

GAHC010272192023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Cont.Cas(C)(Suo Moto)/4/2023

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VERSUS

S NATH
ADVOCATE, S/O RABINDRA LAL NATH, HOUSE NO. 23, JYOTIKUCHI,
GUWAHATI-781040

Advocate for the Petitioner : MRS. S SARMA (SC, GHC)

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

01.12.2023

1. Heard Mr. S. Nath, S/o Mr. Rabindra Lal Nath, R/o House No. 23, Jyotikuchi, Guwahati, against whom the suo moto contempt petition has been registered, in view of his actions in not coming to Court with clean hands, in relation to the order dated 04.10.2023 passed in Cont. Cas(C)(Suo Moto) No.2/2023 registered against the

appellant husband and the order dated 20.11.2023 passed in I.A. (Civil) No.3216/2023.

2. The matter pertains to the appeal filed by appellant husband against the judgment passed by the learned Family Court on 16.07.2019 in FC (Civil) Case No.1007/2017, wherein a direction has been issued to the appellant husband, to pay permanent alimony to the respondent wife amounting to Rs.5,00,000/- and monthly maintenance of Rs.3,000/- till the permanent alimony was fully paid.

3. The appellant has filed the present Mat. App. No.4/2020, challenging directions passed by the learned Family Court, Kamrup(M) at Guwahati. The facts of the case has already been spelt out in the order dated 23.11.2023 passed in Mat. App. No.4/2020 and I.A. (Civil) No.3216/2023 in Cont. Cas(C) (Suo Moto) No.2/2023 which is reflected hereinbelow-

“1. Heard Mr. S. Nath, learned counsel for the appellant husband and Mr. S.K. Agarwal, learned counsel for the respondent wife. The respondent wife is also present in person today. Ms. S. Sarma, learned Standing Counsel appears for the Gauhati High Court.

2. The genesis of this case is that the learned Family Court, Kamrup(M) at Guwahati, vide judgment dated 16.07.2019 passed in FC(Civil) Case No.1007/2017, directed the appellant husband to pay Rs.5,00,000/- as permanent alimony to the respondent wife. Till the permanent alimony was fully paid, the appellant husband was to pay monthly maintenance of Rs.3,000/- to the respondent wife. As the appellant husband paid only Rs.1 lakh out of the Rs.5 lakhs to be paid and as there was huge arrears in the payment of the monthly maintenance, this Court had allowed the appellant husband to pay the arrear maintenance amount in instalments. The same was not complied with and a new payment schedule was made, on the basis of the instalment plan made by the appellant husband. This was also not complied with the appellant husband. In view of the above, a Suo Moto Contempt Case was registered against the appellant husband. Thereafter, vide order dated 04.10.2023, the appellant husband was directed to be sent to civil prison for 1 (one) month for committing

contempt of Court. This Court also held in the order dated 04.10.2023, that if the arrear maintenance amount was paid in the meantime, the appellant husband would be at liberty to approach this Court, to re-consider the order dated 04.10.2023 passed in the contempt case.

3. *The appellant husband approached this Court vide I.A.(C) No.3216/2023, by stating that he had made payment as per the instalment plan. However, on perusing the application, it was found that the appellant had not made payment of arrears as per the instalment plan. An oral submission was then made that a Deed of Compromise had been made between the appellant husband and the respondent wife. The applicant/appellant's counsel thus prayed for recalling the order for civil imprisonment passed on 04.10.2023 and to dispose of the appeal and interim application on the basis of the deed of compromise. This Court, vide order dated 20.11.2023 passed in I.A.(C) No.3216/2023, directed the applicant to submit the original deed of compromise with an application.*

4. *This Mat. Appeal and the I.A.(C) 3216/2023 was to be disposed of, in view of the fact that a Deed of Compromise had apparently been executed between the appellant husband and the respondent wife, which is to the effect that the respondent wife would not claim any amount of the permanent alimony and monthly maintenance that had been awarded to her, beyond what had been received by the respondent wife.*

5. *The learned counsel for the appellant husband submits that an affidavit with the copy of the original Deed of Compromise was filed in the Registry of this Court on 17.11.2023. As the same was not found in the Court's record, he produced his own copy for the perusal of this Court today.*

6. *The respondent wife, who has appeared in person, has also stated before this Court that she has signed the Deed of Compromise and that she does not wish to make any claim against the appellant husband, besides the monthly maintenance/part of alimony already received by her.*

7. *The terms of the Deed of Compromise executed between the parties is re-produced below as follows :-*

“NOW THIS DEED OF COMPROMISE IS MENTIONED AS UNDER:

1. *WHEREAS the above First Party and Second Party has agreed to settle the*

matrimonial dispute amicably by mutual settlement of compromise to end the litigation regarding divorce case between them.

2. *That the first party (Husband) filed an appeal bearing Matt. Appeal No.04/2020, before the Hon'ble High Court, against the judgement and Decree of Divorce dated 16/07/2019 passed by the Principal Judge Family Court, Guwahati in F.C. (Civil) Case No.1007/2017, which is pending for decision by the Hon'ble High Court.*

3. *That the learned Family Court Granted Divorce vide Decree of Divorce dated 16/07/2019, with the Direction to "payment of Rs.5,00,000/- (Rupees Five Lakhs) as permanent alimony to be paid by the first party (Husband).*

4. *That the first party (Husband) has paid an amount of Rs.1,00,000/- (Rupees One Lakh) as per the direction of the Hon'ble High Court, as pre-condition for admitting the appeal.*

5. *That now both the first party and second party have arrived at a decision that case is to be settled out of compromise and accordingly the second party (wife) has agreed to settle the matter on the ground that the alimony amount of Rs.1,00,000/- (Rupees One Lakh) already paid by First Party would be accepted as final settlement of the case, and the first party would accept the Decree of Divorce.*

6. *That the second party (wife) would not claim any amount of further arrear and current maintenance and balance alimony. Second party has abandoned the claim of balance amount of maintenance and alimony and thereby agreed to settle the matter by way of compromise decree of Divorce.*

7. *That the first party (Husband) has agreed to accept the Divorce and accordingly he will have to filed an application for compromise decree before the Hon'ble High Court for final settlement of litigation.*

8. *That the deed of compromise is made between the parties voluntarily and without any pressure or by either party.*

Both the first party and second party have signed this agreement in sound mind and good health on this 14th Day of November, 2023".

8. *In view of the terms of the Deed of Compromise dated 14.11.2023 and the affidavit alleged to have been filed on 17.11.2023, the appeal and the terms of the judgment dated 16.07.2019 passed by the learned Principal Judge, Family Court No.II, Kamrup (Metro) in FC(Civil) Case no.1007/2017 were to be disposed of, to the extent that the respondent wife would not receive anything beyond what she had already received as maintenance and permanent alimony.*

9. During the period the order was being typed out by the stenographer, a check was made with the Registry, with regard to the affidavit allegedly submitted by the counsel for the appellant husband regarding the Deed of Compromise dated 14.11.2023. A report has come from the Registry that only one additional affidavit was filed by the appellant husband on 17.11.2021 and not in the year 2023. As such, we are of the view that the appellant husband has not been fair to the Court and has in fact been playing with the Court, by not coming to Court with clean hands. In fact, the order dated 20.11.2023 passed in I.A.(C) 3216/2023 had directed the counsel for the appellant/applicant to submit the original copy of the Deed of Compromise along with an application during the course of the day. As such, the applicant husband could not have submitted any application prior to 20.11.2023. As such, the oral order passed in the Court today has been modified, as no signature was given by us in the order, to protect ourselves from the alleged fraud.

10. The above being said, the counsel for the appellant husband had initially submitted a photocopy of the Deed of Compromise dated 14.11.2023, which showed that no witnesses had signed the Deed of Compromise. However, the original Deed of Compromise that has been submitted today shows that the witnesses have now signed the Deed of Compromise, though in the photocopy that was produced on 20.11.2023, the witnesses had not signed the same.

11. We have also come to learn that the appellant has not been sent to a civil prison despite this Court, in the order dated 04.10.2023 passed in Cont.Cas(C)(Suo Moto) No.2/2023, had directed that the appellant husband should be sent to civil prison for a period of 1 (one) month for committing contempt of Court. The Registry was to issue necessary orders for incarceration of the appellant husband and the concerned CJM was to issue necessary custody warrant for the same. However, it is surprising to learn that the appellant husband has not been sent to civil prison even till today.

12. Paragraph 9, 10 & 11 of the order dated 04.10.2023 passed in Cont.Cas(C)(Suo Moto) No.2/2023 is re-produced below as follows :-

“9. On considering the various orders passed by this Court and the behavior of the respondent/contemnor, we find that the respondent/contemnor has intentionally not acted upon the schedule of payment that was made as per his own proposal and

recorded in the Order dated 26.07.2023. As such, we find the respondent Biswajit Das in contempt of the Order dated 26.07.2023. We are of the considered view that the respondent/contemnor should thus be sent to civil prison for a period of 1 (one) month for committing contempt of Court.

10. The Registry shall accordingly issue necessary order and instructions for the incarceration of the respondent/ contemnor in civil prison for a period of 1 (one) month, by directing the concerned CJM to issue necessary custody warrant for putting the respondent/contemnor in a civil prison for 1 (one) month. However, in the event the respondent/contemnor pays the arrear maintenance amount in installments as provided in the Order dated 26.07.2023, the respondent/contemnor will be at liberty to approach this Court, to reconsider the order passed today.

11. The Contempt Case is accordingly closed. A report on the steps taken will then be placed by the Registry and the concerned CJM in the case record of Mat. App. No. 4/2020."

13. *The Registry shall submit a report in relation to the above order dated 04.10.2023 by the next Court date.*

14. *List the matter on 30.11.2023."*

4. As per the order, dated 23.11.2023 passed in I.A. (Civil) No.3216/2023, the learned counsel for the appellant was to submit the original copy of Compromise Deed along with application. On 30.11.2023, the learned counsel for the appellant husband had informed this Court that an affidavit had been filed by the appellant husband on 17.11.2023. However, on checking with the Registry of this Court, it was found that no affidavit had been filed by the appellant husband on 17.11.2023, as the only additional affidavit filed by the appellant husband was on 17.11.2021 and not in the year 2023.

5. The respondent Mr. S. Nath submitted on 30.11.2023 that the Acknowledgement receipt issued by the Registry of this Gauhati High Court showed that the appellant husband had submitted an affidavit on 18.11.2023. However, as the same was under objection, the additional affidavit filed on 18.11.2023 was registered only after removing the defect in the affidavit, which was done on 28.11.2023. He had accordingly submitted that the additional

affidavit filed by the appellant husband, in compliance with the order dated 04.10.2023, should be perused for disposing of the appeal and the contempt case. However, the receipt given by the Registry of the Gauhati High Court having stated in clear terms the "Date of Receipt - 28.11.2023", clearly showed that the counsel Mr. S. Nath was guilty of telling lies to this Court again.

6. On verifying the issue with the Registry of this Court we found that no affidavit had been filed by the appellant husband on 8.11.2023. Accordingly, we directed the Registry to register a suo moto case against the respondent, as blatant lies had been told to us by the respondent, in an attempt to mislead us.

7. Mr. S. Nath, the respondent submits that he may be forgiven for the wrong statements made by him in this Court, which was due to wrong information given to him by his clerk. He tenders his unqualified apology before this Court and prays that the contempt petition may be closed.

8. On considering the submission made by Mr. S. Nath we are of the view that the contempt petition should be closed, with a warning given to him that such action of the respondent should not be repeated in the future.

9. With the above, the contempt petition stands closed.

JUDGE

JUDGE

Comparing Assistant