

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

CM Nos.7160/2009 and 15127/2011
in
+ MAT.APP.No.38/2007

% Reserve on : 16th March, 2012
Date of decision : 4th May, 2012

SUNITA Appellant
Through : Ms. Isha Khanna, Adv. along
with appellant in person.

versus

BHARAT BHUSHAN Respondent
Through : Mr. Mir Akhtar Hussain, Adv.
along with respondent in
person.

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT

CM Nos.7160/2009 and 15127/2011

1. The appellant has challenged the judgment dated 16th May, 2007 whereby the learned trial Court granted the decree of divorce to the respondent. During the pendency of the appeal, the parties amicably resolved all their disputes through mediation and the appeal was disposed of in terms of the settlement on 20th January, 2009.

2. The appellant is seeking recall of the order dated 20th January, 2009 and therefore, it is necessary to place on record the complete facts relating to the settlement between the parties.

3. On 8th September, 2008, this case was referred to the Mediation Centre on the prayer of the appellant.

4. On 18th December, 2008, the appellant amicably resolved all their disputes before the Delhi High Court Mediation & Conciliation Centre. The terms of the settlement were reduced into writing by the learned Mediator and was signed by both the parties.

5. As per the said settlement, the appellant agreed to withdraw the appeal and to hand over the vacant and peaceful possession of the first floor of the property no. 6/104, Subhash Nagar, New Delhi on or before 31st March, 2009 upon receipt of ₹5,50,000/- towards all her claims and having no objection to the quashing of the FIR. The respondent agreed to look after the daughter Neha Sharma and also the responsibility of marrying her in a respectable manner. The settlement agreement dated 18th December, 2008 was signed by both the parties as well as by their respective counsels.

6. On 20th January, 2009, the appellant submitted before this Court that she had signed the settlement agreement without reading its contents. She further submitted that the respondent had agreed to provide her a separate accommodation worth ₹3,50,000/- which is not recorded in the

settlement. She submitted that she was not in a position to identify the accommodation and therefore, the respondent should identify and provide her the accommodation comprising of one room-set costing ₹3,00,000/- to ₹3,50,000/- and after the purchase of the said accommodation, the appellant would hand over the vacant and peaceful possession of the first floor of the subject property to the respondent within 10 days.

7. The respondent in response disputed the additional demand of the appellant but in order to put an end to the litigation, the respondent agreed to the new demand of the appellant and the additional terms of the appellant were recorded by this Court. This Court recorded the settlement between the parties after satisfying that both the parties understood and voluntarily agreed to the terms of the settlement. The appeal was disposed of in terms of the settlement. The relevant portion of the order dated 20th January, 2009 reads as under:-

“1. This case was referred to the Mediation Centre. The report has been received from the Mediation Centre as per which the dispute has been settled vide settlement agreement dated 18th December, 2008, which is on record.

2. The appellant states that though she has signed the settlement agreement but she has signed it without reading its contents. However, counsel for the appellant states that the contents of the settlement agreement were clearly explained to her and she signed the same after understanding it.

3. The appellant further states that she agreed to receive a sum of Rs.5,50,000/- (Rupees Five Lakh Fifty Thousand Only) from the respondent and to vacate the possession of the premises which is presently with her on the understanding that the respondent would arrange to buy her a separate accommodation in her name for cost of approximately Rs.3,50,000/- (Rupees Three Lakh Fifty Thousand Only).

4. She further states that a first floor built over the land ad measuring 25 sq. yd. comprising of one room with one kitchen and a bathroom with a separate entrance in Chander Vihar, Delhi, was identified by the respondent, but when she want to see that premises the owner told her that this portion has already been sold.

5. She further states that she is not capable of indentifying, checking the title and completing other formalities for purchasing the property for her stay. She further states that she is suffering from serious liver decease and is intermittently hospitalized for the said decease.

6. She further submits that she is also concerned that the respondent should take care of her daughter Neha and the visiting rights should be sufficiently clarified to enable her to meet her daughter regularly.

7. With these clarifications, she has no further objections to the settlement in terms of the settlement agreement dated 18th December, 2008.

8. Learned counsel for the respondent states that he would indentify a house in the nearby area, where the parties are staying, comprising of a independent floor with one room set for cost of about Rs.3,00,000/- (Rupees Three Lakh Only) to Rs.3,50,000/- (Rupees Three Lakh Fifty Thousand Only) and after the approval of the appellant, the title papers shall be drawn in the name of the appellant. After purchasing of new property in the appellants name, the physical possession would be

handed over to her where upon the appellant agrees to vacate the respondents property which is presently in her possession within 10 days of the receiving the possession of the property sought to be purchased.

9. Balance amount out of Rs.5,50,000/- (Rupees Five Lakh Fifty Thousand only) will be handed over to the appellant at the time of the quashing of the FIR.

10. The parties shall complete the process of purchasing the aforesaid property for the appellant before quashing of the FIR and the respondent shall make efforts to complete the process within the period of 3 months.

11. With respect to the visiting rights, it is agreed between the parties that daughter Neha can visit the appellant whenever she likes. However, the respondent agrees to send the daughter Neha on every alternative Sunday and allow her to stay with her mother for the whole day. The respondent would also request the daughter Neha to stay with her mother during the vacation.

12. The appellant further submits that she has no means of sustenance. On the suggestion of this Court, the respondent has agreed to hand over a draft of Rs.25,000/- (Rupees Twenty Five Thousand Only) to the counsel for the appellant which shall be adjusted out of the settled amount.

13. The settlement agreement with the aforesaid modification is accepted.

14. The counsel for the appellant has explained the terms contained in the settlement agreement and the modification recorded hereinabove to the appellant who has consented the same.

15. The appeal stands disposed of in terms of the settlement agreement dated 18th December, 2008 and the modification mentioned hereinabove. However, the respondent shall not remarry till the

time the terms and conditions contained in the settlement agreement and modification mentioned hereinabove are implemented. Both the parties are bound by the statement recorded in the settlement agreement dated 18th December, 2008 and the modification recorded hereinabove.”

8. On 12th May, 2009, the respondent filed CM No. 7160/2009 for modification of the order dated 20th January, 2009 on the ground that the respondent has identified four flats for the appellant who has not responded and therefore, the respondent could not purchase the property for the appellant to implement the settlement. Notice of the CM No.7160/2009 was issued to the appellant on 18th May, 2009. In order to resolve the dispute with respect to the identification of an alternative accommodation for the appellant in terms of the settlement, the case was again referred to the Delhi High Court Mediation & Conciliation Centre on 22nd July, 2009.

9. The parties amicably resolved the aforesaid dispute before the Mediator on 26th March, 2010. The terms of the settlement were recorded before the learned Mediator on 26th March, 2010. The settlement agreement was signed by both the parties as well as their counsels.

10. On 6th August, 2010, the appellant submitted before this Court that she has identified another property which would be completed by October, 2010. She further submitted that she has agreed to shift to a rented accommodation to vacate the

property in dispute. She sought two weeks time to take the property on rent and vacate the respondent's property. The respondent had brought the demand draft for ₹8,80,000/- in terms of the settlement. The respondent submitted that he would hand over the draft to the appellant at the time of receiving the vacant and peaceful possession. To enable the appellant to shift to the rented accommodation and handing over the vacant and peaceful possession, this case was listed on 20th August, 2010.

11. On 20th August, 2010, the appellant submitted that she had taken alternative accommodation on rent, but she was unable to shift due to heavy rain. She sought further one week time whereupon this Court adjourned the case for 27th August, 2010.

12. On 27th August, 2010, the appellant deposited the keys of the vacant possession of the respondent's property before this Court. The respondent also deposited the three drafts totaling ₹8,80,000/- with this Court. Both the parties submitted that they would approach the competent Court for quashing of the FIR within one week and therefore the case be fixed on 10th September, 2010 for release of the demand drafts to the appellant and for the release of the keys of the subject property to the respondent. This case was accordingly fixed

for 10th September, 2010.

13. On 10th September, 2010, the respondents submitted that he shall be filing the petition for quashing of the FIR, subject to the appellant giving no objection. This case was accordingly fixed for 17th September, 2010.

14. On 10th September, 2010, the appellant re-filed CrI (Misc) No. 2987/2010 along with the settlement agreement dated 26th March, 2010. The appellant gave her no objection to the quashing by means of an affidavit dated 10th September, 2010 in which it was stated that she has no objection to the quashing of the FIR.

15. On 17th September, 2010, the appellant did not co-operate with the quashing of the FIR. Consequently, this case was adjourned to 24th September, 2010 and then to 29th October, 2010 and 24th December, 2010.

16. On 24th December, 2010, the appellant for the first time submitted that she shall be filing an application for re-calling of the order dated 20th January, 2009.

17. On 25th February, 2011, the appellant placed on record the copy of the order dated 21st December, 2010 passed in CrI.(Misc.)No.2987/2010. The learned counsel for the respondent rebutted that he is filing an application for review of the said order.

18. On 10th August, 2011, the appellant filed CM No.15127/2011 for restoration of the position before the settlement agreement dated 18th December, 2008 and 26th March, 2010 and for release of the keys of the respondent's property. The only ground set out by the appellant in the said application is that the respondent is behaving indifferently with his daughter and is objecting to her meeting with the appellant. It was submitted that the respondent was not taking care of the daughter and therefore the appellant wants to resile from the settlement. In that view of the matter, the daughter of the appellant was directed to remain present before this Court on 21st September, 2011.

19. The daughter of the appellant appeared before this Court on 21st September, 2011. There was no allegation of any maltreatment by the respondent. The respondent reiterated to take care of her daughter as well as to bear all expenses relating to her marriage.

20. The appellant relies upon the order dated 21st December, 2010 passed in Crl.(Misc.) No.2987/2010 in which the Court has recorded her statement that she has resiled from the agreement and therefore, the position prior to the Mediation Agreement be restored on the ground that the respondent is not taking care of the daughter.

21. Learned counsel for the respondent on the other hand submitted that the order dated 21st December, 2010 was passed at his back. It is submitted that the respondent's counsel was not present on 21st December, 2010 and the request for pass over for the appearance of the counsel was declined by this Court. It is further submitted that the appellant mislead the Court on 21st December, 2010 inasmuch as the appellant did not inform the Court that MAT Appeal no. 38/2007 had already been disposed of vide order dated 20th January, 2009 in terms of the settlement between the parties on 18th December, 2008. The orders passed by this Court in MAT Appeal no.38/2007 were not placed before the Court in Crl.(Misc.)No.2987/2010 on the said date.

22. So far as the present proceedings are concerned, the settlement between the parties was recorded on 20th January, 2009 by this Court after examining both the parties and satisfying that the parties have voluntarily settled the matter after completely understanding its terms. The appellant made an additional demand on 20th January, 2009 which was also accepted by the respondent and was made part of the settlement. The appeal was disposed of on 20th January, 2009.

23. There is no ground for recalling of the order dated 20th January, 2009 as there is a lawful agreement between the

parties. The appellant cannot be permitted to resile from the same as there is no allegation of fraud or undue influence. The application is, therefore, dismissed. The respondent has deposited a sum of ₹8,80,000/- which is lying deposited with the Registrar General of this Court in terms of the order dated 16th December, 2011. Let the said amount be released to the appellant. The appellant has deposited the keys in respect of the first floor portion of the property. Let the said keys be released to the respondent. The respondent shall remain bound by his undertaking to look after her daughter Neha and to marry her in a respectable manner.

24. The applications are dismissed.

MAY 04, 2012

J.R. MIDHA, J