

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Bose v. Bose*, 2023 NSSC 229

Date: 20230714

Docket: 1201-072403; SFH-D 117035

Registry: Halifax

Between:

Shivdev Chandra Bose

Petitioner

v.

Emma Louise Mary Bose

Respondent

LIBRARY HEADING

Judge: The Honourable Justice Elizabeth Jollimore

Heard: June 27, 2023

Summary: Father applied for finding mother was in contempt of Corollary Relief Order terms relating to decision-making responsibility, parenting time, and notification. Mother found in contempt of parenting time provisions. Sentencing phase to follow.

Key words: contempt of court – civil

Legislation: Civil Procedure Rule 89.02

***THIS INFORMATION SHEET DOESN'T FORM PART OF THE COURT'S
DECISION. QUOTES MUST BE FROM THE DECISION, NOT THIS
LIBRARY SHEET.***

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Bose v. Bose*, 2023 NSSC 229

Date: 20230714

Docket: Proth. No. 1201-72493; SFHD 117035

Registry: Halifax

Between:

Shivdev Chandra Bose

Petitioner

v.

Emma Louise Mary Bose

Respondent

Judge: The Honourable Justice Elizabeth Jollimore

Heard: June 27, 2023

Counsel: Philip Whitehead for Shivdev Bose
James Violande for Emma Bose, also known as Louise
Philpitts

By the Court:

Introduction

[1] Shivdev Bose has applied for an order finding Emma Bose, who sometimes calls herself Louise Philpitts, is in contempt of certain terms of their Corollary Relief Order.

[2] To find Ms. Bose in contempt, Mr. Bose must prove beyond a reasonable doubt that:

- a. The terms of the order state clearly and unequivocally what should and should not be done;
- b. Ms. Bose had actual knowledge of the order;
- c. Ms. Bose intentionally did an act the order prohibits or intentionally failed to do an act the order compels.

The contempt allegations

[3] Mr. Bose alleges that, contrary to the noted terms of the Corollary Relief Order, his former wife:

- a. Did not provide him with a current address for their son – section 1b(1)
- b. Did not keep him updated with their son’s current address – section 1b(2)
- c. Denied him parenting time at the location of his choice on February 28, 2022 – sections 2d and 2e
- d. Denied him parenting time on May 28, 2022; May 30, 2022; and June 1, 2022 – sections 2h and 2i
- e. Denied him 36 consecutive hours of parenting time during Onam – section 2o

- f. Denied him 36 consecutive hours of parenting time during Diwali – section 2o
- g. Denied him 2 non-consecutive 1-week blocks of parenting time during July 2022 and August 2022 – section 2p
- h. Denied him parenting time at a location and time of his choice beginning February 28, 2022 – sections 2d – 2i
- i. Denied him overnight parenting time on alternate weekends from Saturday at 10 a.m. until Sunday at 5 p.m. starting on September 10, 2022 – section 2j
- j. Denied him regular parenting time on Mondays, Wednesday, and alternate weekends from Saturday at 10 a.m. until Sunday at 5 p.m. starting on October 7, 2022 – section 2j
- k. Did not meaningfully consult with him or agree on all major developmental decisions with respect to their son’s health – sections 1a and 1b(5)

[4] I am satisfied beyond a reasonable doubt that Ms. Bose had actual knowledge of the Corollary Relief Order.

Were terms of the Corollary Relief Order clear and unequivocal?

[5] Ms. Bose argues that sections 1b(2), 2d, 2e, 2h, 2i, 2p, and 2j of the Corollary Relief Order are not clear and unequivocal.

[6] She argues that because section 1b(2) did not specify how quickly she must notify Mr. Bose of the change to her telephone number, email address or the child’s address in HRM after the change occurred, she cannot be convicted of failing to update him.

[7] The Order provides that as of April 4, 2022, the parents would share responsibility for transporting Ezra for parenting time: each parent would be responsible for transporting Ezra at the start or end of the parenting time. Until May 15, 2023, Ezra’s parenting time was to occur 3 times each week, with visits no more than 3 days apart. Beginning on May 15, Ezra’s parenting time was to occur 6 times every 2 weeks, with visits no more than 4 days apart.

[8] While no deadline was specified for how quickly Ms. Bose must notify Mr. Bose of any change to the child's address or Ms. Bose's own telephone number or email address, the schedule necessarily means that Ms. Bose would need to notify Mr. Bose within days of any change to her address so he could collect or return Ezra at his next parenting time. Similarly, where Mr. Bose was entitled to select the place and hours for his parenting time, Ms. Bose necessarily needed to notify Mr. Bose of any change to her telephone number and email address within days of the change occurring so he could communicate his choices, from one visit to the next.

[9] Section 1b(2) of the Corollary Relief Order was not specific, but its requirement was clear and unequivocal.

[10] Section 2 of the Order deals with parenting time. Ms. Bose argued that sections 2h, 2i, 2j, and 2p were unclear and ambiguous because they failed to specify what would happen if parenting time was missed. The Order is clear in sections 2h, 2i, 2j and 2p, in specifying, the dates for parenting time. There is no indication whatsoever in the Corollary Relief Order that future parenting time was contingent on the completion of past parenting time.

[11] I am satisfied beyond a reasonable doubt that sections 2h, 2i, 2j, and 2p of the Corollary Relief Order are clear and unequivocal.

[12] Ms. Bose argued that sections 2d and 2e were unclear or equivocal because Mr. Bose selected her home as the location for his initial parenting time. Her counsel argued it would be "unconscionable" that she should be forced to have Mr. Bose in her home. This argument isn't properly framed as a lack of clarity: Ms. Bose will recall that at the trial which resulted in this Corollary Relief Order *she* asked me to order Mr. Bose's parenting time occur in her home. Ms. Bose noted, in her emails to Mr. Bose, that I did not compel him to have his parenting time in her home. If he wished to accede to her desire that his parenting time occur in her home, he had that choice.

[13] I am satisfied beyond a reasonable doubt that sections 2d and 2e of the Corollary Relief Order are clear and unequivocal.

Has Mr. Bose proven the Order has been breached?

[14] Ms. Bose argues Mr. Bose didn't provide clear proof that she'd breached the Order's terms.

[15] The only witnesses were Mr. Bose and his new partner, Katherine MacNeil. Ms. MacNeil's affidavit simply confirmed the contents of Mr. Bose's affidavit. She was not cross-examined.

[16] There is no admissible evidence showing beyond a reasonable doubt that Ms. Bose changed Ezra's address, or her own email or telephone number and failed to notify Mr. Bose, so I acquit her of the allegation that she is in contempt of section 1b(2) of the Corollary Relief Order.

[17] Mr. Bose did not provide evidence that he was denied parenting time at a location of his choice on any date other than February 28, 2022, so I acquit Ms. Bose of the allegation she is in contempt of section 2e of the Corollary Relief Order as it relates to the location of parenting time on all dates other than February 28, 2022.

[18] I have no evidence from Ms. Bose, so my decision is based on Mr. Bose's evidence. His cross-examination lasted less than 15 minutes. His credibility was not challenged, and I accept his evidence.

[19] Mr. Bose has proven beyond a reasonable doubt that he was:

- a. denied parenting time at the location of his choice on February 28, 2022
- b. denied parenting time on May 28, 2022, May 30, 2022, and June 1, 2022
- c. denied parenting time for 36 consecutive hours during Onam in 2022
- d. denied parenting time for 36 consecutive hours during Diwali in 2022
- e. denied 2 non-consecutive 1-week blocks of parenting time during July 2022 and August 2022
- f. denied overnight parenting time on alternate weekends from Saturday at 10 a.m. to Sunday at 5 p.m. beginning on September 10, 2022, and continuing until October 27, 2022, and

g. denied parenting time on Mondays and Wednesdays beginning on October 7, 2022, and continuing until October 27, 2022.

[20] I am also satisfied beyond a reasonable doubt that Ms. Bose intentionally did the acts outlined in paragraph 19 above, and/or intentionally failed to do the acts.

[21] I find Ms. Bose is in contempt of the following sections of the Corollary Relief Order:

sections 2(d) and 2(e) as they relate to February 28, 2022
sections 2(h) and 2(i)
section 2(o)
section 2(p)
section 2(j)

[22] Mr. Bose alleges that Ms. Bose didn't comply with sections 1a and 1b(5) of the Corollary Relief Order. Section 1a gave the parents joint decision-making responsibility. Section 1(5) required each of the parents to "meaningfully consult with the other and agree on all major developmental decisions respecting the child related to health, education, and general well-being."

[23] Mr. Bose's evidence in support of this allegation is hearsay and there is no exception which permits me to admit and rely on this evidence, so I acquit Ms. Bose of this allegation.

[24] The parties will appear before me at the Family Division in Halifax, on Wednesday, August 9, 2023, from 10 a.m. until 4:30 p.m. for the penalty phase of this proceeding. Direct evidence will be *viva voce*. Evidence and argument will be heard during that time: each party will have 2 hours and 15 minutes for their case.

Elizabeth Jollimore, J.S.C.(F.D.)