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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 14th September, 2023*

+ **MAT.APP.(F.C.) 89/2023**

[REDACTED]

..... Appellant

Through: Mr. Amarjeet Singh Sahni & Ms. Shreya Gupta, Advocates with appellant in person.

versus

[REDACTED]

..... Respondent

Through: Mr. Vinay Chaddha & Ms. Shisba Chawla, Advocates with respondent in person.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. **The Appeal under Section 19 of the Family Courts Act, 1971** has been preferred by the appellant-husband against the Order dated 30.01.2023 whereby the learned Judge, Family Courts has dismissed the Contempt Petition against the respondent-wife for not having abided by the Memorandum of Understanding (MoU) dated 28.09.2020 whereby the parties had agreed to take divorce by Mutual Consent.
2. The parties got married according to Sikh rites and customs on 19.11.2017 and one daughter was born from their wedlock. However, on account of marital discord, both the parties decided to dissolve their marriage by way of Mutual Consent. They executed an MoU dated



28.09.2020 pursuant to which, the petition for Divorce under Section 13(B)(1) of the Hindu Marriage Act, 1955 (*hereinafter referred to as the 'Act, 1955'*) was preferred. The petition for first motion under Section 13(B) of the Act, 1955 was allowed vide Order dated 18.12.2020. However, the respondent-wife did not come forth to file the petition for second motion of divorce and consequently, the appellant-husband preferred the Contempt Petition for initiating the Contempt against the respondent-wife.

3. The ground for initiation of contempt essentially was that the respondent has unilaterally withdrawn her consent for second motion and thus, had defaulted in compliance of the terms of MoU. It was further claimed by the appellant-husband that in fact, she is not willing for Divorce and had filed a petition under Section 9 of the Act, 1955 aside from filing a petition under Guardianship and Wards Act seeking custody of the minor daughter.

4. **The contempt petition was contested by the respondent-wife** who submitted that time was granted to her to reconsider her option for divorce by Mutual Consent after the First Motion was accepted. The cooling off time period between the first motion and the second motion is not merely a formality or a ritual but it is in effect, an opportunity to the parties to reconsider their decision for parting ways. It was also claimed by the respondent that her signatures were obtained on the MoU dated 28.09.2020 by misrepresentation of facts by the counsel for the appellant who had been engaged by him at the time of filing of First Motion and who had prepared the unilateral conditions in MoU. It was further claimed that her consent even at the time of First Motion was not free and fair as the daughter of the



respondent aged about 2 years was in her custody since birth and despite the respondent being the mother of the infant daughter, she could not have been deprived of the custody of her daughter without even granting the meeting rights. As soon as she realized the fraud and the misrepresentation, she moved an application for setting aside of the First Motion of divorce. Since according to the respondent, MoU was not out of free consent and will, there cannot be any contempt of Court imputed against her. The learned Judge, Family Courts relied upon the case of Rajat Gupta Vs. Rupali Gupta 2018 SCC OnLine Del 9005 wherein this Court held that a party cannot be compelled to accord her consent for the Second Motion and it is within the right of either party to withdraw his/her consent. It was further observed that to make a person liable for contempt of Court, it must be shown that the violation of the Undertaking given to the Court is wilful and deliberate. It was concluded that the Statute itself provides for reconsideration of consent at the time of filing of second motion and the respondent had also claimed misrepresentation in obtaining her signatures on the MoU dated 28.09.2020. Thus, the learned Judge, Family Court concluded that there was no wilful breach of any undertaking given to the Court and no contempt was made out against the respondent-wife. The Contempt Petition was accordingly dismissed.

5. Aggrieved by the said dismissal of the Contempt Petition, the present Appeal has been preferred by the appellant.

6. **Submissions heard.**

7. The appellant-husband got married to the respondent on 19.11.2017 and one daughter was born from the wedlock. Due to the differences on account of marital discord, the parties decided to get their marriage



dissolved by mutual consent and consequently, entered into a MoU dated 28.09.2020. The petition for First Motion under Section 13-B(1) of the Act, 1955 was filed which was allowed vide Order dated 18.12.2020. Admittedly, as agreed the appellant gave Rs.2 lakhs to the respondent who also handed over the custody of the minor daughter to the appellant herein. Thereafter, the appellant got prepared the Second Motion petition but the respondent refused to come forth, compelling the appellant to file a Contempt Petition on 20.07.2021 which has been dismissed vide the impugned Order dated 30.01.2023. The only grievance of the appellant in his Contempt Petition was that despite having agreed to take divorce by mutual consent, the respondent has refused to come forth in terms of the mutually agreed MoU. This aspect had been considered in detail by a Coordinate Division Bench of this Court in Rajat Gupta (supra) wherein, it was observed that the cooling off period of minimum six months for filing the second motion for divorce is provided under the Statute with the sole objective to give time to the parties to reconsider their decision for divorce and there is no illegality if either party decides to reconsider the decision of divorce and then withdraws the consent. Neither party can be compelled to accord his/her sanction to dissolve the marriage by mutual consent and such withdrawal of consent cannot be held to be a contempt.

8. Pertinently, the terms and conditions of MoU dated 28.09.2020 executed between the appellant and the respondent read as under:

“1.That the first party was married to the second party on 19-11-2017 as per sikh rites and customs .at the Gurudwara shri Guru Singh Sabha , C BLOCK , Surya Nagar, Ghaziabad U.P.



2. That there is one daughter out of wedlock namely Sehaj Preet Kaur aged about 23 month who is in custody of the first party.

3..That ever since the marriage, the both parties could not live with each other peacefully and could not live ,together happily because of the temperamental differences of the both parties and they could not adjust with each other in their matrimonial life .

4.That on 30-08-2019 the first party had left the matrimonial house along with minor daughter and since then she has been residing with her parents.

5.That due to temperamental incompatibility, the marriage between the both parties has irretrievably broken. All efforts for reconciliation by the parties and their respective relatives have failed and now there is no chance for reconciliation. The parties are living separately since 30-08-2019 and have not been able to live together since then.

6.That on 25-09-2020 the good sense had prevailed upon the both parties due to intervention of relatives and friend and the parties have now mutually settled all their disputes, differences and claims against each other present, past and future alimony, custody & maintenance of the minor daughter, dowry articles and Istridhan as per the agreement arrived at between the parties on the following terms:-.

a) **It has been agreed between the parties that both the parties shall dissolve the marriage by way of filing a petition under Section 13-B(1) and 13-B(2) of the H.M.Act in the concerned court of KKD, Delhi.**

b) **It has been agreed between the parties that second party shall give Rs.4,00,000/- (Rupees four Lacs only) to the first party towards full and final settlement of all her claims qua Istridhan, Permanent alimony, dowry articles, maintenance for herself (present, past & future).**

c) **It is further agreed between the parties that the second party shall pay Rs.2,00,000/- (Rupees two lakhs only) In cash / D.D\ to the first party at the time of recording of statement of the both parties in the first motion petition for divorce by mutual consent in the court, and remaining Rs.2,00,000/-**



(Rs.Two lakhs only) cash / D.D. to the first party at the time of recording of statement of the both parties in the second motion petition for divorce by mutual consent in the court which shall be filed by the parties as early as possible on or before 30.10.2020.

d. It is agreed between the parties that, there is one daughter out of wedlock namely Sehaj Preet Kaur aged about 23 months and the first party will handover the custody of the said daughter to the second party at the time of recording of statement of the both parties in the first motion petition for divorce by mutual consent in the court. Thereafter the custody of minor daughter shall continue to remain with the second party/natural father.

e. it is further agreed that thereafter the first party shall not claim any visiting rights/ custody of the said daughter from the second party in any manner in future in any court of India after the signing of the present agreement.

f. it is further agreed that as per settlement besides the aforesaid amount of Rs.4 lakhs, the first party shall return the all goods as shown in the list as ANNEXURE -C to the second party and the second party shall return the all goods as shown in the list as ANNEXURE -A AND B to the first party at the time of the signing of the present agreement or thereafter as per their convenience Annexures A TO C are attached here with.

g. No other case is pending in any other court of law by any parties against each other.

h. It is further agreed between the parties that now the both parties will not litigate against each other qua their marriage and if any other complaint/ case has been filed or pending between the parties they shall withdraw their respective complaints/ case in view of the present agreement.

7. That the both parties is arrived this settlement at between the parties voluntarily without there being any pressure, coercion or threat or undue influence of any kind and the contents of the same have been read over to both the parties in their vernacular language and they shall remain bound by the aforesaid terms and conditions”.



9. It is significant to observe that though the respondent had asserted that her signatures on the MoU were obtained by misrepresentation by the counsel engaged by the appellant during the First Motion, but pertinently not only both the parties appeared before the learned Judge, Family Courts but also reaffirmed the terms of settlement contained in MoU dated 28.09.2020 and also gave their statements accordingly. The custody of the child in compliance of the terms of MoU, was also handed over to the appellant. Moreover, the appellant gave Rs.2 lakhs to the respondent as was agreed in the MoU. In these circumstances, when the terms of the MoU had been duly complied with by the parties and that too, before the learned Judge, Family Courts, it cannot be said that there was any misrepresentation made to the respondent at the time of signing of MoU. As noted above, the terms of settlement are essentially in regard to the payment of Rs.4 lakhs towards all the claims for alimony etc., divorce by mutual consent and the permanent custody of the minor child to be handed over to the appellant/father.

10. In view of the Statute and the observation in the case of Rajat Gupta (supra), the respondent's withdrawal of consent to come forth for second motion for divorce by mutual consent cannot be termed as contempt.

11. As already discussed above, the respondent-wife cannot be compelled to give her consent for second motion which alone is the prayer of the appellant. So being the case, we find that the learned Judge, Family Courts has rightly observed that there was no Civil Contempt of Court committed by the respondent.

12. The learned counsel for the appellant has also relied upon the recent Judgment of learned Single Judge of this Court in Anurag Goel Vs. Chhavi



Agarwal decided on 09.08.2023 wherein the wife was held to be guilty of Contempt of Court since she failed to abide by the terms of MoU. However, a perusal of the Judgment shows that the respondent-wife therein had refused to execute the final version of Gift Deed in favour of the appellant which was one of the terms of MoU entered between them. It was this conduct of the respondent wherein she refused to abide by the terms of settlement by which she had assumed a civil liability, that was held to be contemptuous and accordingly, was held to be guilty under Contempt of Courts Act, 1971. Nowhere does the said Judgment gives a finding that the withdrawal of the party to give consent to the Second Motion amounts to contempt. The Judgment is clearly distinguishable on its facts and is not applicable to the present case. The only alleged act of contempt being non-signing of the Second Motion petition by one of the party, does not make it a case of contempt as has been held in the case of Rajat Gupta (supra).

13. Before concluding, we may observe that the primary objective of the matrimonial laws, be it under the marriage laws or the Family Courts Act, is to make sincere endeavour for reconciliation between the parties. Here, the parties mutually entered into a settlement without initiating any divorce proceedings in the Court. The MoU was submitted by the parties at the time of First Motion. The respondent in her cooling off period after First Motion, has had second thoughts and decided against taking divorce. The approach of the Family Courts being reconciliatory, it cannot compel the parties to take divorce if not mutually acceptable. Pertinently, the respondent has no inclination to grant divorce since she has already filed a petition under Section 9 of the Act, 1955 for Restitution of Conjugal Rights and has also filed a Guardianship Petition for seeking permanent custody of the minor



daughter.

14. In view of the above, we do not find that the respondent has committed any contempt under the Contempt of Courts Act, 1971. There is no merit in the present Appeal which is hereby dismissed.

15. The pending applications, if any, also stands disposed of.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 14, 2023

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