

**IN THE COURT OF SHRI ANUJ AGRAWAL,
ADDITIONAL SESSIONS JUDGE-5, SOUTH EAST DISTRICT,
SAKET COURTS, NEW DELHI**

[REDACTED]

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

.....Appellant

[REDACTED] **Versus** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

INDIAN LEGAL NEWS

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

.....Respondent

Instituted on : 04.04.2019
Reserved on : Not reserved
Pronounced on : 17.08.2021

[REDACTED] [REDACTED]

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JUDGMENT

1. Vide this judgment, I shall dispose of instant appeal filed by the appellant, challenging the order dated 27.03.2019, passed by the learned Metropolitan Magistrate, South-East District, Saket Courts, New Delhi in [REDACTED] titled as [REDACTED], filed under provisions of Domestic Violence Act, whereby the appellant was directed to sign on the transfer certificate of both the minor children so that they can be admitted at any school of repute in [REDACTED].

2. Briefly to state, proceedings under Domestic Violence Act are going on between the parties before concerned Mahila Court, wherein respondent/wife [REDACTED] is the complainant and appellant/husband [REDACTED] is the respondent. Parties have two minor school going children, who were admittedly studying in [REDACTED] at the time when impugned order was passed. The relevant observations (of impugned order) of Ld. Trial Court are being reproduced for the sake of convenience:-

“As far as the application moved on behalf of complainant for seeking transfer certificate of the minor children from respondent No.1 is concerned, I am of the considered view that since the complainant is residing at [REDACTED] which is also near the vicinity of her parents and further that she is a Government servant and is looking after both the minor children who are presently studying in [REDACTED] [REDACTED] respectively and due to the marital discord between the parties, complainant is not residing with the respondent at their previous address of [REDACTED]. Further, since the welfare of the minor children is of paramount consideration and that it would be difficult for the minor children to travel from [REDACTED] which is the place where the complainant is residing with minor children to a school situated at [REDACTED]. I deem it appropriate and hereby direct the respondent to sign on the transfer certificate of both the minor children so that both the children can be admitted at the school in [REDACTED] which is also of good repute. Further the respondent is directed to comply with the aforesaid direction by

28.03.2019 by visiting the present school of the children that is [REDACTED] at 10.00 AM to complete the formalities of the transfer certificate, since the process for admission is also being carried out at school in [REDACTED]

Both the parties are directed to comply with the aforesaid order for the welfare of the minor children and hence, the application of the complainant in this regard is allowed.”

3. Appellant is aggrieved with said order and has assailed the same on the ground that same is in contravention of his rights as a father. During course of arguments, it is however been submitted by Ld. Counsel for appellant that the appellant has not signed the transfer certificate till date, however both the children have been shifted to another school at [REDACTED]. As per appellant, the condition thereby directing him to sign the transfer certificate may be waived off in the facts and circumstances of the present case.

4. I have heard Ld. Counsel for appellant and perused the record.

5. On the basis of record and submissions made at bar, following facts are not in dispute:-

(i) that the minor children are staying at [REDACTED] with their mother i.e. respondent herein;

(ii) that the children have already been shifted from their previous school i.e. [REDACTED] to another school at [REDACTED].

6. Therefore, in my view, once the children have already been shifted from their previous school to a new school at [REDACTED] and appellant having not signed any transfer certificate despite directions dated 27.03.2020 of Ld. Trial Court, he is left with no grievance.

7. Even otherwise, since the children are residing at [REDACTED] with their mother, therefore, in my view, as rightly observed by Ld. Trial Court vide impugned order, it is in best interest of children that they study at any school at [REDACTED] (where they are residing at present with their mother) instead of commuting from [REDACTED] to [REDACTED] on daily basis which would otherwise take a toll not only on their physical health but also on their mental well being. In view thereof, this appeal must need its waterloo. Hence, it stands dismissed being devoid of any merit.

8. Before parting, it would be pertinent to observe here that this court is anguished and appalled by the insidious and cavalier approach of the appellant herein. There cannot be any second thought about the right of an individual to seek judicial redressal of his grievances by filing a petition before the appropriate court but at the same time the right to litigate cannot be reduced into an exercise in wagger or an activity of amusement. The menace of frivolous and luxurious litigation is damaging the cause of Justice on twin counts. On the one hand, an insouciant litigant can mischievously stall the pending Trial Court proceedings by simply filing a frivolous petition and on the other hand it tantamount to a direct onslaught upon the fundamental rights of the litigants attempting to seek speedy and effective justice, by unnecessarily over burdening the dockets and directly impinging upon the precious judicial time of the Appellate Court.

9. In my considered opinion, frivolous and luxurious litigation is one of the pre-dominant cause of the mounting arrears of cases. The Courts of this country owes a duty to the citizens to purge the system off such evil. I am further of the considered opinion that unless the courts starts imposing

appropriate costs, the menace of frivolous and luxurious litigation would continue to mar the entire system. The instant appeal is not only frivolous but is evidently an insidious effort to delay the trial court proceedings. The issue that in appropriate cases, costs can also be imposed while dismissing petition is no longer res integra. Reliance can be placed upon judgments of our own Hon'ble High Court in the matter of **Vijay Ghai v. State Crl. M. C. No. 3669/2011 decided on 01.11.2013** and **M/s Miracle Infoweb Pvt. Ltd. v. State Crl. M. C. No. 4529/2013 decided on 07.11.2013**. To illustrate, observations of Hon'ble High Court of Delhi in the matter of **Inderjeet Kaur Kalsi v. NCT of Delhi & Anr in Crl. M.C No. 4504/2013 and Crl. M. A No. 16125/2013 decided on 27.11.2013** while imposing costs in a criminal revision can be reproduced here as under:

"...22. Imposition of Costs- 22.1 Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. The cost should be equal to the benefits derived by the litigants, and the harm and deprivation suffered by the rightful person so as to check the frivolous litigations and prevent the people from reaping a rich harvest of illegal acts through Court. The costs imposed by the Courts must be the real costs equal to the deprivation suffered by the rightful person and also considering how long they have compelled the other side to contest and defend the litigation in various courts. In appropriate cases, the Courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings. The parties raise fanciful claims and contests because the Courts are reluctant to order prosecution. The relevant judgments in support of this preposition are as under:-

"22.2 In Ramrameshwari Devi v. Nirmala Devi, (2011) 8 SCC 249, the Supreme Court has held that the Courts have to take into consideration pragmatic realities and have to be realistic in imposing the costs. The relevant paragraphs of the said judgment are reproduced hereunder:-

"52. ...C. Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also

control unnecessary adjournments by the parties. In appropriate cases the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings...

54. While imposing costs we have to take into consideration pragmatic realities and be realistic what the Defendants or the Respondents had to actually incur in contesting the litigation before different courts. We have to also broadly take into consideration the prevalent fee structure of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter affidavit, miscellaneous charges towards typing, photocopying, court fee etc.

55. The other factor which should not be forgotten while imposing costs is for how long the Defendants or Respondents were compelled to contest and defend the litigation in various courts. The Appellants in the instant case have harassed the Respondents to the hilt for four decades in a totally frivolous and dishonest litigation in various courts. The Appellants have also wasted judicial time of the various courts for the last 40 years.

56. On consideration of totality of the facts and circumstances of this case, we do not find any infirmity in the well reasoned impugned order/judgment. These appeals are consequently dismissed with costs, which we quantify as Rs. 2,00,000/- (Rupees two lakhs only). We are imposing the costs not out of anguish but by following the fundamental principle that wrongdoers should not get benefit out of frivolous litigation."

22.3 In Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria, (2012) 5 SCC 370, the Supreme Court held that heavy costs and prosecution should be ordered in cases of false claims and defences as under:-

"82. This Court in a recent judgment in Ramrameshwari Devi, (2011) 8 SCC 249, aptly observed at p. 266, para 43 that unless wrongdoers are denied profit from frivolous litigation, it would be difficult to prevent it. In order to curb uncalled for and frivolous litigation, the courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that the court's otherwise scarce time is consumed or more appropriately, wasted in a large number of uncalled for cases. In this very judgment, the Court provided that this problem can be solved or at least can be minimised if exemplary costs is imposed for instituting frivolous litigation. The Court observed at pp. 267-68, para 58 that imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases would go a long way in controlling the tendency of introducing false

pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases, the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings." (Emphasis supplied)"

22.4 In Padmawati v. Harijan Sewak Sangh, 154 (2008) DLT 411, this Court imposed costs of Rs.15.1 lakhs and noted as under:

"6. The case at hand shows that frivolous defences and frivolous litigation is a calculated venture involving no risks situation. You have only to engage professionals to prolong the litigation so as to deprive the rights of a person and enjoy the fruits of illegalities. I consider that in such cases where Court finds that using the Courts as a tool, a litigant has perpetuated illegalities or has perpetuated an illegal possession, the Court must impose costs on such litigants which should be equal to the benefits derived by the litigant and harm and deprivation suffered by the rightful person so as to check the frivolous litigation and prevent the people from reaping a rich harvest of illegal acts through the Courts. One of the aim of every judicial system has to be to discourage unjust enrichment using Courts as a tool. The costs imposed by the Courts must in all cases should be the real costs equal to deprivation suffered by the rightful person.

9. Before parting with this case, I consider it necessary to pen down that one of the reasons for over-flowing of court dockets is the frivolous litigation in which the Courts are engaged by the litigants and which is dragged as long as possible. Even if these litigants ultimately loose the lis, they become the real victors and have the last laugh. This class of people who perpetuate illegal acts by obtaining stays and injunctions from the Courts must be made to pay the sufferer not only the entire illegal gains made by them as costs to the person deprived of his right and also must be burdened with exemplary costs. Faith of people in judiciary can only be sustained if the persons on the right side of the law do not feel that even if they keep fighting for justice in the Court and ultimately win, they would turn out to be a fool since winning a case after 20 or 30 years would make wrong doer as real gainer, who had reaped the benefits for all those years. Thus, it becomes the duty of the Courts to see that such wrong doers are discouraged at every step and even if they succeed in prolonging the litigation due to their money power, ultimately they must suffer the costs of all these years long litigation. Despite settled legal positions, the obvious wrong doers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that dice is always loaded in their favour, since even if they lose, the time gained is the real gain. This situation must be redeemed by the Courts..." (Emphasis supplied)"

10. Considering the totality of circumstances, I deem it appropriate that the instant appeal not only deserves to be dismissed but the appellant also deserves to be saddled with the cost of Rs.30,000/- (Thirty Thousand only) for his mischievous approach. The appellant/accused in the instant matter is directed to deposit a sum of Rs. 30,000/- with Lawyers Welfare Fund, Saket Bar Association within seven days from the date of the instant order and the receipt thereof be deposited with the Ld. Trial Court, failing which Ld. Trial Court is requested to initiate appropriate recovery proceedings against the appellant.

11. With these observations, the present appeal stands disposed of as dismissed being devoid of any merit.

12. A copy of this judgment be sent to Ld. Trial Court.

13. Copy of the instant judgment be also sent to President, Saket Bar Association for necessary information.

14. Appeal file be consigned to Record Room after due compliance.

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**Announced in the open
court on  August, 2021**

**(Anuj Agrawal)
Additional Sessions Judge-05,
South East, Saket Courts, New Delhi**

