the respondent forthwith by way of RC and filed an affidavit to*

*this effect within 3 days. Copy of this order be given dasti to the aggrieved person*." (Emphasis supplied)

17. According to the petitioner, the aforesaid order did not satisfy the respondent, as this order merely injuncted the petitioner from removing the child Liam from the territorial jurisdiction of the Court till further orders. However, the said order did not vest custody of the child Liam in the respondent, which had passed into the hands of the petitioner, as observed by the learned Guardianship Judge in his order dated 30.09.2010. The respondent, therefore, preferred an appeal before the District and Sessions Judge, Saket under Section 29 of the DV Act.

18. The grievance made by the respondent in her appeal under the DV Act was to the following effect:

"*The Ld. Trial Court without taking into consideration the facts and circumstances and the apprehension of the appellant passed an erroneous impugned order whereby* ***the Ld. Trial Court after considering that the appellant has the custody of minor child, restrained the respondent from removing the minor child outside the territorial jurisdiction of this Hon'ble Court and by inadvertently not mentioning that the respondent should also be restrained from removing the child from the custody of the Appellant.*** *Copy of the Domestic Violence Complaint along with all the annexures is annexed as ANNEXURE P-2.*

*Furthermore,* ***the Ld. Trial Court committed an error while passing the impugned order by not granting a stay***

***to the appellant from dispossession, even after taking into consideration that the appellant is living in the shared household with the respondent and all four children, where she has a legal right. Therefore, the appellant being aggrieved from the impugned order is filling the present appeal as there is no other efficacious remedy available.***"

19. From the aforesaid, it is clear that the definite and positive case of the respondent before the appellate court was that she had the actual physical custody of the child Liam, when the petition under the DV Act was preferred and also when she preferred the appeal under the aforesaid Act.

20. The learned ASJ dealing with the respondents said appeal passed an order on 19.10.2011. The relevant extract from the said order reads as follows:

"*19.10.2011*

*Present:* *Ms. Geeta Luthra Senior Advocate with Sh. Jatin Sehgal, Ld. Counsels for the applicant/appellant.*

*xxxxxxxxxxx xxxxxxxxxxx xxxxxxxxxxx*

*I have heard the submissions of the Ld. Counsel. The only urgent relief on which the ld.Counsel for the applicant/appellant had laid emphasis is regarding the custody of the child namely Master Laim Dorge Breckenridge aged about five years. This child is already with the applicant/appellant namely Jhilmil Breckenridge. It is mentioned in the complaint under Section 12 of the Act in Para 68 that respondent Doughlas Breckenridge has filed a*

*petition under Section 7 and 10 of the Guardian and Wards Act for the custody of the minor child namely Master Liam Dorge Breckenridge.* ***In the proceedings before the Guardian Judge the applicant/appellant Jhilmil Breckenridge has already given statement that she will not remove the child Master Liam Dorge Breckenridge from the territorial jurisdiction of this court without the permission of this court. These facts prima facie show that the custody of the minor child namely Liam Dorge Breckenridge is with the applicant/appellant****.*

*Ld. Counsel for the applicant/appellant has submitted that the applicant/appellant has genuine apprehension that the respondent in the Appeal namely Doughlas Breckenridge may not deprive her from the custody of the child Master Liam Dorge Breckenridge forcefully and illegally. Therefore, she has sought for some interim protection till Appeal heard on merit.*

*I have considered the facts and circumstances of the case and gone through the Trial Court Record and the urgency of the relief which has been sought.*

***Since the minor child Master Liam Dorge Breckenridge is already in the custody of the applicant/appellant*** *Jhilmil Breckenridge, so it is directed that till the next date of hearing fixed in the Appeal the custody of the minor child Master Liam Dorge Breckenridge with the applicant/appellant Jhilmil Breckenridge (mother) shall not be disturbed except by due process of law and of course* ***subject to the order, if any passed by the Guardian Judge on this issue in the petition under section 7 and 10 of Guardian and Ward Act, because the applicant/appellant has not conveyed any order passed by the Guardian Judge in this regard to this court****.*

*Since the matter is now listed for 11.11.2011 before the concerned court, the matter will be taken up on the said date. keeping in view the nature of the matter, I deem it appropriate to issue notice to the respondent on filing of*

*PF/RC regarding the Appeal for the date already fixed. File be sent back to the concerned court.*" (emphasis supplied)

21. In the aforesaid background, the submission of Mr. Neeraj Kishan Kaul, learned senior counsel for the petitioner is that the respondent has blatantly, deliberately and willfully breached the orders dated 30.09.2010 and 05.04.2011 passed by the learned Guardianship Judge, which clearly acknowledge and recognize the fact that the custody of the child Liam had passed into the hands of the petitioner, and was with the petitioner. The Respondent mis-stated and misrepresented before the Ld. MM as well as before the Ld.ASJ dealing with the DV Act proceedings, that she had the custody of the child Liam, by only producing her own undertaking recorded before the Ld. Guardianship Judge on 09.09.2010, and by suppressing the subsequent proceedings and orders of the Guardianship Court, and in particular the orders/ proceedings dated 30.9.2010 and 05.04.2011. Under the cover of the orders obtained from the learned Metropolitan Magistrate in proceedings under the DV Act, which have been obtained by suppression of the proceedings and orders of the learned Guardianship Judge, the respondent has sought to take away the child Liam from the custody of the petitioner, and into her own custody. Mr. Kaul, therefore, submits that the

orders dated 30.09.2010 and 05.04.2011 stand blatantly and willfully breached by the respondent.

22. He further submits that the conduct of the respondent in not disclosing the proceedings and orders passed in the guardianship case on 30.09.2010 and 05.04.2011, despite the directions of the learned Metropolitan Magistrate dealing with the DV Act complaint, as well as her conduct in not filing the said proceedings of the guardianship case in her appeal under the DV Act before the learned ASJ, clearly tantamount to gross abuse of the process of the Court on account of suppression of the said proceedings; to playing a fraud upon the court, and; also amounts to contempt of court. In this regard, he places reliance on the decision of a Division Bench of this Court in ***Satish Khosla v. Eli Lilly Ranbaxy Limited & Anr.***, 71(1998) DLT 1 (DB).

23. Ms. Geeta Luthra, learned senior counsel appearing for the respondent has argued that the orders/proceedings dated 30.09.2010 and 05.04.2011 do not qualify to be termed as "order" as defined in Section 2(14) of the Civil Procedure Code (CPC). She submits that an "order" within the meaning of the CPC mean the formal expression of any decision of a civil court which is not a decree. She submits that the so-called order

dated 30.09.2010 does not contain any decision of the learned Guardianship Judge. In fact, the said so-called order was obtained by the petitioner behind the respondents back by making a self serving statement before the Court. She submits that there was no question of the respondent agreeing to the petitioners claim that he had got the custody of the minor child Liam, as the respondent on the same day, i.e. 30.09.2010 filed her reply in the guardianship proceeding clearly stating that the custody of the child Liam was with her.

24. Ms. Luthra submits that even the so-called order dated 05.04.2011 is not an order within the meaning of Section 2(14) CPC. These proceedings merely record that the parties have agreed that the matter be referred to the Mediation Centre, and the order also records the arrangement arrived at by the Court with regard to visitation rights of the respondent qua the minor children.

25. She submits that even the petitioner admits that the custody of the minor child Liam was with the respondent, and it is precisely for this reason that the petitioner preferred the guardianship petition. She submits that the respondent never ever gave up the custody of her minor child. The respondent continued to have the custody of the minor child Liam

inasmuch, as, she was staying in and out of the matrimonial home, i.e. C-87, Anand Niketan, New Delhi with her children and, in particular, the minor child Liam.

26. In para 13.3 of the guardianship petition, the petitioner himself acknowledges that the respondent left the matrimonial home on 24.08.2010 and had taken with her child Liam. It is an acknowledgment of the fact that the custody of the child Liam was with the respondent, and it is for this reason that the respondent was asked to give an undertaking to the Court that she would not remove the child Liam from the territorial jurisdiction of the Guardianship Court without the permission of the said Court, on 09.09.2010. She further submits that there is no order of any Court divesting the custody of the child Liam from the respondent, and vesting the same with the petitioner.

27. Ms. Luthra submits that the respondent, being the mother of the said minor child, is his natural guardian. She submits that even if the respondent had gone out of town leaving the child Liam with her parents, the same does not mean that the respondent has lost the custody of the minor child Liam. She submits that even a perusal of the order dated 05.04.2011 shows that the respondent had unrestricted access to the matrimonial home,

where the petitioner was residing with the children. In fact, the respondent had preferred an application under Order 7 Rule 11 CPC on 27.11.2010 on the premise that the respondent was living in her matrimonial home with the petitioner and her four children. In response to the aforesaid application, the petitioner admitted that the respondent has been residing at the matrimonial home.

28. She submits that the respondent had preferred an application for directions in December 2010 before the Guardianship Judge, as the petitioner was trying to forcefully divest the custody of the children from the respondent. Reference is also made to the reply filed by the petitioner to said application, wherein the petitioner himself admits that the respondent has access to all the four children. In para 11 of the said reply, the petitioner does not dispute the respondents case that Liam is allowed to meet the respondent, and is allowed to sleep with the respondent. She submits that the respondent had filed a second application under Order 7 Rule 11 CPC in the guardianship proceedings. In his reply to the said application filed in July 2011, the petitioner admitted that the respondent has been residing in the matrimonial home with the children. According to the respondent, the parties are leading a normal life. Reference is made to the averments made

by the respondent in her rejoinder to the second application under Order 7 Rule 11 CPC before the learned Guardianship Judge.

29. Ms. Luthra points out that the conduct of the petitioner himself is not aboveboard, inasmuch, as, the petitioner filed an amended petition under the Guardianship Act in July 2011, wherein the petitioner, without the permission of the Court, introduced an averment in Column 4 as follows:

> "*Custody of minor is with Mr. Douglas Breckenridge. At the time of filing of the petition Liam was in the illegal possession of the Respondent. However, on 30.09.2010 the custody of minor Liam has been reverted to the Petitioner*".

30. Ms. Luthra submits that the respondent, being the mother, is entitled to protect her custody of the children under Section 21 of the DV Act. She defends the averments made by the respondent in her petition in para 68 under Section 12 of the DV Act. In support of her submissions aforesaid, she places reliance on the following decisions:

i) ***Jaswant Sugar Mills Ltd., Meerut v. Lakshmichand & Ors.,*** (1963) Supp. SCR 242;

ii) ***Dr. Manju Varma v. State of U.P. & Ors.***, 2004 (9) Scale 463;

iii) ***Devarkonda Edl. Society V. All India Council for Technical Education & Ors.***, AIR 1997 A.P. 389; and

iv) **Vidyacharan Shukla v. Khubchand Baghel & Ors.**, AIR 1964 SC 1099.

31. Ms. Luthra submits that the respondent, in any event, did not understand the proceedings of 30.09.2010 and 05.04.2011 before the learned Guardianship Judge as "orders" within the meaning of Section 2(14) CPC. In these circumstances, there is no contempt made out, on account of the alleged suppression of the so-called orders from the Courts dealing with the DV Act proceedings. In support of this submission, she places reliance on the following decisions:

i) ***Dinesh Kumar Gupta v. United India Insurance Co. Ltd. & Ors.***, 2010 (10) Scale 647;

ii) ***Anshuman Sharma v. Manika Jain***, 114 (2004) DLT 47;

iii) ***Dr. Ashish Ranjan v. Dr. Anupama Tandon***, 2010 (12) Scale 577.

32. Ms.Luthra has also sought to make submissions that the petitioner abused the respondent physically, sexually and mentally, and was responsible for wrong treatment of her bi-polar disorder. These allegations, in my view, are of no relevance to these proceedings and are, therefore, not being gone into.

33. In his rejoinder, Mr. Kaul has submitted that the entire submission of the respondent fails to take note of the manner in which "civil contempt" has been defined under the Contempt of Courts Act. Civil contempt is defined as:

> " (b) *"Civil contempt" means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court*".

He, therefore, submits that civil contempt is defined very widely to not only take within its ambit willful disobedience to decrees, directions and orders, but also *other processes of a Court*.

34. Mr. Kaul submits that the order dated 30.09.2010 is, even otherwise, an "order" within the definition of that expression contained in Section 2(14) of the CPC. He submits that merely because the respondents counsel chose not to appear before the learned Guardianship Judge on 30.09.2010, when the matter was taken up, would not mean that the proceedings held before the learned Guardianship Judge, and recorded by him, do not amount to an order. He submits that the petitioner had moved an application under Section 12 of the Guardians and Wards Act to seek interim custody of the minor child Liam. On 30.09.2010, the petitioner had

appeared before the learned Guardianship Judge with the child Liam, and the Court saw for itself that the custody of the said minor child was with the petitioner. Mr. Kaul submits that the Court recorded the petitioners submissions and duly considered the same and also appreciated the factual position placed before it. Thereafter, the learned Guardianship Judge gave his decision that, keeping in view the fact that the child whose custody was sought by the petitioner has already come in his custody, the prayer made in the application under Section 12 of the Guardians and Wards Act stands satisfied. In the light of the aforesaid position, the learned Judge disposed of the petitioners application under Section 12, as aforesaid.

35. Mr. Kaul, therefore, submits that the order dated 30.09.2010 has all the ingredients of an order under Section 2(14) of the CPC. Mr. Kaul submits that it is not necessary that the formal expression of the decision of the civil court has necessarily to pertain to a final decision. He submits that the respondent did not either seek review of the said order, or challenge it before a higher court. The said order, in so far as it deals with the aspect of interim custody of the minor child Liam, has attained finality, until and unless it is disturbed/ changed due to material change of circumstances.

36. With a view to counter the allegations of the respondent regarding her alleged ill treatment by the petitioner, Mr. Kaul has also drawn the attention of the Court to the email communication sent by the father of the respondent to the petitioner on 07.08.2010, wherein he expressed the apprehension that the respondent may take Liam with her to U.K. The respondent's father himself advised the petitioner to keep Liam's passport and that of the other boys too, under lock and key. Reference is also made to email communications allegedly exchanged between the respondent and her alleged paramour, to submit that the respondent, in any event, is not fit to retain even temporary custody of the minor children on account of her alleged adulterous relationships.

37. I first proceed to consider the submission of the respondent that the proceedings of 30.09.2010 and 05.04.2011 recorded before the learned Guardianship Judge do not tantamount to an "order" within the meaning of Section 2(14) C.P.C. Section 2(14) C.P.C defines "an order" to mean *"the formal expression of any decision of a Civil Court which is not a decree"*. "Decree" has been defined inter alia, to mean *"the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either primary or final".* The

distinction between an "order" and a "decree", therefore, is that, whereas a decree is the result of an "adjudication", an order is the "expression of any decision" of a Civil Court. Moreover, while a decree conclusively determines the rights of the parties with regard to or any of the matters in controversy in the suit, as regards the Court expressing it, an order may not be a conclusive determination of the rights of the parties, as regards the Court formally expressing its decision.

38. Reliance placed by the learned senior counsel for the respondent on ***Jaswant Sugar Mills Limited*** (supra), ***Dr.Manju Varma*** (supra), ***Devara Konda Educational Society*** (supra) and ***Vidya Charan Shukla*** (supra) does not advance the submission of learned senior counsel for the respondent that the orders/proceedings dated 30.09.2010 and 05.04.2011 do not amount to orders. ***Jaswant Sugar Mills Limited*** (supra) was a case wherein the Supreme Court was examining the issue whether an appeal may be entertained in exercise of powers under Article 136 of the Constitution of India against the direction of a Conciliation Officer issued in disposing of an application under Clause 29 of the order promulgated by the Government of Uttar Pradesh under the U.P. Industrial Disputes Act, 1947, when an appeal lay to the Labour Appellate Tribunal under the Industrial Disputes (Appellate Tribunal) Act, 1950. In that context the Supreme Court examined

the issue as to what constitutes a decision judicial. The criteria that must be satisfied to make a decision judicial is stated as follows:-

> "(1) it is in substance a determination upon investigation of a question by the application of objective standards to facts found in the light of pre-existing legal rule;
>
> (2) it declares rights or imposes upon parties obligations affecting their civil rights and
>
> (3) that the investigation is subject to certain procedural attributes contemplating an opportunity of presenting its case to a party, ascertainment of facts by means of evidence if a dispute be on question of fact, and if the dispute be on question of law on the presentation of legal argument, and a decision resulting in the disposal of the matter on findings based upon those questions of law and fact."

39. There can be no manner of doubt that the proceedings before the learned Guardianship Judge are judicial proceedings. Therefore, the decision in ***Jaswant Sugar Mills*** is not relevant for the present purpose. ***Dr.Manju Varma*** (supra) merely restates the aforesaid criteria laid down in ***Jaswant Sugar Mills Limited***. In ***Deverakonda*** (supra) the Andhra Pradesh High Court held that while rendering its decision under Section 23 of the All India Council for Technical Education (AICTE) Act , 1987, the AICTE acts as a quasi judicial authority. It is required to act objectively, judicially and judiciously. In that context the High Court observed in Para 27 as under:-

> "*Normally speaking, 'decision' means "making up one's mind, may be even personal decisions leading to real and true conclusions. Actually it is a judgment based on conclusions" (Page 309 of Oxford Advanced Learner's-Dictionary supra). As a verb, 'decide' means to "to give a judgment in a case", and as a noun 'decision' means "Judgment in a Civil Court, making up one's mind to do something, act of coming to a decision, it is a decision making process" (Page 67 of Dictionary of Law by P.H; ColI in supra). In the legal sense of the meaning; a 'decision' is a "determination arrived at after consideration of facts and in the legal context of law, a popular rather than technical or legal word, a comprehensive: term having, no fixed, legal meaning. It may be employed as referring to-ministerial acts as well as to those that are judicial or of a judicial character*."

40. Once again, I do not see how the aforesaid observations of the Andhra Pradesh High Court advance the respondent's submission with regard to the nature/character of the two orders dated 30.09.2010 and 05.04.2011 passed by the learned Guardianship Judge. In ***Vidya Charan Shukla*** the Supreme Court was, inter alia, examining the manner in which an order may be framed by a Tribunal under Section 98 or Section 99 of the Representation of the People Act, 1951. It was held that the Election Tribunal may issue two documents - one embodying the reasons for the decision and the other, the formal expression of its decision; the former will be its judgment and the later its order. It may issue both in the same document in which case the

judgment as well as the order is embodied in the same document. I fail to appreciate how this decision has any relevance to the case at hand.

41. Keeping in mind the aforesaid position, a perusal of the order/proceedings dated 30.09.2010 leaves no manner of doubt that the same qualifies as an "order" within the meaning of Section 2(14) of the C.P.C. The learned Guardianship Judge gave its decision on the petitioner's application under Section 12 of the Guardian and Wards Act while passing the said order, after appreciating the factual position presented before him that the child Liam was in fact in his custody on the said date. The application under Section 12 of the Guardian and Wards Act had been preferred to seek interim custody of the said child from the respondent. As the said interim custody had, by turn of events, vested in the petitioner, the prayer made in the interim application under Section 12 of the Guardian and Wards Act stood satisfied and, consequently, that application was disposed of by the learned Guardianship Judge after considering all the aforesaid aspects. Merely because the order was passed in the absence of the respondent or her representative, the said order does not cease to be a "decision" of the Court. By this decision, the Court recognized the factual position that the interim custody of the child Liam had passed into the hands of the petitioner. The learned Guardianship Judge has recorded his reason

for disposing of the application under Section 12 of the Guardian and Wards Act.

42. So far as the proceedings/order dated 05.04.2011 is concerned, the same in my view also tantamounts to an "order" within the meaning of Section 2(14) of the C.P.C. Firstly, the same has been passed after hearing the parties. Secondly, the same contains a decision in so far as the aspect of the visitation rights of the respondent are concerned in relation to the minor children. This decision was made without prejudice to the rights and contentions of both the parties, since the parties had expressed their readiness and willingness to settle their disputes amicably and for that purpose to appear before the Judge In-Charge, Mediation Centre, Delhi High Court.

43. The Gujarat High Court in ***Vijaya Park Co-operative Group Housing Society V. Trivedi Bhartiben w/o. S.S.Trivedi & Ors.***, (2003) 1 GLR 190, rejected a similar contention that because the trial Court had not given any reason in its order rejecting an application under Order 1 Rule 10 read with Order 6 Rule 17 C.P.C., the same did not amount to an order. The High Court held that while detailed reasons have not been assigned by the learned Judge while dismissing the application, the learned trial Judge had

indicated his reasons by observing that by seeking amendment in the cause title of a plaint, a new person is sought to be introduced as plaintiff in place of the original plaintiff and therefore, the amendment was not competent. The Gujarat High Court held that whether, or not, the High Court may agree with the aforesaid reasons of the trial Court, it cannot be said that the order has been passed without any reasons.

44. In the present case as well, the order dated 05.04.2011 does not explicitly state the reasons for the arrangement worked out by the Court with respect to the visitation rights of the respondent in relation to the minor children. However, that, by itself, would not reduce the force of the said proceeding/order as the said order contains a binding decision, which the learned Guardianship Judge directed, shall continue till further orders.

45. In any event, whether or not the proceedings/orders dated 30.09.2010 and 05.04.2011 constitute an "order" within the meaning of Section 2(14) C.P.C, or not, is of no avail to the respondent. As pointed out by Mr. Kaul, civil contempt has been broadly defined to mean "willful disobedience of decree, judgment, direction, order writ **or other process of a Court**……" (emphasis supplied). The proceedings of 30.09.2010 and 05.04.2011, even if assumed for the sake of argument as not constituting

"orders", within the meaning of Section 2(14) of the C.P.C, certainly are processes of a Court inasmuch, as, they record the proceedings of the learned Guardianship Court in the petitioner's guardianship petition before it.

46. When the matter was finally heard on 20.12.2011, I had directed the counsel for the respondent, who represented the respondent in proceedings under the D.V. Act to file an affidavit disclosing whether, or not, the said counsel for the respondent was aware of the passing of the orders dated 30.09.2010 and 05.04.2011 in the Guardianship proceedings when the proceedings under the D.V. Act were filed initially, as well as at the appellate stage. An affidavit was also called from the respondent, disclosing whether she had made her counsel aware of the said orders of the Guardianship Court before filing the petition under the D.V Act, or at any time thereafter.

47. Two affidavits dated 28.12.2011 have been filed, one, of the respondent and the other of Mr. Sashank Kumar Lal, Advocate.

48. Mr. Sashank Kumar Lal, in his affidavit has stated that the orders dated 30.09.2010 and 05.04.2011 were not in his knowledge, and the respondent had not instructed him about these orders. He has stated that due

to absence of instructions and due to bona fide belief, he did not place the orders dated 30.09.2010 and 05.04.2011 before the learned M.M and the Ld. ASJ at the time of filing and hearing of the complaint under the D.V. Act and the appeal arising therefrom.

49. So far as the respondent is concerned, she has filed a detailed affidavit which goes far beyond the direction issued by the Court. In this affidavit, the respondent has, for the first time, asserted that she was not at all aware of the order dated 30.09.2010 when she preferred the complaint under the D.V. Act and the appeal arising therefrom. She states in para 15 of this affidavit that *"I did not give any instructions to my present counsel with regard to orders dated 30.09.2010 and 05.04.2011. Even otherwise, I had no knowledge of order dated 30.09.2010".* She states that she did not produce the orders dated 30.09.2010 and 05.04.2011 before the learned M.M, and before the learned Additional Sessions Judge, as she did not have copies of the said orders. She has also sought to tender an unconditional apology "for any act which may have caused hindrance to the administration of justice". This stand taken by the respondent, taken in her affidavit dated 28.12.2011, is strikingly at variance from her stand taken in her reply filed to the contempt petition.

50. I have perused the entire reply filed by the respondent and there is not an *iota* of averment made by her in the said detailed reply to state that she was not aware of the order dated 30.09.2010 passed by the learned Guardianship Judge at the time of filing of her complaint under the D.V. Act, and the appeal arising therefrom. All that she says is that, firstly, the order dated 30.09.2010 was obtained behind her back and, secondly, that the said order was passed on a self serving statement made by the petitioner. Thirdly, she further states that it is not an "order" within the meaning of Section 2(14) of the C.P.C. In this regard, I consider it appropriate to set out paragraphs 12, 14 and the relevant extracts of para 30 of the contempt petition, and the corresponding reply given by the respondent herein below:-

***Petitioner's averment***

*"12. On 30.09.2010 the said child was reverted to the custody of the petitioner as the respondent had left for UK to meet her paramour and could not take the child with her as apprehended due to her undertaking to the Guardian Judge on 09.09.2010. The said fact was duly recorded by the Learned Guardian Judge a copy of which is annexed herewith as* ***Annexure-D****. In sum and substance, the said order clearly held that as the custody of the said child had already come in the hands of the petitioner therefore, the relief sought in the interim application under Section 12 of the said Act stood satisfied and the application was accordingly disposed of. A copy of the said interim application under Section 12 of the said order is annexed hereto as* ***Annexure-E****."*

***Reply to the above para***

*"12. That the contents of para 12 of the petition are wrong and hence denied. It is denied that on 30.09.2010 or before that Liam was reverted to the custody of the petitioner. At the outset it is denied that the child was reverted to the custody of the petitioner vide order dated 30.09.2010. The said order is not an order in terms of Section 2 (14) of the Civil Procedure Code as the same has been passed in the absence of the respondent and not on merits. The said order is based on self serving statement of the petitioner which cannot be interpreted in any manner through which it can be said that the Court has granted custody to the petitioner. The circumstance under which the said order has been passed has been explained, and hence the same are not repeated for the sake of brevity."*

***Petitioner's averment***

*14. That accordingly, the said orders were governing the custody and visitation with respect to the said child qua the parties. The said orders are still subsisting and have not been either vacated or modified by either the learned Guardian Judge or any appellate Court.*

***Reply to the above para***

*"14-15. That the contents of para 14 and 15 of the petition are wrong and hence denied. It is submitted that the orders governing the custody and visitation of the child in question are still in subsistence. At the outset it is submitted that the petitioner is trying to mislead this Hon'ble Court by intentionally making contemptuous statement as the Ld. Guardian Judge has not passed any speaking order in respect of the custody and visitation of the minor child. The petitioner is intentionally interpreting the orders dated 30.9.10 and 5.4.11 passed by the Ld. Guardian Court in order to mislead this Hon'ble Court in order to get an order which he failed to get from the Ld. Guardian Judge."*

***Extract of Petitioner's averment***

*"30. A bare perusal of the said petition and the application would reveal that an off the cuff reference has been made with respect to the pendency of the petition filed by the petitioner before the Guardian Judge under Section 7, 10 and 25 of the said Act in para 68 of the aforesaid application. There is not even whisper about the passing of the said order nor has a copy of the said order been annexed to the petition. ..... ..... ..... ....."*

***Reply to the above para***

*"30. The contents of para 30 of the petition are a matter of record and need no reply. However at the outset, it is submitted that the respondent had disclosed and placed on record the undertaking given by her on 9.9.2010."*

51. Pertinently, the respondent in her reply does not specifically deal with the "grounds" urged by the petitioner in the contempt petition, wherein too, the petitioner has made categorical assertions that the respondent has suppressed, concealed and mis-stated the material facts and documents, namely, the orders dated 30.09.2010and 05.04.2011 passed by the learned Guardianship Judge while pursuing the proceedings under the D.V. Act before the learned M.M. and the learned ASJ.

52. The stand now taken by the respondent in her affidavit, filed in response to the order dated 20.12.2011 that she was not aware of the order dated 30.09.2010 therefore, cannot be accepted. This is clearly an afterthought on the part of the respondent and an attempt on her part to get

out of the tight spot that she finds herself in, because of her acts of suppression and concealment of the orders dated 30.09.2010 and 05.04.2011 from the concerned Courts dealing with the D.V Act proceedings. This stand is now being taken for the first time after the close of the hearing, which means that the petitioner has no occasion or opportunity to say anything in the matter. Moreover, this stand is belied by the fact that in the amended guardianship petition, the petitioner had stated that "….. *On 30.09.2010, the custody of the minor Liam has been reverted to the petitioner".* This amended petition was filed by the petitioner some time around 13.08.2011, whereas the D.V. Act proceedings were launched by the respondent only in October, 2011. From the said averment, it is clear that the respondent was put to notice that the petitioner claimed himself to be in actual custody on and from 30.09.2010. Pertinently, in relation to the order dated 05.04.2011, the respondent has no such explanation to offer, as she has taken benefit of the said order. However, even this order was suppressed and concealed from the learned M.M and the learned ASJ dealing with the D.V Act proceedings, evidently for the reason that this order too would have betrayed the fact that it was the respondent who was being granted visitation rights, and not the petitioner. This obviously would have meant that the actual custody of the children, including the child Liam was with the

petitioner and not the respondent. If this order had been produced before the Ld. MM and the Ld. ASJ in the D.V. Act proceedings, the claim of the respondent- that she has custody of the child Liam, would have been belied. In the light of the aforesaid discussion, I have no hesitation in rejecting the affidavit now filed by the respondent on 28.12.2011 as per the direction of the Court. In my view, the same further compounds the dubious conduct of the respondent in trying to play hide and seek with the courts.

53. Turning to the examination of the affidavit filed by Shri Sashank Kumar Lal Advocate, I find that his conduct too does not appear to be completely beyond suspicion. He discloses that he was engaged by the respondent as her counsel in proceedings before the Guardianship Judge in May, 2011. This means that he had access to the case file of the proceedings pending before the learned Guardianship Judge. Access not only to the counsels file but even to the Court record. He would have been aware of the fact that the respondent had moved an application in December, 2010 to seek access to the children, meaning thereby that the respondent was actually not having custody of any of the four children, including the child Liam.

54. I have called for the Guardianship case record from the family court where the same is pending. It is seen that the Vakalatnama has been filed by Mr. Jatin Sehgal and the Mr. Jai Kush Hoon on 20.05.2011. In fact, Mr. Shashank Kumar Lal has not filed any Vakalatnama. I have also called the inspection application register. The inspection application register does not shows that an application for inspection was made by the aforesaid newly engaged counsel upto 01.07.2011, when the case was transferred to the Court of the Principal Judge, Family Court. The case was assigned to the Court of Smt. Renu Bhatnagar, Judge 2, Family Court, Saket, where it is now pending. It appears that no inspection application register is being maintained in her court. An intimation to this effect has been received from her.

55. Pertinently the proceedings under the D.V.Act were initiated in October, 2011 i.e., five months after the aforesaid counsels were engaged by the respondent as her counsel in the guardianship proceedings. I may note that Mr. Shashank Kumar Lal, Mr. Jatin Sehgal and Mr. Jai Kush Hoon share the same chamber, i.e. 109 Lawyers Chambers, Delhi High Court, New Delhi, and while Mr. Shashank Lal has appeared in the Guardianship proceedings, Mr. Jatin Sehgal has appeared in the DV Act proceedings. Mr. Shashank Lal has inspected the Guardianship proceedings on 11.01.2012. It

is, therefore, clear that they work jointly on matters and belong to the same chamber.

56. It is also pertinent to note that when the D.V. Act proceedings were drafted, in Para 68 the same counsel made ambiguous and unclear averments. It is even more pertinent to note that when the D.V. Act proceedings were taken up by the learned M.M. on 13.10.2011, she specifically raised the issue with regard to the ambiguous averments made in Para 68 of the petition, whereupon the counsel for the complainant sought time to file an amended petition and also to file orders passed by the Guardianship Court. Despite the aforesaid, the counsel did not clearly amend the petition to make a complete disclosure of the orders passed by the learned Guardianship Judge, including the orders dated 30.09.2010 and 05.04.2011. He also did not file these orders before the learned Magistrate dealing with the D.V. Act proceedings. Inconsequential amendments were carried out in Para 68 of the petition which concealed the aforesaid orders of the Guardianship Judge.

57. It is not for a litigant to spoon feed his counsel with regard to earlier proceedings undertaken before a court, once he is engaged as the counsel in a pending case, even if it were to be assumed that the litigant may be either

ignorant, or may not deliberately disclose the earlier proceedings undertaken in the case to his counsel. It becomes the obligation of the counsel who accepts the responsibility from a litigant, in an already pending proceeding, or when he is engaged to file a fresh proceeding, to acquaint himself with all that has transpired on the record. It is clear that Mr. Sashank Kumar Lal was acting as the respondent's counsel in the guardianship proceedings since May 2011. It was his obligation to inspect the orders passed in the guardianship proceedings to acquaint himself fully with all such proceedings, particularly when he was preparing another proceeding under the DV Act, to claim an overlapping relief. No counsel worth his salt can proceed to deal with a case in which he is engaged, without fully acquainting himself of the orders and proceedings in the case which may have already been undertaken. Mr. Sashank Kumar Lal could not have assumed that the custody of the minor child Liam was with the respondent in the face of: (i) the fact that in the amended guardianship petition the petitioner had himself categorically stated that since 30.09.2010 he had the custody of the minor child Liam; (ii) the fact that the respondent did not actually have the custody of the minor child Liam, ever since the engagement of the counsel Mr. Sashank Kumar Lal/Mr. Jatin Sehgal/Mr. Jai Kush Hoon in May, 2011; (iii) the fact that after the passing of the order

dated 13.10.2011 by the learned M.M in the D.V. Act proceedings, wherein the Court had raised the issue about the ambiguous averments made in Para 68 of the complaint, the counsel had sought time to file the amended petition as also to file orders passed by the guardianship court in the guardianship proceedings.

58. It is not explained, why Mr. Sashank Kumar Lal did not inspect the record of the case to obtain the knowledge and copies of the order dated 30.09.2010 and 05.04.2011, in spite of taking time from the learned Magistrate to file the same before him. This omission on his part is suggesting of the fact that he had copies of these orders in his record.

59. If the claim of the respondent's counsel Mr. Sashank Kumar Lal, that he was not aware of the orders dated 30.09.2010 and 04.10.2011, were to be accepted, for the sake of argument, the only other conclusion one can draw is that he has acted with gross negligence, which is unbecoming as an officer of this Court. Shri Sashank Kumar Lal in his affidavit relies upon the prayer made by the petitioner in his amended guardianship petition which was to the effect that he seeks a direction to the respondent to hand over the custody of the minor child to the petitioner. However, he conveniently omits to take note of the averment made in the amended petition to the effect that

the custody of the child Liam, since 30.09.2010, was with the petitioner. As a counsel Shri Sashank Kumar Lal should have known that interim custody, or defacto custody, of the minor child is one thing, whereas permanent custody or dejure custody- upon adjudication of the relevant issues by the guardianship court, is quite another thing. The prayer made in the amended guardianship petition was to seek the permanent custody of the child Liam.

60. I have great difficulty in accepting the affidavit of Shri Sashank Kumar Lal, Advocate and to swallow his solemn averment that he had no knowledge of either the order dated 30.09.2010 or the order dated 05.04.2011 passed in the guardianship proceedings when he prepared, presented and pursued the D.V. Act proceedings.

61. The two orders dated 30.09.2010 and 05.04.2011 were highly relevant and material, and ought to have been placed before the learned M.M and learned ASJ dealing with the D.V. Act proceedings. A material fact would mean a fact which is material for the purpose of determination of the lis. The logical corollary of this is, whether , the same was material for grant or denial of the relief (***See Arunima Baruah vs. UOI: (2007)6 SCC 120)***. Had the learned M.M and the learned ASJ dealing with the D.V. Act proceedings been made aware of the aforesaid two orders passed by the learned

Guardianship Judge there, obviously, would have been no occasion for either of them to have passed any orders restraining the petitioner from removing the child Liam from within the jurisdiction of the Court, or directing that the custody of the child Liam (falsely claimed to be with the respondent) shall not be disturbed except by due process of law. A perusal of the orders passed by the learned M.M. and the learned ASJ dealing with the D.V. Act proceedings clearly shows that by calculatedly producing the statement made by the respondent before the learned Guardianship Judge on 09.09.2010 – to the effect that she shall not remove the child from within the jurisdiction of the Guardianship Court without the permission of the Court, she sought to mislead the learned M.M as well as the learned ASJ that she had actual custody of the child Liam. This is clearly recorded in the order passed by the learned ASJ on 19.10.2011. As noticed hereinabove, he observes as under:-

> *"……* ***In the proceedings before the Guardian Judge the applicant/appellant Jhilmil Breckenridge has already given statement that she will not remove the child Master Liam Dorge Breckenridge from the territorial jurisdiction of this court without the permission of this court. These facts prima facie show that the custody of the minor child namely Liam Dorge Breckenridge is with the applicant/*** **appellant.**
>
> ……
>
> ***Since the minor child Master Liam Dorge Breckenridge is already in the custody of the applicant/appellant Jhilmil***

> ***Breckenridge**, so it is directed that till the next date of hearing fixed in the Appeal the custody of the minor child Master Liam Dorge Breckenridge with the applicant/appellant Jhilmil Breckenridge (mother) shall not be disturbed except by due process of law and of course subject to the order, if any passed by the Guardian Judge on this issue in the petition under section 7 and 10 of Guardian and Ward Act, because the applicant/appellant has not conveyed any order passed by the Guardian Judge in this regard to this court." (emphasis supplied).*

62. As aforesaid, it is not explained by the respondent or her counsel as to why, despite the learned M.M requiring the production of the orders passed in the guardianship proceedings, and despite a statement being made that the respondent shall produce the orders passed by the Guardianship Court, the same were not produced. Even the order passed by the learned ASJ discloses that he was not satisfied with the conduct of the respondent in not producing the orders passed by the Guardianship Court, and that is why he specifically observed in his order dated 19.10.2011 that the order passed by him is subject to orders, if any, passed by the Guardianship Judge "*because the applicant/appellant has not conveyed any order passed by the Guardianship Judge in this regard to this Court"*.

63. From the above discussion it is clear that the respondent has deliberately and willfully sought to breach and disobey the orders dated 30.09.2010 and 05.04.2011 by concealing the said orders while filing the

proceedings under the D.V. Act before the learned M.M. and the appeal proceedings before the learned ASJ, with a view to legitimize her conduct of taking away the custody of the child Liam from the petitioner under the garb of the orders obtained in those proceedings by sheer concealment and deliberate and calculated mis-statements made by her.

64. I had occasion to deal with another case involving suppression of relevant and material facts by a party while preferring a writ petition in ***Ayodhya Devi vs. DDA & Anr***., 156(2009) DLT 346. Unfortunately, like in the present case, in that case too, the conduct of the counsels was not completely above board, and they appeared to have played a role in the suppression and concealment of relevant facts. In the course of that decision, I had occasion to consider the judgment of the Division Bench of this Court in ***Satish Khosla vs. M/s. Eli Lilly Ranbaxy Ltd. & Anr.: Vol.71 (1998) DLT 1 (Division Bench)*** which in turn deals with other relevant judgments including those of the Supreme Court. I consider it apposite to quote relevant extracts from the said decision:-

> "*21. In* ***Satish Khosla v. M/s Eli Lilly Ranbaxy Ltd. & Anr.*** *71 (1998) DLT 1 (DB), a Division Bench of this Court dealt with a similar situation. The respondent preferred an earlier suit being Suit No.3064/1996. It sought ex parte interim orders to restrain the appellant from giving on hire the lawns, adjoining the cottage in the tenancy of the respondent, for*

*marriages and private parties. The respondent failed to obtain any ex parte orders. Thereafter, the respondent preferred a subsequent suit, being Suit No.261/1997 making a similar prayer for interim relief. On 06.02.1997 the learned Single Judge passed an ex parte ad interim order of injunction against the appellant. The appellant preferred an appeal before the Division Bench and also filed a contempt petition for initiating criminal contempt proceedings against the respondents for having intentionally and deliberately filing the proceedings and application being Suit No.261/1997 and I.A. No.1124/1997. After comparing the various averments made in the two suits, the Court considered the issue whether it was obligatory for the respondent to have disclosed to the Court in the subsequent suit, the earlier suit filed by it and the factum that the Court had not granted any stay in favour of the respondent in the earlier suit. The Court referred to* ***S.P. Chengalvaraya Naidu v. Jagannath & Ors.*** *AIR 1994 SC 853, wherein the Supreme Court held that the Courts of Law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. "It can be said without hesitation that a person whose case is based on falsehood has no right to approach the Court. He can be summarily thrown out at any stage of the litigation. A litigant, who approaches the Court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as on the opposite party."*

*22. The Division Bench held that:*

> *"……..by withholding the plaint and the application in the earlier suit from the court and by not disclosing to the Court about the proceedings in the earlier suit and the stay having not been granted to it, the plaintiff/respondent had tried to get an advantage from the Court and was, therefore, guilty of playing fraud on the Court as well as on the respondent."*

*23. The Division Bench relied upon the following passage from **S.P. Chengalvaraya Naidu** (supra):*

> *"…… We do not agree with the High Court that there is no legal duty cast upon the plaintiff to come to Court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The Courts of Law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. We are constrained to say that more often than not, process of the Court is being abused. Property-grabbers, tax-evaders, bank- loan-dodgers and other unscrupulous persons from all walks of life find the Court process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person whose case is based on false- hood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation. A litigant, who approaches the Court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side than he would be guilty of playing fraud on the Court as well as on the opposite party."*

*24. The Division Bench further observed that:*

> *"…… A party must come to the Court with clean hands and must disclose all the relevant facts which may result in appreciating the rival contentions of the parties. In our view, a litigant, who approaches the Court, must produce all the documents which are relevant to the litigation and he must also disclose to the court about the*

*pendency of any earlier litigation between the part is and the result thereof. ……..It was only after 20th January, 1997 when the case was adjourned to May, 1997 that the respondent filed the second suit and though in one of the paragraphs it is mentioned that it had filed an earlier suit for injunction, however, it did not disclose to the Court either in the plaint or in the application as to what had transpired in the Court on the dates when the said suit was fixed nor it was disclosed to the Court that injunction has not been granted in its favor by the Court and the relief claimed in the application in the earlier suit was almost similar to the relief which had been claimed in the subsequent suit. In our opinion, it was obligatory upon the respondent to disclose to the Court that in the application filed in the earlier suit a similar relief had been claimed, however, the Court had not granted the said relief. In our view, if these facts were before the Court on February 6, 1997 when the second suit came up for hearing before it, may be Hon'ble the Single Judge was persuaded not to grant any exparte stay in favor of the respondent. …… We are, therefore, of the opinion that the respondent has not come to the Court with clean hands and has also suppressed material facts from the Court with a view to gain advantage in the second suit. This in our view is clearly over-reaching the Court."*

*25. On the aspect of role of the counsel for the respondent, the Division Bench held that:*

*"As held by the Supreme Court in* ***T. Arivandandam Vs. T.V. Satyapat and Another****, AIR 1977 SC 2421, the pathology of litigative addiction ruins the poor of this country and the Bar has a role to cure this deleterious tendency of parties to launch frivolous and vexatious cases. "It*

*may be a valuable contribution to the cause of justice if Counsel screen wholly fraudulent and frivolous litigation refusing to be beguiled by dubious clients. And remembering that an Advocate is an officer of justice he owes it to society not to collaborate in shady actions. The Bar Council of India, we hope will activate this obligation. We are constrained to make these observations and hope that the co-operation of the Bar will be readily forthcoming to the beach for spending judicial time on worthwhile disputes and avoiding the distraction of sham litigation such as the one we are disposing of. Another moral of this unrighteous chain litigation is the gullible grant of ex-parte orders tempts gamblers in litigation into easy Courts. A Judge who succumbs to ex-parte pressure in unmerited cases helps devalue the judicial process." 20. We are of the opinion that the above noted passage of the aforesaid judgment in* ***T. Arivandandam Vs. T.V. Satyapal's*** *case is fully applicable to the facts and circumstances of the present case. Having not succeeded in getting stay in Suit No. 3064/96, in our view, the Lawyer should have refused to move an application for stay in the second suit."*

*26. The Division Bench held that the respondents were guilty of contempt and that they had made an attempt to overreach the Court by playing a fraud upon the Court and the opposite party. The respondent was, therefore, non suited in respect of the subsequent suit and was warned to be more careful in future. To the same effect is the decision of this Court in* ***Holy Health and Educational Society (Regd.) v. Delhi Development Authority*** *80 (1999) DLT 207.*

*Xx xx xx xx xx xx*

*32. In **T. Arivandandan v. T.V. Satyapal** (1977) 4 SCC 467, the Supreme Court cautioned lawyers by observing that "It may be a valuable contribution to the cause of justice if counsel screen wholly fraudulent and frivolous litigation refusing to be beguiled by dubious clients. And remembering that an advocate is an officer of justice he owes it to society not to collaborate in shady actions." Unfortunately, I regret to observe that the counsels for the petitioners have not heeded to the aforesaid advice of the Supreme Court.*

*33. The facts of this case compel me to take note of what the Supreme Court had the occasion to observe in **Sanjiv Datta, Dy. Secretary, Ministry of Information & Broadcasting, In re v.** (1995) 3 SCC 619:*

> *"20. The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honourable members. Although the entry to the profession can be had by acquiring merely the qualification of technical competence, the honour as a professional has to be maintained by the its members by their exemplary conduct both in and outside the court. The legal profession is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilised society. Both as a leading member of the intelligential of the society and as a responsible citizen, the lawyer has to conduct himself as a model for others both in his professional and in his private and public life. The society has a right to expect of him such ideal behavior. It must not be forgotten that the legal profession has always been held in high esteem and its members have played an enviable role in public life. The regard for the legal and judicial systems in this country is in no small measure due to the tiredness role played by the stalwarts in the profession to strengthen them. They took their profession seriously and practised it with*

*dignity, deference and devotion. If the profession is to survive, the judicial system has to be vitalised. No service will be too small in making the system efficient, effective and credible. The casualness and indifference with which some members practise the profession are certainly not calculated to achieve that purpose or to enhance the prestige either of the profession or of the institution they are serving. If people lose confidence in the profession on account of the deviant ways of some of its members, it is not only the profession which will suffer but also the administration of justice as a whole. The present trend unless checked is likely to lead to a stage when the system will be found wrecked from within before it is wrecked from outside. It is for the members of the profession to introspect and take the corrective steps in time and also spare the courts the unpleasant duty. We say no more.*

*Need I say more?".*

65. The Supreme Court in ***A.V. Pappaya Sastry & Anr. Vs. Govt. of A.P & Ors.,*** *(2007) 4 SCC 221* has held that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Such a judgment, decree or order which is obtained by playing a fraud on court or on Tribunal or authority is a nullity and non-est in the eyes of law. The Court observed that fraud and justice cannot dwell together, and fraud and deceit ought to benefit none. In Para 26 the Supreme Court observed as under:-

> "*26. Fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss of another. Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam. The principle of "finality of litigation" cannot be stretched to the extent of an absurdity that it can be utilized as an engine of oppression by dishonest and fraudulent litigants*".

66. It is evident that the respondent, seemingly with the aid and advice of her counsel had sought to mislead the courts dealing with the D.V. Act proceedings by suppressing material facts and orders passed by the learned Guardianship Judge with a view to gain advantage in the proceedings under the D.V. Act. It is clear that the respondent sought to overreach the Guardianship Court, and the orders passed by the said Court. The conduct of the respondent, seemingly aided and supported by conduct of her counsel, clearly tantamounted to playing a fraud upon the Court dealing with the D.V. Act proceedings as well as upon the petitioner. The respondent had abused the process of the Court by filing the D.V. Act proceedings with concealment of the orders, and proceedings already passed and undertaken before the learned Guardianship Judge. This concealment was calculated to hamper the due course of justice i.e to interfere with the order dated 30.09.2010 passed by the learned Guardianship Judge.

67. The respondent has made a mockery of the judicial process that undermines the dignity of the Court and the majesty of law. The conduct of the respondent tends to bring the authority and administration of law into disrespect and disregard. It seriously interferes with the rights of the petitioner. Abuse of the process of Court calculated to hamper the due course of judicial proceedings or the orderly administration of justice tantamount to contempt of Court (see ***Advocate General, State of Bihar V. Madhya Pradesh Khair Industries***, (1980) 3 SCC 311 and ***Delhi Development Authority V. Skipper Construction & Anr,*** JT 1995(2) SC 391). Accordingly, the respondent is clearly guilty of contempt of Court.

68. The respondent cannot be heard in these proceedings unless she purges herself of the contempt so committed by her by forthwith placing the child Liam in the custody of the petitioner. As aforesaid, the proceedings launched under the D.V. Act are tainted by fraud, suppression and concealment and the orders passed therein by the learned M.M and learned ASJ are therefore a nullity.

69. So far as the conduct of the respondent's counsel is concerned, the same is highly suspicious. If he is given the benefit of the doubt, his conduct is highly negligent and unprofessional, and the same deserves to be

deprecated in the strongest terms. It is such conduct of counsel which brings the noble legal profession into disrepute and erodes the confidence of the litigating public and the courts in the professionals practicing the legal profession. The administration of judicial process and dispensation of justice by the Courts would become extremely difficult, if the members of the Bar do not maintain the highest standards of integrity and professionalism in pleading their cases before the Courts. Justice would become a casualty, even if temporarily. Though the law provides remedies to tackle such conduct on the part of litigants and their lawyers, and such myopic street smartness invariably eventually fails, it consumes a tremendous amount of material and other resources of the litigant who is a victim of such fraud, and also leads to immense waste of productive time of the Court which would otherwise be utilized in dealing with more deserving cases.

70. Now I may deal with two other decisions relied upon by the respondent. The reliance placed on the decision in ***Dinesh Kumar Gupta*** (supra) by the respondent is wholly misplaced. In this case, upon examination of facts the Court came to the conclusion that no case of contempt of court was made out. It was in this background that the Court observed that if an order is capable of more than one interpretation giving

rise to variety of consequences, non-compliance of the same cannot be held to be willful disobedience of the order so as to make out a case of contempt entailing serious consequences. In the present case, it is evident that the orders dated 30.09.2010 and 05.04.2011 were unambiguous and clearly brought out the fact that the defacto custody of the child Liam was with the petitioner. There was no question of there being any ambiguity in those orders, or of their being interpreted in any other manner.

71. For the same reason, reliance placed on the decision in ***Anshuman*** (supra) is also of no avail to the respondents. The decision in ***Dr. Ashsih Ranjan*** (supra) has absolutely no relevance to the facts of the present case. That was a case where the visitation rights of the father had been frustrated by the respondent-mother who had the custody of the child. The Supreme Court held that on account of the denial of the visitation rights and the tutoring of the minor child, and in the light of the changed circumstances, the petitioner-father could seek review/modification of the orders regarding custody before the appropriate Court. The decision in the aforesaid case does not mean that in every case where there is willful and deliberate breach of the orders of the Court, or orders are obtained by playing a fraud upon the Court and the opposite party, the party guilty of committing contempt of

Court can be allowed to get away with such contempt without being suitably dealt with by the Court.

72. In the light of the aforesaid discussion, I allow this petition. The respondent is found guilty of committing contempt of Court.

73. The respondent is guilty of disobeying the orders dated 30.09.2010 and 05.04.2011 passed by the leaned Guardianship Judge by removing the child Liam from the custody of the petitioner and by taking the said child into her own custody. The respondent is guilty of contempt of Court as she has abused the process of the Court, calculated to hamper the due course of judicial proceedings or the orderly administration of justice. She has made mockery of the judicial process.

74. I direct the respondent to purge the contempt by forthwith restoring the custody of the child Liam with the petitioner. I hold the orders passed by the learned Metropolitan Magistrate and learned ASJ in the proceedings initiated by the respondent under the D.V Act, in so far as they deal with the aspect of custody of the minor child Liam, to be null and void. I call upon the respondent to show cause as to why she should not be punished for contempt of Court. Let the requisite notice issue to her for this purpose.

75. The counsel for the respondent, Mr. Sashank Kumar Lal is cautioned for minding his conduct in future. He is advised to adhere to the highest standards of professionalism, ethics and integrity as an Advocate.

76. I subject the respondent to costs of Rs. 2,00,000/-, out of which Rs.1,00,000/- be paid to the Delhi Legal Services Committee and the remaining amount be paid to the petitioner within four weeks from today.

**(VIPIN SANGHI)**
**JUDGE**

**FEBRUARY 21, 2012**
sr/ms