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

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Date of Decision : January 15, 2013

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FAO(OS) 04/2013

RAVI SINGHAL & ORS. ...Petitioners

Represented by: Mr.Y.P.Narula, Sr.Advocate and
Shri Kirti Uppal, Sr.Advocate instructed by
Mr.Aniruddha Choudhury, and Mr.Abhay Narula,
Advocate.

versus

MANALI SINGHAL & ANR. ...Respondents

Represented by: Ms.Pinky Anand, Sr.Advocate
instructed by Ms.Manali Singhal, Ms.Ankita Mishra, and
Ms.Natasha Sahrawat, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE VEENA BIRBAL

PRADEEP NANDRAJOG, J.

CM No.65/2013 and 66/2013

Allowed; subject to just exceptions.

FAO(OS) No.4/2013

1. Vide impugned order dated September 27, 2012 the learned Single Judge has dismissed IA No.10697/2001 filed by the appellants under Order VI Rule 17 CPC praying for leave to be granted to amend the written statement filed by the appellants who were defendants No.1 to 3 in the suit filed by the respondents.

2. Mother and daughter i.e. the respondents, had filed a suit seeking enforcement of an agreement dated November 04, 1994. The first respondent and the first appellant were married to each other, and unfortunately the relations turned sour. Respondent No.2 was born during

the wedlock. Issues pertaining to alimony and maintenance cropped up. The mother and the daughter had to be provided for. It is not in dispute that the first appellant was a member of an HUF, Karta whereof was his father, the second appellant. A family house at No.24, Olof Palme Marg, Vasant Vihar belonged to the Joint Family.

3. The settlement agreement, enforcement whereof was prayed for noted the right of the respondents to be maintained and provides for agreed terms. Certain amounts were agreed to be paid. A motor vehicle and a residential accommodation was also agreed to be provided for.

4. As per the respondents there was breach of the agreement dated November 04, 1994. Enforcement of the agreement was prayed for. The suit was instituted in the year 1997.

5. Attempts to have the disputes reconciled and settled failed right up to the Supreme Court, and during the interregnum time passed and the parties did not seriously pursue the suit, and we find that the application in question was filed in the year 2001, and probably for the reason the parties were attempting a settlement, was not pressed. However, talks broke down resulting in issues being settled on February 27, 2006 as under:-

“1. Whether the Plaintiffs are entitled for decree of specific performance of Family Agreement dated 4.11.94, against the defendants jointly and/ or severally?

2. Whether the plaintiffs are entitled to a decree for payment of ₹9,60,000/- (Rupees Nine Lacs and Sixty Thousand) on account of arrears of maintenance, vacation expenses and school fee?

3. Whether the plaintiffs are entitled to a decree for rendition of accounts in respect of shares, securities, deposits, dividends and income of plaintiff in partnership, companies, HUF's, which the defendants are managing and/or controlling and other companies and partnerships, including those detailed in Schedule II?

4. Whether the plaintiffs are entitled to a decree for

disclosure against the defendants jointly and/or severally in relation to various movable properties including accounts and also of the HUF's in which properties including accounts and also of the HUFs in which the defendants are co-parcenors? OPP

5. Whether plaintiffs are entitled to return all their movables as claimed in the plaint and detailed in Schedule I? OPP

6. Whether the plaintiffs is entitled to interest on the amounts due and payable in terms of prayer a, b and f?

7. Whether the plaintiffs are entitled to costs of the Suit?

8. Whether the defendants have defaulted in paying the amounts and performing their obligations under the family settlement dated 4.11.1994 after having provided maintenance upto December 1996?

9. Whether the defendants are barred from raising the plea of undue influence, coercion, family settlement being without consideration, unreasonable and uncertain after the defendants have acted upon it?

10. Whether the family settlement was acted upon and accepted by the parties till December, 1996 and the defendants are debarred by the principle of estoppel and acquiescence to resile from the said family settlement? OPP

11. Whether the Suit is bad for misjoinder of parties as alleged in Para (1) of the Written Statement? (OPD)

12. Whether the Suit is bad for misjoinder of cause of actions as alleged in Para (2) of the Written Statement? (OPD)

13. Whether the Plaintiff No.1 is entitled to act as guardian of the Property or person of Plaintiff No.2? (OPD)

14. Whether the counter claim is maintainable?

15. Whether the Defendants are entitled to counter claim as prayed for?

16. Whether the Counter Claim of the Defendants is only a counter blast to the legitimate claims of the Petitioner?

17. Whether the counter claim of the Defendants has any nexus to the subject matter of the Suit?

18. Whether the counter claim of the Defendants is barred under the Benami Transactions Act and the Petitioner No.1 is the exclusive owner of the said property?

19. Whether the properties claimed under the counter claim are the stridhan of the Petitioner No.1 and her absolute property?"

6. After lapse of more than six years of the issues being settled, only on September 27, 2012, that the application seeking amendment was pressed for arguments. As noted above, the application has been dismissed.

7. Five amendments, four by way of preliminary objections and one by way of a counter claim seeking cancellation of the agreement were sought to be incorporated. The four amendments sought by way of preliminary objections would read as under:-

“Para 10-The Defendant No.1 submits that without admitting the validity or enforceability of agreement in question, it is the case of the Defendant No.1 that the suit has not been properly valued for the purposes of court-fee and jurisdiction under Section 7(2) of the Court Fee Act and is liable to be dismissed. It is the case of the Defendant No.1 that the Plaintiffs are claiming future maintenance @ ₹40,000/- per month on the basis of the agreement dated 4.11.1994. The Plaintiffs have however, not paid appropriate court fees as per the provisions of Section 7(2) of the Court Fees Act, for the said relief and therefore, the suit of the Plaintiff is liable to be dismissed under Order 7 Rule 11 CPC.”

....

“Para 11. The Defendant No.1 further submits that without prejudice to the contention of the Defendant No.1 that the said agreement dated 4.11.1994 was signed under undue influence as mentioned in preliminary objection No.4 sub-paras (a) to (d), it is the case of the Defendant No.1 that the alleged agreement dated 4.11.1994 is not a family settlement in law and it is only an agreement to pay maintenance. It is the case of the Defendant No.1 that the said agreement dated 4.11.1994 does not relate to or settles any dispute with regard to any property belonging to the HUF or to any of its members. In fact, the said Memo of Settlement has not been signed by the brother of the Defendant No.1, Mr.Saurabh Singhal, who is one of the coparceners of the HUF. In view of the said circumstances therefore, the said Memo of Settlement dated 4.11.1994 is void and is not enforceable in law.”

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“Para 13- The Defendant No.1 submits that without prejudice to the contention of the Defendant No.1 that the said Memo of Settlement was signed under undue influence and that the said Memo of Settlement is not a family settlement in law it is the case of the Defendant No.1 that the Memo of Settlement dated 4.11.1994 is only an agreement to pay maintenance and cannot be specifically enforced. It is also the case of the Defendant No.1 that he is not having any income to pay monthly maintenance @ ₹40,000/- per month to the Plaintiff No.1 is working as a Lawyer and has been having substantial income to support herself. The Defendant No.1 submits that the Plaintiff No.1 has deliberately not disclosed her income in the plaint. It is the case of the Defendant No.1 that the Plaintiff No.1 is liable to disclose her income for the purposes of deciding the quantum of maintenance, if any, payable by the Defendant no.1 to the Plaintiff No.1. As per the information of the Defendant No.1, the Plaintiff No.1 has been earning more than Rs.1 Lakh per month for the last numbers of years. It is thus the case of the Defendant No.1 that assuming though not admitting that the Defendant No.1 is legally liable to pay for the maintenance of the Plaintiffs, the same can only be fixed by the Court under Section 18 read with Section 23 of the

Hindu Adoption & Maintenance Act, 1956 and any private agreement between the parties would be opposed to Public Policy and not enforceable.”

....

“Para No.14- Without prejudice to the contentions of the Defendant No.1 that the Memo of Settlement dated 4.11.1999 was signed under undue influence and also that the said Memo of Settlement is not a ‘Family Settlement’ and that it is not a specifically enforceable contract, the Defendant No.1 submits that the said Memo of Settlement dated 4.11.1994 is liable to be altered keeping in view the change in circumstances. The Defendant No.1 submits that the Plaintiff No.1 is a Practicing Lawyer in Delhi High Court & Supreme Court of India. Plaintiff No.1 started working with M/s Amarchand & Mangal Das & Suresh A Shroff & Co. 13, Abul Fazal Road, Bengali Market, New Delhi, after she graduated in law in the year 1995. As per the information of the Defendant No.1, the Plaintiff No.1 has been earning more than ₹1 Lac for the last number of years. The Plaintiff comes from a family of Lawyers and is well established in the profession. On the other hand, the income of the Defendant No.1 has been going down due to recession in the business market. The Defendant No.1 is filing herewith the details of his income from the time the present suit was instituted to shows that the Defendant No.1 does not and did not have the means to pay the exorbitant amounts of maintenance claimed by the Plaintiffs in the suit. The Defendant No.1 thus submits that the alleged Memo of Settlement/Agreement dated 4.11.1994 needs to be altered keeping in view the fact that the Plaintiff No.1 has a substantial income of her own after the signing of the Agreement and also keeping in view the fact that the income of the Defendant No.1 has been constantly going down due to recession in the business.”

8. The fifth amendment sought by way of a counter claim reads as under:-

“The Defendant No.1 further submits that the Agreement/Memo of Settlement dated 4.11.1994 is void

and is not enforceable in law. The said memo of Settlement has not been signed by all the coparceners. Even otherwise the Memo of Settlement was signed and executed under undue influence as stated in the Written Statement. The Defendant No.1 therefore, seeks relief of the production of the said document and the cancellation thereof by this Hon'ble Court. In the alternative, it is also the case of the Defendant No.1 that the Defendant No.1 is not in a position to pay the huge amount of maintenance mentioned in the alleged Memorandum of Settlement dated 4.11.1994. The Defendant No.1 is filing herewith his income details with effect from 1993 and his Income-Tax returns etc. so as to show that at no given time, the Defendant No.1 had income to pay and provide for maintenance of the Plaintiff as mentioned in the said Agreement. The said Agreement is thus reasonable and is void and is also liable to be altered keeping in view the change in circumstances, relating to the parties concerned. The Defendant No.1 submits that the Plaintiffs have a right to claim maintenance from the Defendant No.1 as per his means. The quantum of maintenance has to be decided by the Court under the Hindu Adoption and Maintenance Act. For the purpose of deciding quantum of maintenance, the Plaintiff No.1 is liable to disclose her income before this Hon'ble Court. It is the case of the Defendant No.1 that since 1995, the Plaintiff No.1 has been working as a Lawyer with M/s. Amarchand & Mangal Das & Suresh A Shroff & Co.13, Abdul Fazal Road, Bengali Market, New Delhi. As per the information of Defendant No.1, the Plaintiff No.1 is having an income of ₹1 Lakh per month from her law practice. The Defendant No.1 submits that the Plaintiff No.1 comes from the family of lawyers and has substantial law practice in the Delhi High Court as well as in the Supreme Court of India. In view of the said change in circumstances and also keeping in view the fact that the income of the Defendant No.1 has been going down on account of recession in the business for the last number of years, it is a fit case that the alleged Agreement dated 4.11.1994 may be cancelled/altered keeping in view the provisions of Section 25 of the Hindu Adoption and Maintenance Act and the quantum of maintenance, including interim maintenance, if any, may be fixed keeping in view the provisions of Section

23 of the said Act.

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For the relief of production and cancellation of the Memorandum of Settlement dated 4.11.1994, the counter-claim is valued at ₹200.00 and a court-fee of ₹20.00 has been paid. As regards the relief of fixing of the maintenance amount keeping in view the change in circumstance and also keeping in view the provisions of Section 25 of the Hindu Adoption and Maintenance Act, the subject matter of the suit with regard to the said relief is valued at ₹5,00,001/- and a court-fee of ₹7,275.00 has been paid. The Defendant No.1 shall pay further court-fee if required for the relief claimed in the counter claim.”

9. Pertaining to the first amendment prayed for, the learned Single Judge has held that the suit was not one for maintenance or annuities and thus Section 7(ii) of the Court Fees Act 1860 was not attracted. It has been opined that the suit sought to enforce a right under the agreement dated November 04, 1994 and the Court fee had been paid accordingly.

10. Thus, the amendment has been declined.

11. Questioning the view taken, learned senior counsel for the appellants urged that it is settled law that while considering an amendment the merits of the plea cannot be gone into.

12. Quiet right. But that would only relate to a factual content of a plea. Amendment sought to a pleading has to be considered with reference to whether or not the same would be necessary to determine the real questions in controversy between the parties.

13. Now, an objection which is predicated on law and sought to be incorporated by way of amendment has to be considered differently vis-à-vis an amendment based on facts. If by way of an amendment another preliminary objection to the maintainability of the suit is sought to be added, the Court would be perfectly justified in considering the nature of the suit.

The matter can be looked at a little differently. Suppose an objection is raised to the maintainability of a suit with reference to a plea that adequate Court fees has not been paid by labeling the suit as having a character 'X' and the Court finds that the character of the suit is 'Y' and as laid before the Court, adequate Court fee was paid, the Court would be fully justified in not even settling an issue with reference to the objection raised.

14. In the decision reported as 2012 (5) SCC 370 Maria Margarida Sequeira Fernandes & Ors. v. Erasmo Jack De Sequeira (Dead) Through LRs the Supreme Court highlighted that suits should not be set down to trial on vexatious and frivolous objections and pleadings which are incapable of being sustained.

15. Thus, we concur with the view taken by the learned Single Judge as regards the first amendment sought to be incorporated.

16. The second amendment sought to be incorporated in the pleadings is to attack the settlement dated November 04, 1994 on the ground that Mr.Saurabh Singhal, a co-parcener of the HUF was not a signatory to the agreement.

17. Declining the amendment the learned Single Judge has opined, and in our opinion correctly, that a maintenance agreement between a wife and her husband, if the husband is a co-parcener in an HUF, would bind the husband and if any money is payable to the wife under the agreement, the same can always be treated as a charge with respect to the husband's share in the joint family property belonging to the HUF.

18. For the same reasons on which we have agreed with the learned Single Judge as not warranting the written statement to be permitted to be amended with respect to a preliminary objection as per para 10, we agree that even the decision declining the second proposed amendment is correct.

19. Pertaining to the third proposed amendment sought to be incorporated by way of a preliminary objection the learned Single Judge has

found, and rightly so, that the existing written statement had enough pleadings to cover the sweep of the third proposed amendment. The learned Single Judge has dealt with the issue in paras 9 to 11 of the impugned order pertaining to the third proposed amendment, and we simply agree inasmuch as on the issue of the financial capacity of respondent No.1 there are enough pleadings in the existing plaint. The learned Single Judge has correctly opined that other details which are in the nature of evidence are not required to be pleaded.

20. The fourth proposed amendment has been opined by the learned Single Judge to be wholly unwarranted inasmuch as it was not a case where a maintenance granted and payable in future was sought to be got varied by the husband. We agree with the view taken by the learned Single Judge that the wife and the daughter were enforcing a settlement agreement dated November 04, 1994 and the question of the husband's income declining did not arise to be considered.

21. That leaves us to the last proposed amendment, which is in the nature of a counter claim. The learned Single Judge noted that for a paltry Court fee in sum of ₹20/- the proposed amendment sought the cancellation of a document on which the claim was founded. The reasons given by the learned Single Judge, have some weight, but more weighty would be the reasons that in the written statement filed it has already pleaded that the settlement agreement was a result of undue influence. Pleadings to said effect are to be found in para 4(d) in the preliminary objections. Needless to state, no cancellation of the document would be required and liability can be avoided if it is found to be the result of an undue influence.

22. One more fact needs to be noted before we bring the curtains down. The negotiations had broken down when issues were settled on February 27, 2006 and we see no reason why, if the proposed amendments were sought bona fide, the application seeking amendment was not argued

before issues were settled.

23. While dismissing the appeal we modify the impugned order imposing costs while dismissing the appeal. The appeal stands disposed of maintaining the impugned order dismissing the application seeking amendment but without any order as to costs while dismissing the application as also while dismissing the appeal.

CM No.64/2013

Since the appeal stands disposed of, instant application seeking ad-interim stay of the impugned order till disposal of the appeal stands disposed of as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(VEENA BIRBAL)
JUDGE

JANUARY 15, 2013
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