



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

COPC No. : 102 of 2023

Reserved on : 25.05.2022

Decided on : 01.06.2023

Gurditta Ram Chauhan

....Petitioner

Versus

Mrs. Babita

...Respondent.

Coram

The Hon'ble Mr. Justice Satyen Vaidya, Judge.

Whether approved for reporting?¹ Yes

For the petitioner : Mr. Vijay Chaudhary, Advocate.

For the respondent : None.

Satyen Vaidya, Judge

Heard.

2. Petitioner was appellant before this Court in FAO(FC) No. 04 of 2022. He had assailed judgment dated 01.01.2022, passed by learned Principal Judge, Family Court, Chamba, District Chamba, H.P. in case No. 77/2019 by filing an appeal under Section 19 of the Family Courts Act, 1984. Petitioner was aggrieved against the order of maintenance passed against him by learned

¹ *Whether reporters of the local papers may be allowed to see the judgment?*

Principal Judge, Family Court, Chamba, District Chamba
H.P.

3. During the pendency of FAO No. 04 of 2022 and at the request of learned counsel for the parties a Division Bench of this Court appointed Sh. S. S. Sandhu, Advocate, District Court Chamba, District Chamba, H.P. as Mediator. He was requested to make an endeavor for an amicable resolution to the dispute. The Mediator, vide his report dated 14.05.2022 reported the mediation as successful. As per such report, the parties had arrived at an amicable settlement. Respondent herein had agreed to get her marriage with petitioner dissolved by filing petition under Section 13-B of the Hindu Marriage Act, 1955 (for short "The Act") and had also agreed to receive Rs. 15, 00,000/- towards permanent alimony. Accordingly on 23.05.2022, FAO No. 04/2022 came to be disposed of by the Division Bench in following terms:-

"Learned counsel for the appellant has submitted that parties have amicably settled their dispute before the Mediator. Learned counsel has placed on record mediation report and statements of the parties recorded before the Mediator, which are taken on record and marked as Annexures C-1, C-2 and C-3, respectively.

2. *Learned counsel for the respondents has admitted the factum of compromise between the parties.*

3. *Learned counsel for the appellant has further submitted that in view of the compromise effected between the parties, he may be permitted to withdraw the appeal..*

4. *Ordered accordingly. Parties will remain bound by the terms of the compromise.”*

4. By way of instant petition, petitioner has made a prayer to prosecute and punish the respondent under Contempt of Courts Act, for deliberately and willfully violating the undertaking given by her on 14.05.2022 before the Mediator. It is alleged that in pursuance to successful culmination of mediation proceedings, petitioner deposited a sum of Rs. 8,00,000/- in the account of respondent on 26.10.2022. He could not thereafter immediately come forward for taking steps to file a petition under Section 13-B of the Act, as he was in remote area of Tehsil Pangi, District Chamba, H.P., which remained out of bounds due to winters and when in April 2022, respondent was approached to fulfill her commitment under negotiated mediation, she refused to sign the petition for being filed before the Court.

5. Keeping in view the facts of the case, learned counsel for the petitioner was heard on the maintainability of the petition. He contended that respondent was in contempt of the orders passed by a Division Bench of this Court, whereby parties were directed to abide by the terms of settlement arrived at between the parties before learned Mediator. It was further submitted that the mediation was continuation of the legal process and violation of an undertaking given before the Mediator amounted to undertaking given before the Court. Strong reliance was placed on a judgment passed by a Division Bench of High Court of Delhi, dated 15.05.2018 in reference in Contempt Case (C) 772 of 2013 alongwith other connected matters.

6. Admittedly, parties in FAO No. 04.2022 were referred to mediation by a Division Bench of this Court. During mediation proceedings, learned Mediator recorded a statement of respondent to the effect that she would file a petition under Section 13-B of the Hindu Marriage Act and also accept Rs. 15,00,000/- towards permanent alimony. FAO No. 04 of 2022 was accordingly disposed of

and parties were directed to remain bound by the terms of the compromise.

7. Section 13-B of the Hindu Marriage Act, 1955, reads as under:-

“13B. Divorce by mutual consent.—*(1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.*

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.”

8. By way of above provisions of law, both the parties to a marriage together have been given a right to

apply for dissolution of marriage by a decree of divorce on the grounds, *firstly* that they have been living separately for a period of one year or more and *secondly*, they have not been able to live together and have mutually agreed for dissolution of marriage. Once the petition by both the parties is presented, on the motion of both the parties moved not earlier than six months, the Court, on being satisfied that the averments in the petition are true pass a decree of divorce declaring the marriage to be resolved with effect from the date of decree. The abovesaid provision simultaneously grants a right to the parties to withdraw the petition before statutorily required cooling off period.

9. Thus, the right to withdraw the petition seeking divorce under Section 13-B of the Act, is inherently available to the parties jointly or even singly. In above background, it cannot be said that the respondent herein had no right to withdraw her consent earlier given by her before the learned Mediator for filing petition under Section 13-B of the Act. The reason for such withdrawal may not be relevant for the adjudication of issue present before this Court. No doubt, after resiling from the consent, as is the case in hand,

respondent may not be legally entitled to retain the benefits derived in lieu of such consent, still, to prosecute and punish her under the provision of Contempt of Courts, will not be the appropriate course to be adopted.

10. Section 2(b) of the Contempt of Courts, Act, 1971 defines "civil contempt" as under:-

"civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a Court."

11. The statement made by respondent before the Mediator can at best be said to be an assurance on her behalf. It cannot be construed to be an undertaking and not at least an undertaking before the Court so as to attract the mischief of contempt of court. As regards, the direction by Division Bench of this Court to the parties to abide by the terms of the settlement, that also cannot not be assigned a meaning in derogation of the statutory right available to a party to marriage to withdraw the petition under Section 13-B of the Act for it will amount to re-writing a provision of statute which is wholly impermissible.

12. Hon'ble High Court of Delhi in **Rajat Gupta and Ors. Vs. Rupali Gupta and Ors., Reference in CONT. CASE (C) 772/2013 dated 15.05.2018**, had formulated one of the questions for answer as under:-

“Question (A) Whether a party, which has under a settlement agreement decreed by a Court undertaken to file a petition under [Section 13B\(1\)](#) or a motion under [Section 13B\(2\)](#) of the Act, 1955 or both and has also undertaken to appear before the said Court for obtaining divorce can be held liable for contempt, if the said party fails to file or appear in the petition or motion or both to obtain divorce in view of the option to reconsider/renege the decision of taking divorce by mutual consent under [Section 13B\(2\)](#) of the Act?”

13. While answering the question, Hon'ble Division Bench of the High Court of Delhi has not laid any absolute rule that in such eventuality, the contempt will be inevitably consequence. It has been observed as under:-

“ Answer: (a) The answer to Question (A) is yes. The distinguishing feature of [Section 13B](#) of the Act, 1955 is that it recognizes the unqualified and unfettered right of a party to

unilaterally withdraw the consent or reconsider/renege from a decision to apply for divorce by mutual consent, notwithstanding any undertaking given in any legal proceeding or recorded in any settlement/joint statement, in or outside the court, resulting in a consent order/decre, to cooperate with the other spouse to file a petition under [Section 13B\(1\)](#) or a second motion under [Section 13B\(2\)](#) of the Act, or both. Withdrawal of the consent even at the stage of the enquiry, as contemplated under [Section 13B\(2\)](#), is also in exercise of the right available to a party under the very same provision. In other words, the mutuality of the consent to divorce should commence from the stage of filing the First motion under [Section 13B\(1\)](#) and it should continue at the time of moving the Second motion under [Section 13B\(2\)](#) of the Act, till such time that the court completes the enquiry and a decree of divorce is finally passed. The said element of mutual consent is a sine qua non for passing a decree of divorce. This being the legal position, the defaulting party cannot be compelled to file or appear in the petition or motion or both, to obtain divorce by mutual consent.

(b) Any other view will not only impinge on the jurisdiction of the court which has an obligation under the Statute to undertake an independent enquiry before passing a decree of divorce by mutual consent, it will also encroach upon a statutory right vested in

a party under [Section 13B\(2\)](#) of the Act and go against the very spirit of the provision, at the heart of which lies the right of a party to reflect/revisit and retract from its decision of going ahead for grant of divorce by mutual consent, during the cooling off period.

(c) At the same time, a defaulting party can be held liable for civil contempt on the ground of breaching the terms and conditions incorporated in an undertaking given to the court or made a part of a consent order/decre. In the event the aggrieved party approaches the court for initiation of contempt proceedings against the defaulting party for willful/deliberate breach of any of the terms and conditions of an undertaking/settlement agreement/consent order or a decree and takes a plea that as a consequence thereof, he/she has been placed in a disadvantageous position or has suffered an irreversible/grave prejudice, the court in exercise of its inherent powers of contempt, supplemented by the 1971 Act has the requisite jurisdiction to entertain the petition and direct restoration of status quo ante in every possible way. Besides directing the defaulting party to disgorge all the benefits/advantages/privileges that have/would have enured in its favour and restoring the parties to the position that was before they had arrived at such a settlement/agreement/undertaking and/or before the consent order/decre was passed

in terms of the settlement arrived at/undertakings recorded, **the court has the discretion to punish the defaulting party for civil contempt, depending on the facts of a given case.** Thus, contempt jurisdiction operates in a different field and is uninfluenced by the fetters imposed on a court under the Act of 1955. The only rider to the above is that no direction can be issued even in contempt proceedings to compel the defaulting party to give its consent for a decree of divorce by mutual consent, as it is opposed to the object, policy and intent of [Section 13B](#) of the Hindu Marriage Act.”

14. Thus, while holding the right of a party to marriage to withdraw his/her consent for divorce by mutual consent to be absolute and indefeasible right, Hon’ble High Court of Delhi in *Rajat Gupta (supra)* has kept the window of contempt proceedings open in appropriate cases only.

15. Thus, right of respondent to withdraw her consent for mutual divorce being her absolute and indefeasible right, the direction issued by the Division Bench of this Court to the parties to abide by the terms of settlement cannot be construed to obliterate

or negate such right. Further, by reverting to the facts of the case it can be noticed that the money deposited by petitioner in the account of respondent was a voluntary act. There was nothing in the negotiated settlement between the parties that deposit of half of the agreed amount would be paid in advance, rather the mediation report reveals that such amount was to be paid by petitioner to the respondent at the time of filing of petition under section 13-B of the Act. As per his own version, it was the petitioner who could not take steps for filing the petition under section 13-B of the Act within reasonable time of the deposit of amount in the account of respondent. It is also not the case of petitioner that respondent had insisted upon the petitioner to deposit the amount in her account as a pre-condition. Petitioner has also not made any averment to the effect that the respondent has refused to return the amount or that she has resiled from her promise for any *malafide* reasons.

16. In light of above discussion, I am of the considered view that the petitioner cannot maintain

petition under Section 12 of the Contempt of Courts Act against respondent in the peculiar facts of the case.

17. In result, the petition is dismissed.

18. Before parting, it is clarified that this order will not preclude the petitioner from seeking other available remedies, if any, against respondent in accordance with law.

19. Accordingly, the petition is disposed of, so also the pending miscellaneous application(s) if any, also stands disposed of.

1st June, 2023
(sushma)

(Satyen Vaidya)
Judge