

**SUPREME COURT OF NOVA SCOTIA**  
**(FAMILY DIVISION)**

**Citation:** *Bose v. Bose*, 2023 NSSC 257

**Date:** 20230815

**Docket:** 1201-072403; SFH-D 117035

**Registry:** Halifax

**Between:**

**Shivdev Chandra Bose**

Petitioner

v.

**Emma Louise Mary Bose**

Respondent

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**LIBRARY HEADING**

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**Judge:** The Honourable Justice Elizabeth Jollimore  
**Heard:** August 9, 2023 in Halifax, Nova Scotia  
**Summary:** Mother found in contempt of parenting time provisions of Corollary Relief Order (reported at 2023 NSSC 229). Sentenced to 1 month imprisonment suspended during the performance of conditions designed to educate the mother about the impact of her conduct and improve the child's relationship with his father.  
**Key words:** Contempt of court – civil  
**Legislation:** Civil Procedure Rule 89.13

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Respondent

**Judge:** The Honourable Justice Elizabeth Jollimore

**Heard:** August 9, 2023, in Halifax, Nova Scotia

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

**By the Court:**

**Introduction**

[1] Emma Bose, who sometimes calls herself Louise Philpitts, has been found in contempt of certain terms of the Corollary Relief Order granted in her 2022 divorce in a decision reported at 2023 NSSC 229. Now I must determine her penalty.

[2] Specifically, I found Ms. Bose in contempt because she:

- a. denied Mr. Bose parenting time at the location of his choice on February 28, 2022 (contrary to sections 2d and 2e of the Corollary Relief Order)
- b. denied Mr. Bose parenting time on May 28, 2022; May 30, 2022; and June 1, 2022 (contrary to sections 2h and 2i of the Corollary Relief Order)
- c. denied Mr. Bose 36 consecutive hours of parenting time during Onam (contrary to section 2o of the Corollary Relief Order)
- d. denied Mr. Bose 36 consecutive hours of parenting time during Diwali (contrary to section 2o of the Corollary Relief Order)
- e. denied Mr. Bose 2 non-consecutive 1-week blocks of parenting time during July 2022 and August 2022 (contrary to section 2p of the Corollary Relief Order)
- f. denied Mr. Bose overnight parenting time on alternate weekends from Saturday at 10 a.m. until Sunday at 5 p.m. starting on September 10, 2022 (contrary to section 2j of the Corollary Relief Order) and
- g. denied Mr. Bose 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 (contrary to section 2j of the Corollary Relief Order).

[3] Mr. Bose asks me to order Ms. Bose be imprisoned and that I suspend her imprisonment provided she complies with the terms of the Corollary Relief Order. Mr. Bose also seeks costs.

[4] Ms. Bose suggests that I order her to pay a modest fine of \$500 by a fixed date and order incarceration if she defaults on the payment. Mr. Bose opposes this, arguing that Ms. Bose has made no effort to satisfy an earlier costs award arising from the divorce. Ms. Bose admitted that she transferred her sole asset (a 2019 Hyundai) to her mother around the time of the divorce trial. She continues to drive this car and to make monthly payments to her mother for the car – but the car is beyond the reach of Mr. Bose to satisfy the judgment against her for costs.

### **What are the considerations when imposing a penalty?**

[5] The focus of a contempt proceeding is far greater than the impact of Ms. Bose's denial of parenting time because obeying the law and following court orders are foundations of social order.

[6] Respect for court orders means following them. If a decision is thought to be wrong, it should be appealed. If the circumstances on which a decision is based have changed, it should be varied. Until stayed, overturned, or varied, court orders must be followed. Since the parenting decision was made in February 2022, Ms. Bose has not applied to stay it, sought to appeal it, or asked to vary it.

[7] Ms. Bose's penalty is both to secure her compliance with the Corollary Relief Order and to protect the administration of justice: *Carey v. Laiken*, 2015 SCC 17 at paras 18 and 30. I have the inherent authority to impose penalties for civil contempt. The *Civil Procedure Rules* are supplementary to my authority.<sup>1</sup>

[8] Securing compliance with the order means ensuring that Ms. Bose does not continue to thwart Mr. Bose's parenting time.

[9] Denouncing Ms. Bose's conduct and deterring both her, specifically, and others, generally, from defying court orders is particularly important where this order relates to parenting time for a young child. The denial of parenting time for a young child can negatively impact a child's relationship with a parent and the child's own well-being.

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<sup>1</sup> *McLean v. Sleight*, 2019 NSCA 71 at paragraph 42

[10] Ms. Bose's penalty must reflect her offence. It must be in proportion to the offence's gravity and Ms. Bose's degree of responsibility, recognizing any aggravating and mitigating factors.

**Are there mitigating factors?**

[11] Ms. Bose says there are 3 mitigating factors. She said she has purged her contempt. She offered evidence attempting to explain her actions. She offered an apology.

[12] Since mid-March 2023, Ms. Bose has made efforts to provide parenting time to Mr. Bose. She has not always provided the time ordered. Ms. Bose's adherence to the Corollary Relief Order has improved but she is not in complete compliance. For example, she denied parenting time so she could go to a Cape Breton cabin with her boyfriend – she said she went because they'd booked the cabin, bought gas, and groceries. There was no reason Ms. Bose couldn't have left Ezra with Mr. Bose and gone to the cabin with her boyfriend.

[13] Ms. Bose said that she denied parenting time because she received documents in the mail which caused her to fear for her safety and Ezra's. According to records from the Department of Community Services, on November 25, 2022, Ms. Bose said she received the documents "recently (1 month ago)" – this would be in late October. My contempt findings relate to the denial of parenting time in February, May, June, July, August, September and until October 27, 2022. The documents cannot explain her breaches of the Corollary Relief Order in February, May, June, July, August, September and early to mid-October 2022 because she said she received the documents *after* the dates that relate to my contempt finding.

[14] Ms. Bose did not provide the documents during the hearing. Nor did she provide them to the Halifax Regional Police or the Department of Community Services. According to the Department of Community Services' records, Ms. Bose said she "does not want Shivdev to know this new information, so that she can use it in Family Court against him" and "she does not want Shivdev to be able to prep for court". The only ongoing court proceeding at the time was this contempt proceeding which Mr. Bose started on October 28, 2022.

[15] During her November 25, 2022, interview with Emma Pink, a social worker at the Department of Community Services, Ms. Bose said that "nothing has happened to Ezra since [Ms. Pink] closed the file". The file was closed on June 3,

2022, after an earlier referral from Ms. Bose on May 10, 2022. Ms. Bose was prompted to make this referral by a hospital social worker. The referral was investigated and unsubstantiated. Ms. Bose's comment that "nothing has happened to Ezra" suggests there was no reason for Ms. Bose to deny Mr. Bose parenting time after June 3, 2022.

[16] Ms. Bose said she thought the parenting time provisions of the Corollary Relief Order "were like driving school" and Mr. Bose had to complete every hour of supervised parenting time before he could proceed to unsupervised and extended parenting time. As noted in my earlier decision (2023 NSSC 229 at paragraph 10), there is no language in the Corollary Relief Order which could support this interpretation. The order was specific in stating the exact dates when parenting time would occur, the number of hours, whether someone was required to supervise and any terms about location. There was no statement that future parenting time was contingent upon the completion of past parenting time.

[17] Ms. Bose has not explained her breach.

[18] In response to her lawyer and to me, Ms. Bose apologized for not knowing or following "proper procedures and rules", and for the court's time being used to address her contempt. Ms. Bose testified that she obtained legal advice or information from a website and from a lawyer before re-retaining her counsel 1 week before the original date for the contempt hearing. She explained her breach of the Corollary Relief Order, saying that until she re-retained her counsel, she didn't know she had no authority for what she did – and she now knew there are "processes" to follow.

[19] It's not clear what "procedures", "processes" or "rules" Ms. Bose is referring to. I have already found that the terms of the Corollary Relief Order were clear and unequivocal. Ms. Bose gave no evidence of any "procedure", "process" or "rule" that she is now following that was previously unknown to her.

**Are there aggravating factors?**

[20] There are 3 aggravating factors.

[21] First, Ms. Bose has not apologized for breaching the order or denying Mr. Bose's parenting time with Ezra.

[22] Second, Ms. Bose's breach of the Corollary Relief Order began on the very first day parenting time was ordered to start.

[23] Third, Ms. Bose continued to deny Mr. Bose parenting time for almost 5 months after the contempt motion was filed. This case came before me for a conference on December 5, 2022. At that point, Ms. Bose had denied Mr. Bose any parenting time and any contact with Ezra since October 24, 2022. At the conference, I spoke to Ms. Bose about her need to comply with the Corollary Relief Order. Regardless, she continued to deny Mr. Bose **all** contact with Ezra until March 12, 2023 – just 3 days before the contempt hearing was originally scheduled to be heard.

### **Proportionality, the gravity of the offence and Ms. Bose's responsibility**

[24] Ms. Bose alone is responsible for her breach of the Corollary Relief Order. She said she sought legal information or advice, but that only when she re-retained her counsel did she realize that she was required to follow the Corollary Relief Order. This ignores my comments to her at the conference on December 5, 2022.

[25] In April 2021, when Ezra was 20 months old, Ms. Bose moved Ezra to an undisclosed location in Cape Breton. This precluded any parenting time with Mr. Bose, so Ezra'd been without contact with Mr. Bose for 10 months before the divorce. The Corollary Relief Order dictated a schedule of parenting time to re-establish Ezra's relationship with Mr. Bose. A regular pattern of Monday, Wednesday and alternate weekend access would be in place just days after Ezra celebrated his third birthday in late June 2022. Ms. Bose's breach of the Order thwarted the schedule and thereby failed to meet Ezra's best interests. Ezra is now 4 and his relationship with Mr. Bose is not yet secure. Mr. Bose's offence is a grave one.

[26] Ms. Bose's wrongdoing is serious. She has breached the Order routinely and didn't take steps to purge her contempt until days before the originally scheduled contempt hearing. There was no evidence justifying her conduct based on Ezra's best interests. To the contrary, her conduct undermined the schedule for re-establishing Ezra's relationship with his father. In *Rogers*, 2003 MBQB 131, Justice Little considered these factors and described a parent's conduct as being at the "most serious and egregious end of the scale".

### **Specific and general denunciation and deterrence**

[27] A penalty must denounce Ms. Bose's contempt and deter her, and others, from violating court orders.

### **Penalty**

[28] Both parties suggested suspended penalties. Ms. Bose suggested that she be fined and incarcerated only if she failed to pay the fine. Her lawyer said that this would require her to "go without something" to pay the fine. Deprivation is punitive, but it ignores the nature of her contempt and her ongoing failure to pay costs. Any means Ms. Bose has to pay a fine should be directed to paying the costs order.

[29] Mr. Bose suggested a term of incarceration that would be suspended while Ms. Bose adhered to the Corollary Relief Order. This coerces compliance but fails to address Ezra's best interests.

[30] A better way to secure Ms. Bose's compliance is a penalty which is suspended during her performance of conditions tailored to her contempt, in addition to compliance with the Corollary Relief Order. Rule 89.13 allows me to order a make such an order. In doing this, I look to decisions such as *CAG v. SC*, 2005 MBQB 224 for guidance.

[31] I order Ms. Bose to be imprisoned for a period of 1 month. I order this term of imprisonment be suspended during performance of stated conditions. The conditions are:

- a. Ms. Bose must comply with the terms of the Corollary Relief Order until such order is varied by a further order, when she must comply with those terms.
- b. Ms. Bose must comply with all efforts to remove the Twitter posts in Exhibit 7 and any other posts of a similar nature on any social media.
- c. Ms. Bose must attend a parental education course that is designed to include a component to educate parents about the damage done to children by continuing levels of conflict and animosity between parents. Counsel must provide me with an agreed upon parental education course by August 24, 2023, or, if they disagree, by August 24, 2023, each lawyer will identify no more than 2 courses from which I will choose the course for Ms. Bose to



attend. At the completion of the course, Ms. Bose must file with the Court and with Mr. Bose a letter confirming that she has attended and completed the course. Ms. Bose must pay the complete cost of this course.

- d. Unless Mr. Bose elects otherwise, Ezra must attend at and receive therapeutic counselling with the express intention of attempting to reunify him with Mr. Bose. Mr. Bose will be solely responsible for scheduling appointments as recommended by the therapist and Ms. Bose must ensure that Ezra is taken to and from the appointments. I direct counsel to submit the name of a single therapist, whether a child psychologist or a social worker experienced in the area, no later than August 24, 2023. If counsel disagree, each must provide the name of 1 individual who is willing to assume this task and I will select 1 of them. Ms. Bose must pay the complete cost of this counselling.
- e. On any occasion when Ms. Bose chooses not to transport to Ezra to his parenting time with Mr. Bose, the parties will meet for Ezra's exchange at the start of Ezra's parenting time at a location of Mr. Bose's choosing and Ms. Bose's grandfather must not be present.
- f. In granting Ms. Bose's request for an adjournment, I ordered costs of \$1,000 payable in the cause. Ms. Bose must pay these costs to Mr. Whitehead in trust for Mr. Bose no later than December 1, 2023.

[32] Mr. Whitehead will prepare the order. Each party may file any submissions on costs by August 24, 2023.

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

Halifax, Nova Scotia