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

+ CONT.CAS(C) 181/2021

MAHINDER SINGH

..... Petitioner

Through: Mr. Yogesh Sharma and Mr. Yugant Parihar, Advs. with petitioner in person.

versus

MEENAKSHI YADAV

..... Respondent

Through: Mr. Rohit Kumar and Mr. Ayush Sharma, Advs. with respondent in person.
Ms. Prabhsahay Kaur, Amicus Curiae.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **29.09.2021**

The hearing has been conducted through hybrid mode (physical and virtual hearing).

1. This petition seeks initiation of contempt proceedings against the respondent for wilful disobedience of the order dated 04.12.2019 passed by the learned Principal Judge, Family Courts. As per the said order, the statement of learned counsel for the respondent was recorded by the said court to the effect that the respondent does not wish to pursue the petition, as the matter has been amicably settled between the parties in terms of the settlement agreement dated 07.09.2019 i.e. both the parties have mutually agreed to dissolve their marriage. However, the respondent's presence in court is not

recorded on the said date. The petition was disposed-off on the basis of the submission of Mr. Sumit Rathi, the respondent's counsel.

2. The learned Amicus Curiae draws the court's attention to the dicta of this court in *Rajat Gupta vs. Rupali Gupta*, 2018 SCC OnLine Del 9005, Cont. CAS(C) 772/2013, which has held *inter alia* as under:

“... ”

63. *Question (C) Whether any guidelines are required to be followed by the Court while recording the undertaking/agreement of the parties with respect to a petition under Section 13B(1) or a motion under Section 13B(2) of the Act, 1955 or both for obtaining divorce?*

Answer: The general guidelines suggested to be followed by the Court while recording undertaking/agreement of the parties are as below: —

(1) If the parties amicably settle their inter se disputes and differences, and arrive at a settlement, whether of their own accord, or with the aid and assistance of the court or on exercising the ADR processes (mediation/conciliation/Lok Adalat), or otherwise, the settlement agreement that may be drawn up, must incorporate the following: —

i) Record in clear, specific and unambiguous language, the terms/stipulations agreed upon between the parties;

ii) Record in clear, specific, simple and unambiguous language, the mode, manner, mechanism and/or method for the implementation or compliances of the terms/stipulations agreed upon between the parties;

iii) Record an undertaking of the parties that they will abide by and be bound by the agreed terms/stipulations of the settlement agreement;

iv) Stipulate a fine or penalty as may be agreed upon, in the event of a default of the agreed terms/stipulations of the settlement agreement by either side;

v) Provide for the consequences of the breach of the terms/stipulations of the settlement agreement;

vi) Record a declaration of both the parties in unequivocal and unambiguous terms that they have agreed on each and every term recorded in the settlement agreement, after carefully reading over and fully understanding and appreciating the contents, scope and effect thereof, as also the consequences of the breach thereof, including payment of the fine/penalty, if so agreed;

vii) The settlement agreement must state that the terms have been settled between the parties of their own free will, violation and consent and without there being any undue pressure, coercion, influence, misrepresentation or mistake (both of law and fact), in any form whatsoever. It should also be stated that the settlement agreement has correctly recorded the said agreed terms.

(2) The settlement agreement may include a term/stipulation that the parties have agreed that they would dissolve their marriage by mutual consent, which necessarily has to be in accordance with the law, as provided under Section 13B of the Hindu Marriage Act.

(3) The settlement agreement may include other terms/stipulations settled between the parties including payment of money, transfer of moveable/immovable properties as for example, jewellery/stridhan, maintenance amounts, alimony etc. or plans for the custody of the children/visitation rights of children. The said terms must be scrutinized by the court to satisfy itself that they are in accordance with the spirit of law and are enforceable and executable.

(4) On the said settlement agreement being presented, along with a report (in the event the settlement is arrived at through mediation or conciliation or Lok Adalat) to the court where the proceedings between the parties are sub judice, the said court should apply the procedure and principles to be followed by a civil court

under and/or analogous to the provisions of Order XXIII Rule 3 of the Code of Civil Procedure.

(5) To avoid any ambiguity or misunderstanding on the part of either of the parties, at a later stage, a clear and unambiguous undertaking to the court must be recorded.

(6) The statements of the parties may be recorded by the court after putting them on oath in the following manner: —

a) the parties should affirm the terms of the settlement;

b) the fact that they have executed the settlement agreement after fully understanding the terms, consents, effect and consequences thereof;

c) that the same has been arrived at of their own free will and volition;

d) that they would be liable for penal consequences in case of breach.

(7) In the alternative, the court may direct the parties to file their respective affidavits affirming the terms and conditions of the settlement. If considered necessary, the court may ask the parties to formally prove not only the said affidavits, but also the settlement agreement executed by them.

(8) The Court must apply its judicial mind to satisfy itself that the settlement arrived at between the parties is not only bonafide, equitable and voluntary in nature, but is enforceable in law and is not opposed to public policy. The court must also satisfy itself that there is no impediment of any nature in accepting the said settlement and the undertakings of the parties and binding them down thereto.

(9) After perusing the settlement agreement, recording the statements of the parties and/or examining the affidavits filed by them, as the case may be, the Court must specifically accept the statements of the parties and/or the undertakings given by them as also the terms/stipulations of the settlement agreement and direct

that they shall remain bound by the same.

(10) Depending upon the jurisdiction of the Court, appropriate orders/decrees be passed. The said order/decrees, as the case may be, should clearly spell out the consequences of breach, violation of any of the terms of the settlement agreement. In the event any fine/penalty has been agreed to be paid under the terms of the settlement agreement or in case of breach of the same, the order shall state that the said amount will be recovered from the defaulting party. The parties must be informed that they will be liable to be punished for contempt of court in the event of any breach/violation/willful/deliberate disobedience of the terms of the settlement agreement.

(11) A decree/order shall be passed by the Court in respect of the subject matter of the suit/proceedings. For those matters/disputes that are not the subject matter of the suit/proceedings, where a settlement has been reached before a non-adjudicatory ADR fora, the Court shall direct that the settlement agreement shall be governed by Section 74 of the Arbitration and Conciliation Act (in case of a settlement through conciliation) and/or Section 21 of The Legal Services Authorities Act, 1987. (in respect of a settlement by a Mediator or a Lok Adalat) [Refer: Afcons Infrastructure Ltd. (supra)]

(12) If the obligations under the settlement agreement/undertaking/consent order/decrees are breached by one party, then, at the instance of the aggrieved party, appropriate orders shall be passed in accordance with law.

(13) For breach of the undertaking given to the concerned court or willful/deliberate violation of a consent order/decrees, if so approached or otherwise, the court would take appropriate action as permissible in law to enforce compliance by the defaulting party by exercising contempt jurisdiction as contemplated under Section 2(b) of the Contempt of Court Act, 1971. This will

however exclude any coercive orders compelling the defaulting party to give its consent for grant of a decree of divorce by mutual consent, notwithstanding any settlement/undertaking given by the parties before any fora.

....”

3. Clearly, what is required is that the settlement ought to be recorded in clear and unambiguous terms, that such terms ought to have been understood by the parties; that they should have been of their volition and their statement before the court ought to have been recorded on solemn oath. The learned Amicus Curiae submits that none of the essential elements of the said procedure prescribed by the Division Bench have been followed.
4. The court would note that the mediation settlement has handwritten clauses which are not in seriatim. They have not been signed at each place where clauses have been inserted. To obviate any doubts, each such handwritten clause ought to have been countersigned by all the parties. That not being done, it raises doubts about the parties being *ad idem* apropos the said clauses. Furthermore, the same was not reproduced in an undertaking before the learned Family Court. Instead, a statement of counsel for the parties was recorded, without solemn affirmation. The respondent submits that she cannot be held liable for a statement she did not make before the court in terms of the said judgment as apparently all outstanding monies were payable by the husband.
5. This court by its order dated 04.09.2019 in *BVG INDIA LTD vs. Navin Saini*, CM (M) 1311 of 2019, has held *inter alia* as under:

“...

7. *As a matter of caution, it is directed that Id. Mediators are requested to not allow any handwritten notations or words, in the Mediation/settlement agreements especially if the same are not countersigned/initialled by the Mediator himself, as in the present suit. This has led to complications and subsequent proceedings being filed between the parties. The present order be communicated to all the Mediation Centres in the District Courts as also the SAMADHAN - the Delhi High Court mediation centre. Copy of this order be sent to the worthy Registrar General for communication to the Mediation centre of all the District courts.”*

6. The practice of handwritten clauses needs to be discontinued forthwith, unless it is countersigned or initialled by the Mediator/Counsellor in the presence of the parties as well as by the parties. Often when a settlement is recorded, it is after a lot of dialogue between the parties, who have invariably suffered long litigations, harassment and much anguish. They may not know the finer points of recording of the mediated settlement agreements; therefore, it becomes the duty of the Mediator/Counsellor to ensure that the settlement agreement is recorded specifically in terms of the dicta of this court in *Rajat Gupta (supra)*. The learned Family Court too shall ensure that whenever a settlement agreement is recorded, it is in accordance with the aforesaid dicta. In cases of default, the agreement may be referred back to the mediation centre for correcting the anomaly. The learned Family Court shall ensure that the recording of the settlement/undertaking of the parties is in terms of *Rajat Gupta (supra)*.

7. The learned Amicus Curiae also relies upon the dicta of this court in *Rosey Sailo Damodaran vs. Nitin Damodaran*, 2019 SCC OnLine Del 7159, in which it was held *inter alia* as under:

“...

8. *The scope of contempt proceedings in cases where the defaulting party has retracted or failed to co-operate to give its consent at the point of first motion or second motion or at any stage before the divorce decree is passed, despite having an undertaking to that effect, in cases of divorce petition by mutual consent is limited. The Courts, acting in their contempt jurisdiction, do not have the power to compel the defaulting party to give his/her consent despite having an explicit agreement to that effect. However, the court can still hold the defaulting party liable for contempt for retracting from such an undertaking only if, a plea that as a consequence of default by the defaulting party, he/she has been placed in a disadvantageous position or has suffered an irreversible/grave prejudice is set out. The court in such a case, in exercise of its inherent powers of contempt, has the requisite jurisdiction to entertain the petition and direct restoration of status quo ante in every possible way and direct the defaulting party to disgorge all the benefits/advantages that would have ensued in its favour and restore the parties to the same position which was there before giving consent. Apart from it, the court has the discretion to punish the defaulting party for civil contempt depending on the facts of a given case.*

...

16. *Further, Rule 25 (a) of the Mediation and Conciliation Rules, 2004 sets out the procedure for the court to ratify the settlement reached between the parties. The Rule reads as under: —*

"Rule 25: Court to fix a date for recording settlement and passing decree.

(a) On receipt of any settlement, the court shall fix a date of hearing normally within seven days but In any case not beyond a period of fourteen days. On such date of hearing. If the court Is satisfied that the parties have settled their dispute

(s). It shall pass a decree In accordance with terms thereof."

17. The petitioner herein never personally appeared before the learned Principal Judge, Family Court. Even the respondent did not personally appear. Only the learned counsel for the respondent made a statement that the matter stands settled between the parties as per the mediation settlement Ex. P-2 and he sought permission to withdraw the petition. The petition was allowed to be withdrawn with liberty to the respondent herein to revive the proceedings in case the petitioner herein does not abide by the terms and conditions of the mediation settlement. The satisfaction stipulated In Rule 25 is a judicial satisfaction and could be reached at only after verifying from both the parties, their objective, willingness and satisfaction towards the terms of the settlement. The said Rule escaped the attention of the learned Principal Judge, Family Court.

...."

8. In the present case, the petitioner has not paid Rs.21 lakhs to the respondent-wife.
9. The Supreme Court in *Abhishek Kumar Singh Vs. G. Pattanaik & Ors.*, 2021 SCC OnLine SC 416, has held that the contempt would be only when the same is deliberate in the face of the court order and it has caused prejudice to the other party.
10. As noted hereinabove, since the settlement agreement recorded between the parties is not in terms of the decision of the Division Bench, nor was any undertaking of the respondent recorded before the learned Family Court, nor was an affidavit directed to be filed or filed affirming the terms of the settlement; the settlement agreement does not form a part of the court order. Accordingly, it cannot be said that the respondent has committed contempt of court. No contempt is made out.

11. This court records its gratitude to Ms. Prabhsahay Kaur, the learned Amicus Curiae, for her assistance.
12. The petition stands disposed-off in terms of the above.
13. However, at this stage, the learned counsels for the parties seek time to obtain instructions apropos whether they would like to go for mediation before the Delhi High Court Mediation and Conciliation Centre.
14. At request, renotify on 05.10.2021.

NAJMI WAZIRI, J

SEPTEMBER 29, 2021

AB/RW