

Trisha Singh
v.
Anurag Kumar

(Transfer Petition (Civil) No. 1008 of 2023)

15 May 2024

[B.R. Gavai and Sandeep Mehta, JJ.]

Issue for Consideration

Parties arrived at an amicable settlement for dissolution of marriage by mutual consent. However, the wife resiled from the settlement agreement. Exercise of powers under Article 142 of the Constitution of India to grant decree of divorce.

Headnotes[†]

Constitution of India – Article 142 – Exercise of powers under – Grant of decree of divorce – Present transfer petition was filed by wife seeking transfer of the petition filed by husband u/s.9 of the Hindu Marriage Act, 1955 – Parties arrived at settlement before the Mediator for dissolution of marriage by mutual consent – Husband abided by the terms of settlement however, the wife resiled from the settlement agreement:

Held: The petitioner-wife having taken advantage of the settlement executed before the Mediator managed to get the matrimonial case instituted by the respondent-husband withdrawn – She also accepted Rs.50 lakhs from the husband towards part payment of the permanent alimony and thereafter, tried to resile from the settlement without any justification – The conduct of the wife is clearly, recalcitrant inasmuch as she disregarded the terms and conditions agreed before the Mediator in the settlement proceedings undertaken pursuant to the directions of this Court – Because of her conduct, the husband was put to grave disadvantage inasmuch as he withdrew the matrimonial case and also paid a significant proportion of the permanent alimony to the wife in terms of the settlement agreement – The matrimonial relations between the spouses have broken down irrevocably and there is no possibility of reconciliation and revival of the spousal relationship – Hence, looking at the conduct of the wife and the other attending facts and circumstances, decree of divorce granted in exercise the powers under Article 142 of the Constitution of India – The marriage between the petitioner and the respondent is dissolved. [Paras 7, 10]

Digital Supreme Court Reports**Case Law Cited**

Ruchi Agarwal v. Amit Kumar Agrawal and Others (2005) 3 SCC 299 – relied on.

List of Acts

Constitution of India; Hindu Marriage Act, 1955.

List of Keywords

Exercise of powers under Article 142 of the Constitution of India to grant decree of divorce; Transfer petition; Dissolution of marriage by mutual consent; Amicable settlement; Settlement before Mediator; Resiled from settlement; Matrimonial case withdrawn; Permanent alimony; Matrimonial relations; Spousal relationship; Irrevocable/irretrievable break down; Marriage dissolved.

Case Arising From

CIVIL ORIGINAL JURISDICTION: Transfer Petition (Civil) No. 1008 of 2023

Petition Filed Under Section 9 of The Hindu Marriage Act, 1955

Appearances for Parties

Dr. Arvind S. Avhad, Adv. for the Petitioner.

Paban K Sharma, Himanshu Shekhar, Pranab Kumar Nayak, Anchit Sripat, Arvind Kumar, Advs. for the Respondent.

Judgment / Order of the Supreme Court**Order**

1. The instant transfer petition came to be preferred by the petitioner-wife seeking transfer of the petition filed by the respondent-husband under Section 9 of the Hindu Marriage Act, 1955 being Matrimonial Case No. 2172/2022 titled as ‘Anurag Kumar S/o Ravindra Nath Sharma Vs. Trisha Singh’, pending before the Court of 7-Principal Judge, Family Court, Varanasi, U.P. to the Family Court at Pune, Maharashtra.
2. The transfer petition was dismissed for want of prosecution on 26th July, 2023. Subsequently, vide order dated 21st August, 2023, the transfer petition was restored to its original number and on the request of learned counsel for the parties, the matter was forwarded to the

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Supreme Court Mediation Centre for exploring the possibility of an amicable settlement between the parties. Pursuant to the efforts made by the Mediator, the parties had arrived at a settlement which was signed by the petitioner-wife and the respondent-husband before Shrabani Chakrabarty, Advocate/Mediator, Supreme Court Mediation Centre on 26th February, 2024. The relevant terms and conditions of the settlement agreement which in entirety shall form a part of this order are reproduced below: -

“5. Both the parties hereto have arrived at an amicable settlement on the following terms and conditions for dissolution of marriage by mutual consent: -

A. That the respondent husband continued to pay certain expenses voluntary to the tune of Rs.20 lakhs (Rupees twenty lakh only) from March 2020 upto October 2023 for his child to the bank account of the petitioner-wife including the period the parties were not together. Mediation took place at great length between the parties and parties want to part away taking divorce. The respondent- husband has agreed to pay full and final alimony of Rs.1 Crore 15 lakh (one crore and Fifteen lakhs only) to the petitioner-wife. The respondent husband has paid an amount of Rs.50 lakh to the petitioner wife on 22.02.2024. The remaining alimony will be paid will be as under:

- (i) Rs.50 Lakh (rupees fifty lakh) only shall be paid to the petitioner-wife on or before 31.08.2024;
- (ii) The remaining alimony of Rs. 15 lakh (rupees fifteen lakh) only will be paid on or before 31.12.2024.
- (iii) The gold and jewelries belonging to the petitioner-wife kept in a locker at Bank of India of Varanasi shall be taken by the petitioner within 14th to 20th March 2024. Petitioner will also collect silver items given on marriage from the respondent-husband.”

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3. It is thus manifest that there was a clear undertaking by the parties before the Mediator that they shall part ways peacefully.
4. It is also clear that the respondent-husband had voluntarily paid a sum of Rs. 20 lakhs for the support of his child during the period from March, 2020 to October, 2023. The respondent-husband also paid a sum of Rs. 50 lakhs to the petitioner-wife in the terms of the settlement. The remaining amount of permanent alimony has been agreed to be paid as per the schedule indicated in the settlement deed. Out of this agreed amount, the respondent-husband has paid a sum of Rs. 50,00,000/- (fifty lacs) only to the petitioner-wife.
5. However, today when the matter was taken up, this Court was apprised that the petitioner-wife seems to have resiled from the settlement agreement.
6. Learned counsel for the petitioner-wife has affirmed that his client has stopped instructing him in the matter. Acting on the terms of the settlement, the respondent-husband has already withdrawn the matrimonial case on 23rd April, 2024 which fact is recorded in the order sheet of the Family Court placed on record with I.A. No. 112620 of 2024 and thus he is abiding by the terms of settlement in letter and spirit.
7. It seems, the petitioner-wife having taken advantage of the settlement executed before the Mediator has managed to get the matrimonial case instituted by the respondent-husband withdrawn. She has also accepted a sum of Rs.50 lakhs from the respondent-husband towards part payment of the permanent alimony and thereafter, she is trying to resile from the settlement without any justification. The conduct of the petitioner-wife is clearly, recalcitrant inasmuch as she has disregarded the terms and conditions agreed before the Mediator in the settlement proceedings which were undertaken pursuant to the directions of this Court. Not only this, because of her conduct, the respondent-husband has been put to grave disadvantage inasmuch as he has withdrawn the matrimonial case and has also paid a significant proportion of the permanent alimony to the petitioner-wife in terms of the settlement agreement.
8. Learned counsel for the respondent-husband on instructions states that his client undertakes to abide by the remaining terms and conditions of the settlement agreement in letter and spirit and shall make due payments on the schedule dates if the marriage is dissolved.

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9. A similar situation was examined by this Court in the case of ***Ruchi Agarwal v. Amit Kumar Agrawal and Others***¹, the relevant excerpts whereof read as follows: -

“4. It is the above order of the High Court that is under challenge before us in this appeal. During the pendency of the proceedings before the courts below and in this Court, certain developments have taken place which have a material bearing on the merits of this appeal. The complaint which the appellant herein filed is dated 10-4-2002. Thereafter, a divorce petition was filed by the appellant wife before the Family Court at Nainital. In the said divorce petition a compromise was arrived at between the parties in which it was stated that the first respondent husband was willing for a consent divorce and that the appellant wife had received all her stridhan and maintenance in lump sum. She also declared in the said compromise deed that she is not entitled to any maintenance in future. It is also stated in the said compromise deed that the parties to the proceedings would withdraw all criminal and civil complaints filed against each other which includes the criminal complaint filed by the appellant which is the subject-matter of this appeal. The said compromise deed contains annexures with the particulars of the items given to the appellant at the time of marriage and which were returned. The said compromise deed is signed by the appellant. But before any order could be passed on the basis of the said compromise petition, the appellant herein wrote a letter to the Family Court at Nainital which was received by the Family Court on 3-10-2003 wherein it was stated that she was withdrawing the compromise petition because she had not received the agreed amount. But subsequently when her statement was recorded by the Family Court, she withdrew the said letter of 3-10-2003 and stated before the court in her statement that she wanted a divorce and that there is no dispute in relation to any amount pending. The court, after recording the said statement, granted a

1 (2005) 3 SCC 299

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divorce under Section 13-B of the Hindu Marriage Act, dissolving the marriage by mutual consent by its order dated 3-3-2004.

5. In the compromise petition, referred to hereinabove, both the parties had agreed to withdraw all the civil and criminal cases filed by each against the other. It is pursuant to this compromise, the above divorce as sought for by the appellant was granted by the husband and pursuant to the said compromise deed the appellant also withdrew Criminal Case No. 63 of 2002 on the file of the Family Court, Nainital which was a complaint filed under Section 125 of the Criminal Procedure Code for maintenance. It is on the basis of the submission made on behalf of the appellant and on the basis of the terms of the compromise, the said case came to be dismissed. However, so far as the complaint under Sections 498-A, 323 and 506 IPC and under Sections 3 and 4 of the Dowry Prohibition Act is concerned, which is the subject-matter of this appeal, the appellant did not take any steps to withdraw the same. It is in those circumstances, a quashing petition was filed before the High Court which came to be partially allowed on the ground of the territorial jurisdiction, against the said order the appellant has preferred this appeal.

6. From the above-narrated facts, it is clear that in the compromise petition filed before the Family Court, the appellant admitted that she has received *stridhan* and maintenance in lump sum and that she will not be entitled to maintenance of any kind in future. She also undertook to withdraw all proceedings, civil and criminal, filed and initiated by her against the respondents within one month of the compromise deed, which included the complaint under Sections 498-A, 323 and 506 IPC and under Sections 3 and 4 of the Dowry Prohibition Act from which complaint this appeal arises. In the said compromise, the respondent husband agreed to withdraw his petition filed under Section 9 of the Hindu Marriage Act pending before the Senior Judge, Civil Division, Rampur and also agreed to give a consent divorce as sought for by the appellant.

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7. It is based on the said compromise the appellant obtained a divorce as desired by her under Section 13-B of the Hindu Marriage Act and in partial compliance with the terms of the compromise she withdrew the criminal case filed under Section 125 of the Criminal Procedure Code but for reasons better known to her she did not withdraw that complaint from which this appeal arises. That apart after the order of the High Court quashing the said complaint on the ground of territorial jurisdiction, she has chosen to file this appeal. It is in this background, we will have to appreciate the merits of this appeal.

8. Learned counsel appearing for the appellant, however, contended that though the appellant had signed the compromise deed with the abovementioned terms in it, the same was obtained by the respondent husband and his family under threat and coercion and in fact she did not receive lump sum maintenance and her *stridhan* properties. We find it extremely difficult to accept this argument in the background of the fact that pursuant to the compromise deed the respondent husband has given her a consent divorce which she wanted, thus had performed his part of the obligation under the compromise deed. Even the appellant partially performed her part of the obligations by withdrawing her criminal complaint filed under Section 125. It is true that she had made a complaint in writing to the Family Court where Section 125 CrPC proceedings were pending that the compromise deed was filed under coercion but she withdrew the same and gave a statement before the said court affirming the terms of the compromise which statement was recorded by the Family Court and the proceedings were dropped and a divorce was obtained. **Therefore, we are of the opinion that the appellant having received the relief she wanted without contest on the basis of the terms of the compromise, we cannot now accept the argument of the learned counsel for the appellant. In our opinion, the conduct of the appellant indicates that the criminal complaint from which this appeal arises was filed by the wife only to harass the respondents.**

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9. In view of the abovesaid subsequent events and the conduct of the appellant, it would be an abuse of the process of the court if the criminal proceedings from which this appeal arises is allowed to continue. Therefore, we are of the considered opinion to do complete justice, we should while dismissing this appeal also quash the proceedings arising from criminal case Cr. No. 224 of 2003 registered in Police Station Bilaspur (District Rampur) filed under Sections 498-A, 323 and 506 IPC and under Sections 3 and 4 of the Dowry Prohibition Act against the respondents herein. It is ordered accordingly. The appeal is disposed of.”

(emphasis supplied)

10. On going through the material available on record, we find that the matrimonial relations between the spouses have broken down irrevocably and there is no possibility of reconciliation and revival of the spousal relationship. Hence, looking at the conduct of the petitioner-wife as indicated *supra* and the other attending facts and circumstances, we are inclined to exercise the powers under Article 142 of the Constitution of India so as to grant decree of divorce and hence, the marriage between the petitioner and the respondent is dissolved.
11. However, it is made clear that the respondent in terms of the settlement shall make the remaining payment to the petitioner.
12. The petition is allowed in these terms.
13. Decree be prepared accordingly.
14. No order as to costs.
15. Pending application(s), if any, shall stand disposed of.

Result of the case: Petition allowed.