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**(2025) 04 KL CK 1284**

**In the High Court Of Kerala**

**Case No : Contempt Of Court Case (Civil) No. 1803 Of 2024**

Mary Swapna

APPELLANT

Vs

Joji Joseph

RESPONDENT

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**Date of Decision : 03-04-2025**

**Acts Referred:**

Code of Civil Procedure, 1908 — Section 89  
Contempt of Courts Act, 1971 — Section 2(a), 2(b), 2(c), 12  
Contempt of Courts (High Court of Kerala) Rules, 1971 — Rule 9

**Citation : (2025) 04 KL CK 1284**

**Hon'ble Judges : Anil K.Narendran, J;Muralee Krishna S., J**

**Bench : Division Bench**

**Advocate : Sajin S. Das, S.Krishnalal, Jayaprakash Narayanan**

**Final Decision : Disposed Of**

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## **Judgement**

Muralee Krishna, J.

1. This Contempt Case (Civil) is filed by the petitioner in O.P.(Div) No.959 of 2020 on the file of the Family Court, Alappuzha, under Section 12 of the Contempt of Courts Act, 1971, alleging non-compliance of an undertaking by the respondent contained in Annexure A5 mediation agreement dated 22.11.2023 entered into between the petitioner and the respondent which was made a part of Annexure A3 decree dated 29.11.2023 passed by the Family Court in terms of that agreement.

2. Going by the averments in the contempt petition, the marriage between the petitioner and the respondent was solemnised on 29.05.2006 and there is a male child born in that wedlock on 19.07.2008. The petitioner filed a suit as O.P. (Div) No.959 of 2020 for dissolution of marriage and M.C No.36 of 2020 seeking maintenance of Rs.6,000/- each to the petitioner and her son, before the Family Court, Alappuzha. The matters were referred for mediation and on receipt of the mediation report the Family Court disposed of the suit as per the judgment and decree dated 29.11.2023 in terms of that agreement. As per the terms of the

mediation agreement, the respondent has agreed to make a monthly payment of Rs.3,000/- to the son of the petitioner by depositing in his bank account on or before the 10th of every month. He agreed to give a permanent alimony of Rs.1,00,000/-to the petitioner within three months from 22.11.2023. According to the petitioner, the respondent has not adhered to Annexure A5 agreement, and the act of the respondent is a wilful disobedience or wilful breach of an undertaking given to the Court. Therefore, the act of the respondent is a contempt of Court, punishable under Section 12 of the Contempt of Courts Act.

3. We have heard the learned counsel for the petitioner to satisfy whether any prima facie case of contempt is made out, so as to proceed further by issuing notice to the respondent as provided under Rule 9 of the Contempt of Courts (High Court of Kerala) Rules, 1971. The learned counsel would submit that after entering into a compromise with the petitioner in the mediation and suffering a decree in terms of that compromise, the respondent wilfully violated the decree which in effect is a wilful disobedience of an undertaking given to the Court and hence a civil contempt. The petitioner is entitled to proceed against the respondent by filing an Execution Petition before the jurisdictional Court in terms of Annexure A3 decree and simultaneously with the above contempt petition.

4. As per Section 2(a) of the Contempt of Courts Act, 1971 ('the Act', in short) contempt of Court means civil contempt or criminal contempt. Section 2(b) defines civil Contempt and Section 2(c) defines criminal contempt. In the instant case, we are concerned about the civil contempt, since the allegation against the respondent is that he wilfully violated an undertaking given to the court in Annexure A5 mediation agreement. Section 2(b) of the Act, which defines civil contempt reads thus:

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

5. A reading of the definition of civil contempt under Section 2(b) of the Act makes it clear that the said Section has two parts. The first part deals with wilful disobedience to any judgment, decree, direction, order, writ or other process of a court. The second part deals with the wilful breach of an undertaking given to a Court. According to the petitioner, the consent decree suffered by the respondent is in fact an undertaking given to the Court by way of the Annexure A5 mediation agreement.

6. While appreciating this argument of the learned counsel for the petitioner it would be apposite to refer to the judgment of the Apex Court in *Balwantbhai Somabhai Bhandari v. Hiralal Somabhai Contractor (deceased)* Rep. by Lrs [AIR 2023 SC 4390:2023 (5) KHC SN 39]. It was a case wherein the matter was disposed of by the learned Single Judge of the High Court on an undertaking made by the learned counsel for the respondent on instructions from his clients that the property which was the subject matter of that case shall not be sold out

till the main petition is heard and decided. But later the respondent sold the property to third parties in violation of said undertaking. In the appeal filed by the respondents therein, while considering the question as to whether the breach of such undertaking would amount to contempt or not, the Apex Court at paragraphs 62 held thus:

"62. Thus, it is evident that Section 2(b) of the Act, which defines civil contempt, consists of two different parts and categories, namely, (i) wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or (ii) wilful breach of an undertaking given to a court. The expression 'any' used with reference to the first category indicates the wide nature of power given to the Court and that the statute does not draw a difference between an order passed after adjudication or an order passed by consent. The first part or category is distinct and cannot be treated as a part or taking colour from the second category. This Court consciously observed that the Courts in England have held that the breach of consent decree of performance by refusal to execute an agreement was punishable by way of contempt proceedings. With reference to the second part, in *Rama Narang* (supra) it was observed that giving of an undertaking is distinct from a consent order recording compromise. In the latter case of violation of compromise, no question of contempt arises, but the party can enforce the order of compromise either by execution or injunction from a Court. However, in the former case, when there is wilful disobedience, contempt application and proceedings would be maintainable. [ See: *Suman Chadha and Another v. Central Bank of India* reported in 2018 SCC Online Del. 11536]

(emphasis supplied)

7. The decree suffered by the respondent herein was on the basis of a mediation agreement entered into between the parties after deliberations in the Mediation Centre on a reference made under Section 89 of the Code of Civil Procedure, 1908. Such a mediation agreement and the consequent judgment passed by the Court cannot be taken as one passed on an undertaking given to the Court. It is a consent decree passed on the basis of the terms of the mediation agreement. If the terms of the mediation agreement and consequent decree are violated, the petitioner is very well entitled to execute the same through the process of law. Viewing the facts of the instant case in the light of the judgment referred to above, conclusion is irresistible that a petition under Section 12 of the Contempt of Courts Act is not maintainable against the respondent.

8. There is another reason also for us to reach the above conclusion. Apart from alleging wilful violation of the mediation agreement by the respondent, the petitioner has not produced any material before this Court to say that there is wilful violation of the terms of the mediation agreement by the respondent. The account statement of her son to show that the respondent did not deposit the amount in his bank account as agreed in the mediation agreement is not produced by the petitioner. Moreover, as per Annexure A5, it was agreed by both parties to file a joint petition before the court. But what actually is the nature of

that joint petition is not clear from Annexure A5. While considering the fact that the O.P. was filed before the Family court for dissolution of marriage, in all probability the joint petition mentioned in Annexure A5 would have been for dissolution of marriage. But, a pleading pertaining to the same is conspicuously absent in this contempt petition. It is also not pleaded in the contempt petition that the petitioner is ready and willing to perform her part of Annexure A5, especially the condition of filing the joint petition.

9. In such circumstances, we hold that the petitioner has not made out any prima facie case of civil contempt by the respondent, so as to proceed against him by issuing notice under Rule 9 of the Contempt of Courts (High Court of Kerala) Rules, 1971.

In the result, the contempt petition stands closed.