

**IN THE COURT OF APPEAL OF THE DEMOCRATIC  
SOCIALIST REPUBLIC OF SRI LANKA**

An application under Article 105(3)  
of the constitution to punish for  
contempt of Court.

**C.A. (Contempt of Court)**

**No.13/2016**

**D.C. Moratuwa**

**No. 2275/2016/D**

Dagedera Gamage Milinda De Silva  
No. 6B, De Soya Avenue,  
Mount Lavinia.

**Petitioner.**

Vs.

1. Renuka Ashani Perera,
  2. Priyananda Hector Lalith Perera
- Both of  
No. 30/8, De Mel Road,  
Laxapathiya, Moratuwa.

**Respondents.**

C.A. No.13/2016 (Contempt of Court)

Before : Vijith K. Malalgoda, P.C., J (P/CA) &  
S. Thurairaja, P.C., J.

Counsel : Chrishmal Warnasuriya with Jeevan Goonetilleke for  
the Petitioner.  
Shantha Perera for the Respondents.

Argued on : 28.02.2017.

Written Submissions

Tendered on: 07.03.2017

Order on : 14.03.2017.

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Order on Preliminary Objection

S. Thurairaja, P.C., J.

The petitioner and the 1<sup>st</sup> respondent are husband and wife and they are involved in a divorce case at the District Court of Moratuwa, Case No. 2275/2016/D. Presently the Petitioner's complaint is that he was permitted to have access to his son from Friday after school till noon Sunday, and the Respondent has flouted the order by not allowing the child to go with the father namely the petitioner in this case. The 2<sup>nd</sup> Respondent, according to the Petitioner is the father of the 1<sup>st</sup> Respondent had aided and abetted the 1<sup>st</sup> Respondent to violate the order of access issued by the District Judge of Moratuwa. Briefly the Petitioner is complaining, that the 1<sup>st</sup> and the 2<sup>nd</sup> Respondent had violated the order of the District Judge by not allowing the Petitioner to access his child. The Counsel for the Respondents submits that the 2<sup>nd</sup> Respondent is not a party in the original divorce case, hence he cannot be brought into the contempt

proceedings before this Court. Further the Counsel submits the 2<sup>nd</sup> Respondent is a neighbour and has no connection with this case.

Briefly perusing the application, objections and all documents annexed, I find that the petitioner and the 1<sup>st</sup> respondent are husband and wife and they want to terminate their marriage by way of a divorce, and the case is before the District Court. It appears both parties are strongly contesting the case. The 2<sup>nd</sup> Respondent who is the father of the 1<sup>st</sup> Respondent, was also involved in the proceedings by submitting certain affidavits and other materials. The child is 11 years old and he is presently schooling at a school close to Colombo city. I find that the papers submitted before us are not healthier to discuss when it concerned with the custody of minor child. Before I decide the preliminary objection raised by the 2<sup>nd</sup> Respondent I wish to be mindful of the provisions of the United Nations convention on the Rights of the Child. Sri Lanka is a signatory to the said convention and ratified the same in the Parliament. Among other provisions I wish to advise myself of article 3 of the said convention. Article 3 states as follows:

- 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, **the best interests of the child shall be a primary consideration.***
- 2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.*
- 3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.*

(Emphasis added)

Considering the documents submitted by the 2<sup>nd</sup> Respondent by way of an objection it invades the privacy of the husband and wife, i.e. the Petitioner and the 1<sup>st</sup> Respondent, hence I ~~am not referring any of the materials before this Court for this~~ decision. Considering the objections, I find the 2<sup>nd</sup> Respondent is not

named as a party in the District Court case No. D.C. Moratuwa 2275/2016/D. The material party is the 1<sup>st</sup> Respondent, hence I uphold the preliminary objection and rule that the contempt proceedings cannot proceed against the Second Respondent. Accordingly he is discharged from the proceedings.

The Court decides to proceed with contempt proceedings against the 1<sup>st</sup> Respondent and direct the Registrar to proceed to frame the charges in order to fix the matter for inquiry. At this juncture the court wishes to observe that the Petitioner and the Respondents are fighting a battle/dispute between them, they should be mindful that an innocent child can be victimized by their conduct. Therefore the parties are advised to be cautious, the Court will consider the best interest of child and not the benefit or the interest of the adult parties.

Accordingly the preliminary objection is uphold and the second Respondent is discharged from the proceedings.

JUDGE OF THE COURT OF APPEAL

**Vijith K. Malalgoda, P.C., J (P/CA)**

I agree.

PRESIDENT OF THE COURT OF APPEAL