

Delhi High Court

Avneesh Sood vs Tithi Sood on 30 April, 2012

Author: Vipin Sanghi

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 09.02.2012

% Judgment delivered on: 30.04.2012

+ CONT.CAS (C) 559/2011 & C.M.1932/2012

AVNEESH SOOD

..... Petitioner

Through: Mr. Harish Malhotra, Senior
Advocate with Ms. Malini Sud,
Ms.Vidhi Goel and Ms. Bhumika
Menon, Advocates.

versus

TITHI SOOD

..... Respondent

Through: Ms. Malvika Rajkotia with Ms.Arпита
Rai, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

JUDGMENT

VIPIN SANGHI, J.

1. The present contempt petition has been filed under Sections 2, 10 and 12 of the Contempt of Courts Act, 1971 by the petitioner to take action against the respondent for withdrawing from her undertaking given to the Court, at the time of filing of the petition for mutual divorce, in the matrimonial Court on 14.09.2010.

2. The petitioner, Avneesh Sood and the respondent, Tithi Sood are husband and wife respectively. Their marriage was solemnized on 08.11.2001 according to Hindu rites and ceremonies. Out of the wedlock one daughter, Aisheeya, was born on 23.12.2002, who is studying in Step by Step World School, Noida.

3. The petitioner submits that after sometime of the marriage, serious differences arose between the parties. The parties negotiated between themselves and with the intervention of the family friends, both arrived at a Memorandum of Understanding (MOU) on 27.08.2010. They agreed to seek divorce by mutual consent.

4. It was also agreed between the parties that the petitioner will pay a lumpsum amount of Rs. Seven crores to the respondent, as a one-time settlement in lieu of all the claims of respondent towards

maintenance, alimony, istridhan, jewellery etc. The petitioner agreed to pay Rupees One Crore Fifty Lakhs at the time of filing of the divorce petition to seek divorce by mutual consent, i.e. at the first motion, and the balance amount was to be paid at the time of filing of the second motion. The respondent also agreed to make a statement before the Court in support of the divorce petition. It was also agreed that the respondent will vacate the matrimonial home within a period of sixty days of the first motion going through.

5. As per the MOU, the parties agreed that the custody of the child Aisheeya will be with the petitioner exclusively, and he will take care of day to day needs of the child. Respondent was entitled to visit the child and also to take her for outings, including sleepover and to spend time with her, if the child agrees to it.

6. Consequently, In pursuance of this MOU, a joint petition for dissolution of marriage by mutual consent (under section 13-B(1) of Hindu Marriage Act) was filed by both the parties, incorporating the terms of settlement arrived between the parties, as contained in the MOU. The statements of both the parties were recorded by the matrimonial Court on 14.09.2010. Both the petitioner and the respondent reiterated the terms of settlement arrived between them and also undertook to abide by them. The Court, acting on the statements of the parties, accepted the first motion petition of the parties. The Court also directed both the parties to remain bound with the terms and conditions agreed upon between them.

7. The petitioner paid an amount of Rupees One Crore Fifty Lakhs, as agreed, to the respondent. The respondent vacated the matrimonial home, 35 Golf Links, on 04.11.2010 with all her belongings and handed over the possession to the petitioner.

8. Since there is a mandatory requirement of cooling off period of six months before which second motion petition cannot be filed, and the first motion petition was accepted on 14.09.2010, the second motion petition could have been filed only after 14.03.2011. The petitioner submits that the draft divorce petition for moving the second motion was sent to the respondent.

9. The petitioner is aggrieved by the fact that even after the passage of more than four months after 14.03.2011, the respondent has not signed the second motion petition and is not coming forward to make a statement before the matrimonial Court in the second motion to obtain a divorce.

10. Notice was issued in this petition and a chamber meeting was held between the parties, as well as with the child separately, on 15.12.2011. The parties broadly agreed in the meeting in relation to grant of visitation rights to the respondent. Both the parties also agreed that they will take further steps in their divorce proceedings and will bring on record their settlement on the next date of hearing. The matter was adjourned to 22.12.2011.

11. However, on the next date of hearing the counsel for the respondent submitted that the respondent is not agreeable to the settlement which was worked out in the chamber meeting, and that the respondent will contest this petition on merits. Consequently, pleadings were completed and both the parties were heard.

12. The submission of learned senior counsel of the petitioner is that the respondent had entered into the MOU voluntarily, and having made a statement in and having given an undertaking to the Court affirming the same, she cannot, out of her own sweet will, withdraw from the said agreement/undertaking.

13. Mr. Malhotra, learned senior counsel for the petitioner submits that the respondent, to rescind from the understanding reached between the parties, sent various notices and e-mails through her counsel.

14. The petitioner submits that the respondent is going to the school of the child daily, which is upsetting the child and causing disturbance in the studies of the child, despite it being clearly agreed between the parties that the custody of the child will be with the petitioner. This, according to the petitioner, is in clear violation of the settlement. He refers to the averments made by the respondent in the reply in which she has admitted that she has met the child 102 times in the school.

15. He also refers to the notice sent by the counsel for the respondent on 26.09.2011, in which it was mentioned that the only reason for inability to file a second motion divorce petition is on account of ensuring modality of having Aisheeya stay with Tithi permanently .

16. Mr. Malhotra submits that the amount settled between the parties was in lieu of all the respondent's claims including alimony, stridhan etc. and there was no other amount that the petitioner was obliged to pay to the respondent. He submits that the respondent has done a complete volte face in stating that the money was not limited to the amounts mentioned in the MOU and a house and a chauffeur driven car was also promised by the petitioner.

17. Mr. Malhotra submits that the petitioner had fulfilled his part of the obligation and paid an amount of Rupees One Crore Fifty Lakhs to the respondent at the time of moving the first motion petition. He submits that the respondent has taken benefit of the understanding reached between the parties by receiving the said amount. He submits that the said amount was paid in consideration of the respondent being agreeable to seek divorce by mutual consent and the respondent cannot be allowed to back track from the agreement.

18. He places reliance on the case of Shikha Bhatia v. Gaurav Bhatia & Ors., being CONT. CAS(C) 274/2009, decided on 13.05.2010, to contend that the settlement arrived between the parties has to be honoured, and any violation of that understanding will amount to contempt of Court.

19. The petitioner submits that the respondent has willfully and intentionally disregarded and disrespected the solemn undertaking given by her to the matrimonial Court, whereby the parties were directed to remain bound. The petitioner submits that the respondent has interfered in the administration of justice and is liable to be punished for her contemptuous acts.

20. On the other hand, learned counsel for the respondent Ms. Malvika Rajkotia submits that the allegations of the petitioner are completely false. She submits that the respondent is not a greedy person as is being made out by the petitioner.

21. She submits that the primary concern of the respondent at the time of entering into settlement with the petitioner, and at present also, is the welfare of the child. She submits that the agreement was entered by the respondent only for the reason that the troubled relations of the parties should not affect the upbringing of the child, and it was never the intention of the respondent to completely give up the child.

22. She submits that the petitioner and his family have done everything they can do to traumatize and tutor the child so that the child turns hostile against the respondent. To do so, they started creating obstruction in the access of the respondent towards the child by not allowing the respondent to talk to the child. The petitioner would switch off his phone when the respondent would call him to talk to the child. She submits that the petitioner would take away the child on long overseas holidays without informing the respondent, and she was not even informed of the child's health condition, whenever she was not keeping well.

23. Learned counsel for the respondent submits that the respondent visits the school of the child not to embarrass the child or to create disturbance in her studies, but out of genuine concern which every mother would have for her child. She submits that the respondent goes to the school to reassure the child that her mother is there for her. She submits that the primary reason for the respondent not coming forward for moving the second motion petition for divorce was that the arrangement arrived between the parties has not been reflected in the true sense, and the respondent has every apprehension that after the divorce, even the minimal access to the child will be denied by the petitioner. Ms. Rajkotia submits that the respondent only wants that the interest of the child should be secured.

24. She further submits that the whole purpose of the legislature providing a "cooling off" period, of at least six months, between the first motion and second motion petition is to allow the parties to reconsider their decision whether, or not, they wish to proceed further for divorce, which would be a life changing event for them. She places reliance on the case of *Sureshta Devi v. Om Prakash*, (1991) 2 SCC 25, to contend that a party can unilaterally withdraw the consent at any time till passing of the divorce decree.

25. She further refers to decision of Supreme Court in *Hitesh Bhatnagar v. Deepa Bhatnagar*, AIR 2011 SC 1637.

26. Counsel of the respondent thus submits that the undertaking given by the respondent to the Court cannot be contrary to her statutory rights. She submits that the statutory rights of the respondent cannot be taken away by mere agreement. The respondent submits that she cannot be compelled to give up her issues related to the child's visitation/custody under the threat of contempt.

27. Before I proceed to deal with the legal submission of learned counsel for the respondent, that an undertaking given by a party to the Court to remain bound by her agreement to obtain divorce by mutual consent, is not enforceable, because of the statutory provision contained in Section 13B of the Hindu Marriage Act, (which grants a cooling off period to both the husband and wife to rethink

their initial decision to agree to divorce by mutual consent), let me first take note of a few relevant facts.

28. Admittedly, the marriage between the petitioner and respondent has gone sour. The parties, admittedly, have not lived as husband and wife since 15.08.2009. Efforts for conciliation have also failed and they have both submitted that their marriage has broken down. It is also the admitted case of the parties that they jointly moved a petition under Section 13 B(1) of the Hindu Marriage Act for dissolution of marriage by a decree of divorce by mutual consent. This petition was filed on 14.09.2010. This joint petition contains the various terms & conditions agreed to by the parties. Some portions of this petition may be reproduced, as they are relevant:

"5. For the last so many years there have been differences between the petitioner No. 1 and petitioner No. 2 and these have now become irreconcilable and the parties hereto have mutually decided to part ways and dissolve the marriage subject to the terms set out herein. The Petitioners have not co-habited as husband and wife since more than the last one year w.e.f. 15.8.09 and have been living in different portions of the house though under the same roof.

6. That as the marriage is dead and there is no likelihood of the Petitioners living together again, the Petitioners have amicably settled all their matrimonial disputes, difference and claims against each other and have decided to seek a decree of Divorce by Mutual Consent dissolving their marriage under the following terms and conditions:

(a). That the Petitioner No. 2 specifically agrees that she has in her possession all her belongings and valuables including her wari, daaj, Stridhan, jewellery, gifts given to her by both sides before, at and after the marriage, and has no claim or grievance against the Petitioner No. 1 and his family members in this regard.

(b). In full and final settlement of every claim of the Petitioner No.2, whether it be towards alimony, maintenance (past, present and future) or on any other ground whatsoever, the Petitioner No. 1 will pay the Petitioner No. 2 a sum of Rs.7,00,00,000/- (Rupees seven crores only). With such payment, the Petitioner No. 2 will be left with no claim or grievance against the Petitioner No. 1 or his family members on any ground whatsoever. The payment of Rs.7,00,00,000/- (Rupees seven crores only) by the Petitioner No. 1 to the Petitioner No. 2 will be as under:

(i). That the Petitioner No. 1 will pay to the Petitioner No. 2 a sum of Rs.1,50,00,000/- (Rupees one crore fifty lacs only) vide Cheque No. 862630 dated 6.9.2010 drawn on Oriental Bank of Commerce, Nehru Place, New Delhi in Court on the date the statement of the parties are recorded before the Hon ble Court in support of this first motion under Section 13-B (1) of the Hindu Marriage Act, 1955.

(ii). The Petitioner No. 1 will pay to the Petitioner No. 2 the balance amount of Rs.5,50,00,000/- (Rupees Five Crore Fifty Lacs only) by Cheque in Court on the date the statement of the petitioner No. 2 is recorded in support of the second motion u/s 13-B (2), Hindu Marriage Act, 1955.

(iii). The Petitioner No. 2 will vacate the matrimonial home at 35 Golf Links, New Delhi alongwith all her clothes and possessions which she acknowledges and admits are with her in her custody within a maximum period of 60 (sixty) days from filing of this Motion.

(iv). In case the Petitioner No. 2 does not appear for making statement in support of the Second Motion within the period prescribed, the Petitioner No. 2 will forfeit her claim to the balance payment of Rs.5,50,00,000/- (Rupees Five Crore Fifty Lacs only).

7. The Petitioner No. 2 specifically agrees that the custody of the girl child Aisheeya will be exclusively with the Petitioner No. 1 and the child will be fully taken care of and her day to day needs provided for by the Petitioner No.1 and the paternal grandparents Mr. Raman Kumar Sood and Mrs. Madhu Sood.

8. The Petitioner No. 2 will however, be entitled to visit child at 19, Golf Links, New Delhi or take her for outings, including sleepovers, weekends, if the child so desires.

9. After the grant of the first Motion the Petitioner No. 2 will be entitled to take the child on vacations and if the child is agreeable to the same and subject to her school schedules."

29. When the first motion petition was taken up for consideration before the learned ADJ-01, New Delhi, the parties made their respective statements on oath before the Court. Since we are concerned in this case with the alleged breach of an undertaking given by the respondent to the Court, I may extract a few portions of the said solemn statement made by the respondent before the learned ADJ-01, New Delhi:

"There is no possibility of any reconciliation between me and petitioner no.1 Sh. Avneesh Sood.

Our marriage has irretrievably broken down. Myself and petitioner no.1 have jointly filed the petition no.98/10, it bears my signatures at point A1 and B1 and those of my counsel at point C1. The same is Ex. P3.

My affidavit supporting the petition is Ex. PW2/A. It bear my signatures at points A and B. Vakalatnama of my counsel bears my signatures at point A. It bears my counsel s signatures at point B. The vakalatnama is Ex. P6. I have filed the present petition and signed the same along with the documents voluntarily, out of my free

will and without any threat or coercion from any quarter. I seek a decree of divorce from petitioner no.1 by way of mutual consent.

I have settled all the matrimonial disputes with petitioner no.1 amicably. It is mutually agreed that petitioner no.1 shall pay a sum of Rs.7,00,00,000/- (Rupees Seven Crores) to me in full and final settlement. Out of the said amount a sum of Rs.1,50,00,000/- (Rupees One Crore and Fifty Lakhs) has been paid today to me by petitioner no.1 vide cheque no.862630 dated 6.9.2010 drawn on Oriental Bank of Commerce, Nehru Place, New Delhi, in my favour. The balance amount of Rs.5,50,00,000/- (Rupees Five Crore and Fifty Lakhs) shall be paid to me by petitioner no.1 at the time of statement in second motion petition. I shall be bound by the terms and conditions mentioned in the petition Ex. P3 in para no.6 on page 4 to para no.11 on page 7.

I reiterate that I have given my consent to file the present petition voluntarily, without any pressure, duress or coercion. There is no collusion between me and petitioner no.1 in institution of present petition.

I have made the above said statement voluntarily, out of free will and after due contemplation and understanding of its implications". (emphasis supplied)

30. The learned ADJ-01, New Delhi then proceeded to pass the order dated 14.09.2010. In paragraph 7 of his order, the learned ADJ-01, New Delhi, has observed as follows:

"7. Nothing on record suggests any collusion between the parties. Parties have also stated that they have settled all their matrimonial disputes amicably as per the petition Ex.P3 and they shall be bound by the terms and conditions mentioned therein". (emphasis supplied)

31. Between 14.09.2010 and 14.03.2011, i.e. for exactly six months, it appears that the respondent did not take a stand contrary to the aforesaid terms & conditions. However, on 14.03.2011, the respondent through her counsel sent a communication to the petitioner's counsel. In this communication it was claimed by the respondent that the aspect of custody of the minor child Aisheeya was arrived at only with a view not to disturb the minor child Aisheeya from her family surroundings of her home, and in view of the fact that the respondent did not have an alternate residence at the time when the first motion divorce petition was filed. It was claimed that paragraphs 7, 8 & 9 of the petition for first motion were signed with certain assurances given to the respondent by the petitioner and his parents. According to the respondent, this assurance was that, eventually, the minor child would be comfortable enough with alternative accommodation for her care to be transferred to her mother. It was claimed that the assurance was that, primarily the custody of the minor child would be with the mother, regardless of the fact that on paper it was mentioned otherwise. It was claimed that even though six months have passed, the said so-called arrangement has not been put in place. The present status does not reflect the true understanding between the parties. Allegations were made with regard to the behaviour of the minor child vis-à-vis

the petitioner, his parents and the respondent. The respondent's counsel stated that:

"Further, under the circumstances it is imperative that the arrangement of paragraphs No.7, 8 and 9 of the first motion divorce be revised and it be clarified that it is the mother who is the primary care given for Aisheeya.

Tithi has been involved considerably in Aisheeya's school with the hope and expectation of participating in Aisheeya's growing up. She does not have a career and is focused to spending quality time with her daughter. This was the understanding even when the first motion was signed but it is not being allowed to fructify.

Tithi cannot compromise on a document which takes away Aisheeya's basic right to enjoy and have the comfort and security of her mother's continuous presence in her life".

32. The respondent in this communication also demanded that the minor child's financial interest be secured by some provision, by putting properties in her name and managed for her benefit. It was claimed that there was pressure exerted upon the respondent at the time of signing of the first motion divorce petition and the respondent feared, and was reluctant, to confront a family as powerful as that of the petitioner. The respondent also stated that she was not in an equal bargaining position with that of the petitioner at the time of signing of the first motion petition. It was stated that the purpose of the „cooling off period“ is to revisit the circumstances of the terms of the divorce. This is what, according to the respondent, she had done. The respondent sought that the minor child should be with her for five days of the week and the weekends be spent by the minor child with her father and her grandparents. It was also claimed that the respondent was made to sign the documents stating that she has received her entire jewellery, which was not the case. According to the respondent, the understanding was that the jewellery would be left with the petitioner and his family on the assurance that it would be given to the Aisheeya, the minor child. The respondent sought some security to ensure the same.

33. From the aforesaid communication it clearly emerges that the respondent sought to walk out of the agreement arrived at between the parties, as contained in the joint petition. The respondent not only wanted a complete re-hash of the custody and visitation rights qua the child, but also raised other issues with regard to the monetary compensation payable by the petitioner to the respondent in full & final settlement of all her claims. The respondent sought to justify the same on the basis that the first motion petition has been signed by her under duress, coercion and threat and on a verbal assurance which, in fact, ran contrary to the express terms contained in the joint petition.

34. In her reply as well, the respondent states that the settlement amount was not limited to the amount stated to be in the divorce petition (first motion). According to the respondent, the petitioner had assured that they would also provide a house for the respondent.

35. The submission of the respondent with regard to exercise of coercion, undue influence or pressure by the petitioner upon the respondent at the time of making the first motion petition cannot be gone into in the present proceedings. Even otherwise, there appears to be no substance in these allegations. The first motion petition appears to be the result of mutual negotiation and agreement. The respondent, under the said agreement, agreed to receive Rs. 7 crores as a one-time settlement in lieu of her claim for stridhan, jewellery, gifts and other items, maintenance and alimony. The memorandum of understanding dated 27.08.2010 is executed on non-judicial stamp paper of Rs.1,000/-; is signed by the parties, and; signed by two witnesses. The respondent acted on the said memorandum of understanding by moving the first motion petition. Even in those proceedings, the respondent was represented by the same counsel who is representing the respondent at this stage in these proceedings. There is not a whisper in the first motion petition that the memorandum of understanding was extracted by the petitioner by exercise of coercive or undue influence, or that the assurances given by the petitioner and his parents goes contrary to, or beyond the terms of settlement recorded in the MOU or the divorce petition. Even when she made her statement before the learned ADJ, the respondent did not say that there were other terms and conditions agreed to by the parties other than those reflected in the MOU or the Divorce Petition.

36. Even after the passing of the order in the first motion petition on 14.09.2010, the respondent did not question the correctness of any of the terms of the MOU on any ground, much less on the ground of coercion or undue influence being exercised by the petitioner upon the respondent.

37. So far as the respondent's submission that the terms and conditions contained in the memorandum of understanding and the first motion are contrary to the understanding of the parties vis-a-vis the custody of the minor child, are concerned, once again I find that there is no merit in the same. There was nothing to prevent the parties from recording the arrangement as now sought to be propounded by the respondent, if that was so. It is abundantly clear to me that the respondent has undergone a change of mind and now wants to take over the custody of the minor child, contrary to the express understanding reached between the parties earlier. To defend her present position, she is now making a baseless and unsubstantiated allegation of undue influence, coercion etc. against the petitioner.

38. If the respondent is so minded and if she is entitled, in law, to assail the memorandum of understanding and the terms and conditions contained in the first motion petition, the respondent may take appropriate steps. However, this Court, in these proceedings, is not required to examine the said assertions of the respondent founded upon alleged exercise of coercion or undue influence, or upon the plea that the actual understanding of the parties was different from what stands recorded in the memorandum of understanding and the first motion petition. So far as this Court is concerned, this Court will proceed on the basis that the MOU and the first motion had been arrived at, and signed by the parties out of their own free will and consent, and the terms and conditions contained in the MOU and the first motion petition mean what they plainly say, and not what is contended by the respondent before me.

39. The issue which arises for my consideration is whether the conduct of the respondent in resiling from her undertaking given to the Court, by which she was bound, tantamounts to contempt of

Court. "Civil Contempt" is defined to mean willful disobedience of any judgment, decree, direction, order, writ or other process of the Court or wilfull breach of an undertaking given to a Court. The respondent has sought to confuse the issue by asserting that she has a right not to give her consent to proceed further under Section 13-B(2) of the Hindu Marriage Act after the "cooling off" period of 6 months has expired. No doubt, the respondent cannot be compelled to give her consent for moving the second motion petition under Section 13-B(2), and she has the right to withhold such consent. But does that mean that a party who has given an undertaking to the Court that he/she shall grant his/her consent for moving the second motion petition, as a part of a settlement wherein he/she has derived benefits and advantage, can simply walk out of the said agreement and undertaking given to the Court without the consequences flowing from the Contempt of Courts Act? In my view the answer to this question would normally be "No", though there may be exceptional circumstances in which a party may be justified in not granting his/her consent to move the second motion petition despite the undertaking given to the Court on account of extraordinary developments which may take place after the giving of the undertaking to the Court, and before the time for giving the consent for the second time under Section 13-B(2) arrives.

40. The issue before the Supreme Court in *Sureshta Devi* (supra) was whether consent once given can be withdrawn in a proceeding for divorce by mutual consent.

41. The Supreme Court in para 13 of *Sureshta Devi* (supra) observed as under:-

"13. From the analysis of the section, it will be apparent that the filing of the petition with mutual consent does not authorise the Court to make a decree for divorce. There is a period of waiting from 6 to 18 months. This interregnum was obviously intended to give time and opportunity to the parties to reflect on their move and seek advice from relations and friends. In this transitional period one of the parties may have a second thought and change the mind not to proceed with the petition. The spouse may not be a party to the joint motion under sub-section (2). There is nothing in the section which prevents such course. The section does not provide that if there is a change of mind it should not be by one party alone, but by both. The High Courts of Bombay and Delhi have proceeded on the ground that the crucial time for giving mutual consent for divorce is the time of filing the petition and not the time when they subsequently move for divorce decree. This approach appears to be untenable. At the time of the petition by mutual consent, the parties are not unaware that their petition does not by itself snap marital ties. They know that they have to take a further step to snap marital ties. Sub- section (2) of Section 13-B is clear on this point. It provides that "on the motion of both the parties. ... if the petition is not withdrawn in the meantime, the Court shall ... pass a decree of divorce ...". What is significant in this provision is that there should also be mutual consent when they move the Court with a request to pass a decree of divorce. Secondly, the Court shall be satisfied about the bona fides and the consent of the parties. If there is no mutual consent at the time of the enquiry, the Court gets no jurisdiction to make a decree for divorce. If the view is otherwise, the Court could make an enquiry and pass a divorce decree even at the instance of one of the parties and against the consent of the other.

Such a decree cannot be regarded as decree by mutual consent." (emphasis supplied)

42. In Hitesh Bhatnagar (supra), both husband and wife had filed mutual divorce petition. After the passing of the first motion petition the wife withdrew her consent before the decree of divorce could be granted. The husband insisted for passing of the decree and the matter travelled up to Supreme Court. The Supreme Court framed the following question to be determined "Whether the Court can grant a decree of divorce by mutual consent when the consent has been withdrawn by one of the parties, and if so, under what circumstances".

43. The Court answered the above mentioned question in the following words:-

"15)..... Besides, from the language of the Section, as well as the settled law, it is clear that one of the parties may withdraw their consent at any time before the passing of the decree. The most important requirement for a grant of a divorce by mutual consent is free consent of both the parties. In other words, unless there is a complete agreement between husband and wife for the dissolution of the marriage and unless the Court is completely satisfied, it cannot grant a decree for divorce by mutual consent. Otherwise, in our view, the expression „divorce by mutual consent would be otiose.

16) In the present fact scenario, the second motion was never made by both the parties as is a mandatory requirement of the law, and as has been already stated, no Court can pass a decree of divorce in the absence of that. The non-withdrawal of consent before the expiry of the said eighteen months has no bearing. We are of the view that the eighteen month period was specified only to ensure quick disposal of cases of divorce by mutual consent, and not to specify the time period for withdrawal of consent, as canvassed by the appellant."

44. In neither of these cases the Supreme Court was dealing with the issue, whether the breach of an undertaking given to the Court in terms of a settlement arrived at between the parties, to grant consent for the second motion petition, would amount to civil contempt, or not. A party is not bound at the stage of moving the first motion petition to give an undertaking to the Court that he/she shall grant his/her consent for moving a second motion petition as well. The law gives both the spouses the right to opt out of the divorce proceedings, and not to give their respective consent to proceed with the second motion. In the present case as well, it was open to the respondent not to have given her undertaking to the Court, that she would give her consent to move the second motion petition. However she did, as a matter of fact, give her undertaking to the Court to this effect. She gave this undertaking on account of her settlement with the petitioner wherein she received a substantial amount of Rs.1.5 crores from out of the total settlement amount of Rs. 7 crores. Had she not agreed to give the said undertaking and, in fact, not given the said undertaking to the Court, obviously the settlement agreement would not have been acted upon by the petitioner and he would not have paid the said amount to the respondent which she accepted, pocketed and appropriated.

45. In Shikha Bhatia (supra) the wife had filed an FIR against the husband. The husband filed the anticipatory bail application and during pendency of that petition, a settlement was reached between the parties to the effect that the parties will seek divorce by mutual consent, and husband

will pay 8 lakhs to the wife at different stages and all the pending cases between the parties will be withdrawn by both the parties. Acting on that settlement the anticipatory bail was granted to the husband and he also paid certain amount to the wife. Thereafter the husband did not comply with the terms of the settlement and the Court held him guilty of contempt of Court. The Court observed:

"The respondents once having taken the advantage of the agreement entered into the terms of the settlement cannot be withdrawn by the respondents to suit his whims and fancies and to the detriment of the petitioner."

46. As aforesaid, the respondent was not bound to give the said undertaking to the Court. However, having given the same, voluntarily and consciously, with a view to derive the benefit of the agreement with the petitioner, if the respondent walks out of the same, only for the reason that she has changed her mind with regard to the custody/visitation rights of the minor child, she must take the consequences. Pertinently, even now, the respondent is not averse to proceeding with the mutual divorce petition and filing a second motion petition. However, she wants to do the same on her own terms in relation to alimony and custody/visitation rights, contrary to her earlier agreement which formed the basis of the first motion petition. It is, therefore, clear that her decision to withhold her consent for moving the second motion petition does not stem out of any new development or mitigating circumstance which would justify the same, but only on account of her having a change of mind on the aforesaid two aspects. It is not that the respondent has decided to continue with the marriage with the petitioner. She has not expressed any desire to resume marital life with the petitioner. It is not her case that her initial decision to move the mutual consent divorce petition was a decision taken by her in haste or was a mistake. Even now she does not dispute the fact that the marriage has, in fact, broken down but she wants to use her right not to give consent for the second motion petition as a bargaining point, which the petitioner prefers to call a black mail tactics .

47. No doubt the law gives the right to both the parties to take a decision whether, or not, to continue with the mutual consent divorce proceedings, and for that purpose a cooling off period of at least 6 months is provided under the scheme of the Act. It does not mean that an undertaking given by them to the Court to continue their consent even for moving the second motion petition can be said to be an illegal consent or undertaking or an undertaking recorded by the Court without jurisdiction. She, while giving her undertaking, did not undertake to commit an illegality, or to do anything which is barred by law. No one compelled the respondent to give the said undertaking. She could have kept her options open whether, or not, to give her consent for moving the second motion petition at the end of the cooling of period of six months. But she did consciously decide to give the said undertaking to the Court. This she did to derive benefit under the agreement with the petitioner.

48. If a party is permitted to resile from an undertaking given to the Court, in pursuance of an agreement arrived at between the parties, without any penal consequences, the same would completely destroy the sanctity attached to such solemn undertakings, and would encourage dishonesty and disrespect for the judicial process. It would also undermine the majesty and authority of courts, and instill doubts in the minds of the litigating public with regard to the efficacy

of the judicial process and, in particular, with regard to the process of accepting undertakings by the Court and of the efficacy of the undertakings given to the Court by a party, and the acceptance thereof by the Court, as a part of a settlement process. It was on account of the respondent's conduct of voluntarily giving her undertaking to the Court to abide by her settlement, and the acceptance thereof by the Court, which led the petitioner to agree to pay an amount of Rs. 7 crores in all to the respondent, and to part with a huge amount of Rs. 1.5 cores at the first motion stage. The respondent cannot make mockery of the law and mock at the Courts by now claiming that she has decided not to give her consent for moving the second motion petition, and that too for the reasons that she wants to renegotiate the terms of settlement, both in relation to her monetary compensation and custody/ visitation rights in respect of the minor child. It is clear that the respondent has exploited and abused the process of the Court to serve her purpose, without intending to adhere to her solemn undertaking given to the Court.

49. A Division Bench of the Karnataka High Court in *S. Balasubramaniam v. P. Janakaraju & Anr.*, 2004 (5) Kar. LJ 338 (DB), rejected the defence set up by the respondent that the court which initially passed the eviction decree did not have jurisdiction, and the decree was a nullity and, consequently, breach of an undertaking given to the revisional court did not tantamount to contempt of court.

50. The petitioner instituted an eviction petition under the Karnataka Rent Control Act. That petition was allowed. The revision petition filed by the tenant under the said Act was dismissed by the District Court. A second revision petition was preferred before the Karnataka High Court. During the pendency of that revision petition, the tenant sought three years time to deliver back the possession of the premises to the landlord. This was agreed to by the landlord. Accordingly, the tenant filed an undertaking before the court agreeing to, inter alia, voluntarily hand over the premises at the end of three years to the landlord. The revision petition was disposed of by the learned Single Judge in view of the said settlement. At the end of three years period, the tenant did not vacate the premises as undertaken. Consequently, the landlord filed the contempt petition alleging breach of the undertaking by the respondent/tenant, and praying for initiation of contempt proceedings.

51. The defence taken by the tenant was that the eviction petition under the Karnataka Rent Control Act, as initially filed, was not maintainable and that the landlord should have preferred a civil suit for ejectment after terminating the tenancy under the provisions of the Transfer of Property Act.

52. When the eviction petition was preferred, the position in law was that section 31 of the Karnataka Rent Control Act, which entitled the landlord of a non residential premises, rent whereof was more than Rs.500/- per month, to file a civil suit for ejectment, had been struck down by the Karnataka High Court. It is for this reason that the landlord had proceeded to file an eviction petition by resort to the provisions of the Karnataka Rent Control Act. However, after the recording of the compromise before the High Court in the second revision proceedings, the Supreme Court upheld the said provision. The tenant, therefore, argued that since section 31 of the Karnataka Rent Control Act was declared by the Supreme Court to be valid, the eviction proceedings could not be instituted by resort to the provisions of the Karnataka Rent Control Act. It was argued that the

eviction decree passed against the tenant was itself a nullity, as it had been passed without jurisdiction.

53. The Division Bench of the Karnataka High Court, speaking through Mr. Justice R.V. Raveendran, as his lordship then was, firstly rejected this contention and held that the order of eviction was not a void order, but a voidable order. The said order was not avoided by the respondent/tenant at any stage - even till the stage when he gave his undertaking. The order passed by the learned Single Judge disposing of the second revision petition could, therefore, not be called a void order. That order of the learned Single Judge could not even be called a voidable order.

54. The Division Bench then proceeded to consider whether the respondent/tenant who had given a solemn undertaking to the court to vacate the premises on the appointed day, and thereby had secured an advantage/benefit, i.e. three years time to vacate the premises, which he had availed of, is absolved from complying with such an undertaking.

55. The Division Bench, in paras 20 and 22 held as follows:

"20. The principles relating to contempt are clear. The definition Civil Contempt includes wilful breach of an undertaking given to a Court. Public interest requires that solemn undertakings given to a Court with the intention of obtaining any benefit should not be breached willfully. No litigant can be allowed to wriggle away from a solemn undertaking given to the Court, as it will open dangerous trends and defeat the very purpose of giving undertakings to Court. While Courts will not be vindictive, Courts cannot also allow themselves to be trifled with by violating the solemn undertakings given to them. Litigants ought to understand that once they given an undertaking to a Court, they should comply with it in all circumstances, the only exceptions being fraud or statutory bar. They cannot break an undertaking with impunity and then attempt to justify it. The breach of solemn undertaking given to a Court is a serious matter and will have to be dealt with seriously. Further, while execution of a decree is a matter between the decree holder and the judgment debtor, an undertaking to a Court is a matter between the Court and the person who gives the undertaking to the Court. The right of a landlord to get his tenant vacated in terms of an order of eviction has nothing to do with the solemn undertaking given by a tenant to the Court to vacate the premises to obtain the benefit of grant of time for vacating the premises. It therefore follows that even if the order of eviction becomes unexecutable for any reason, that will not absolve the person giving the undertaking to Court, from acting in term of it.

22. We are of the view that the validity of order of eviction, has nothing to do with a contempt action taken for any willful breach of solemn undertaking given by a litigant to the Court to vacate the premises. Reliance place on the decision rendered with reference to disobedience of orders passed without jurisdiction, as noticed above, may not be relevant, as the contempt alleged is not wilful disobedience of any order/judgment, but wilful breach of an undertaking given to this Court. We,

therefore, hold that irrespective of the fact that an order of eviction is executed or unexecutable, it will not absolve the respondents from their liability and responsibility to act in terms of the solemn undertaking given to the Court. Failure to vacate the premises as undertaken by the tenants - respondents is clearly a willful breach of undertaking given to the Court which is a civil contempt punishable under the Act". (emphasis supplied)

56. From the aforesaid, it is clear that the mere inexecutability of the undertaking given by the respondent to the learned ADJ-01, New Delhi in the present case, would not absolve the respondent from the liability and responsibility to act in terms of the solemn undertaking given to the Court, and her failure to act in terms of her undertaking is clearly her willful breach of her undertaking given to the Court, which is a civil contempt punishable under the Contempt of Courts Act.

57. I now turn to examine the respondents' conduct in visiting the minor child at her school regularly which, according to the petitioner, disturbs the child and is against the terms and conditions agreed upon by the parties, which has been approved by the Court.

58. It appears from the record that on 16.04.2011, the counsel for the respondent sent a communication, wherein respondent admitted that the minor child was reluctant to meet the respondent. However, the reason for the same, according to the respondent, was stated to be the petitioner's conduct. The respondent also admitted to visiting the class of the minor child regularly.

59. In response to the present petition, the respondent has filed her reply. In her reply, the respondent states in para 2 of the preliminary submissions as follows:

"2. At the outset, it is stated that the entire purpose of the statutory "cooling off" period of at least six months between the first motion and final motion divorce is to allow the parties to avail of the time to reconsider such a life changing event as a divorce particularly where there is a child involved.

In the present case, the daughter Aisheeya is 8 years old. She is traumatized by the divorce and by the fact that she has to choose between her parents. She has even told the Court during her chamber interview on 15.12.2011 that she would like to live with both parents as she loves them both equally. However, when repeatedly asked, she said that she would like to live with her father".

60. The respondent also adds that the choice exercised by the minor child to live with her father is because of continuity and influence, rather than opting for either parent. The above explanations and defences of the respondent do not impress the Court. These explanations, in any event, are not an answer to justify the respondents conduct. Her visitation rights have been clearly defined in the agreement of the parties. She cannot seek to enlarge the same on her own.

61. The respondent cannot be permitted to disturb the arrangement arrived at between the parties mutually with regard to the custody of visitation rights on her own, when the same have found judicial acceptance and which binds the parties. The terms of the arrangement arrived at between the parties has received the courts imprimatur. The continued breach of the said arrangement by the

respondent is also highly contumacious and cannot be permitted to be continued.

62. I, therefore, hold the respondent guilty of contempt of Court as she has breached her undertaking given to the learned ADJ-01, New Delhi on 14.09.2010 in the first motion divorce proceedings under Section 13-B(1) of the Hindu Marriage Act. The agreement arrived at between the parties not only deals with the aspect of divorce, to be obtained by mutual consent, but also deals with the aspect of custody/visitation rights of the minor child. Admittedly, the respondent has breached the said arrangement as well, and consequently, breached her undertaking to abide by the arrangement with regard to the custody and visitation rights of the minor child, given to the Court and accepted by the Court. She admits to regularly going to the child's school to meet her on a regular basis which disturbs the child psychologically on a day-to-day basis.

63. In the light of the aforesaid discussion, I allow this petition and direct as follows:-

(i) The respondent is directed to show cause as to why she should not be punished for contempt of Court on account of her having breached her undertaking given to the learned ADJ-01, New Delhi in the first motion petition under Section 13-B(1) of the Hindu Marriage Act on 14.09.2010 which was accepted by the said Court, and on account of her breaching her undertaking to the said Court to abide by her agreement in relation to the custody and visitation rights of the minor child, Aisheesya.

(ii) The respondent should file her reply within four weeks of her being served with a show cause notice as aforesaid to explain why she should not be punished for contempt of Court.

(iii) The respondent is directed not to breach the settlement arrived at between the parties in relation to the custody and visitation rights of the minor child, Ayesha and not to visit the said child to meet her at her school.

(iv) The respondent is subjected to costs which are quantified at Rs. 1 lakhs to be paid to the petitioner within four weeks.

(VIPIN SANGHI) JUDGE APRIL 30, 2012 as/sr/bsr