

Court No. - 39

Case :- FIRST APPEAL No. - 1185 of 2023

Appellant :- Arvind Pathak

Respondent :- Smt. Preeti @ Akanksha

Counsel for Appellant :- Nanhe Lal Tripathi

Counsel for Respondent :- Kundan Rai

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Vinod Diwakar,J.

1. Heard Sri Santosh Kumar Mishra, Advocate, holding brief of learned counsel for the appellant and Sri Kundan Rai, learned counsel for the respondent.

2. Present appeal has been filed under Section 19 of the Family Courts Act, 1984, arising from the judgement and order dated 06.09.2023 passed by the Additional Principal Judge, Family Court, Jalaun at Orai in Matrimonial Case No. 179 of 2021 (Smt. Priti @ Akanksha Vs. Arvind Pathak). By that order, the learned court below has dissolved the marriage between the parties and provided for permanent alimony Rs. 3 lakhs to the respondent. That amount is required to be deposited in three yearly installments.

3. On 31.10.2023, the following order had been passed in this appeal :

"1. Upon hearing learned counsel for the parties, it appears to the Court that real reason for filing of the present appeal is pendency of certain criminal cases instituted by the respondent. Since the marriage between the parties has been dissolved, pendency of criminal cases that may have been lodged owing to misunderstanding and misgivings, may have lost their purpose.

2. Accordingly, Shri Kundan Rai, learned counsel appearing for the respondent may obtain written instructions if the respondent is willing to withdraw from the criminal prosecution lodged by her against the present appellant and his family members.

3. Learned counsel for the appellant may also obtain instructions if the appellant would like to press the appeal any further.

4. Put up as fresh on 07.11.2023."

4. Later, on 28.11.2023, the following order came to be passed :

"1. Pursuant to the last order, Sri Kundan Rai, learned counsel for the respondent informed that the respondent had instituted four cases (in all against the appellant and his family members). Similarly Sri Nanhe Lal Tripathi, learned counsel for

the appellant informs that the appellant's side had instituted five cases (in all against the respondent and her family members).

2. Both counsel state that the parties shall withdraw the cases instituted by each, against the other. Sri Nanhe Lal Tripathi, learned counsel for the appellant further states that subject to such development the appellant is ready and willing to pay the amount of Rs.3 lakhs under the impugned order as full and final amount of settlement.

3. Let such terms of settlement be reduced in writing and brought on record by means of joint/ individual affidavit of both parties.

4. Put up as fresh on 11.12.2023 to enable the parties to file appropriate affidavit and also seek withdrawal of criminal and other cases lodged against each other."

5. In compliance of the above order, supplementary affidavits have been filed by both parties. In the supplementary affidavit filed by the appellant, it has been stated as below :

"3 - That the appellant side had instituted five cases (in all against the respondent and her family members) which is following cases -

"1. Complaint Case No. 8506 of 2021 under section 406, 323, 504, 506 I.P.C. (Arvind Pathak Vs Priti @ Akansha) which is pending before CJM Lalitpur in the aforesaid case appellant prepared the affidavit for withdrawal the case but due to condolence on Friday which has not been submitted by the appellant before the court concern.

2. Case No. 211 of 2022 under section 9 Hindu Marriage Act in the aforesaid case appellant filed the affidavit for withdrawal the case on 7.12.2023 which has been sent by the concern court in Lok Adalat which has been held on 9.12.2023 and the in the Lok Adalat matter has been finished against the respondent.

3. Case No. 1012 of 2021, (Smt. Harkuwar Devi Vs Smt. Priti @ Akansha and others) under section 12 Domestic Violence Act in the aforesaid case appellant was also filed the affidavit for withdrawal the case before the concern court on 7.12.2023 which is Pending before the Junior Division FTC Lalitpur.

4. Case No. 4290 of 2018 (Smt. Harkuwar Vs Ramprakash and others) under section 323, 504, 506 I.P.C. which is also pending before CJM Lalitpur in the aforesaid case withdrawal affidavit is ready but due to condolence on Friday appellant was not submitted the affidavit while which is ready for filing the withdrawal application in the aforesaid case which must be filed on 11.12.2023.

5. Appellant was filed a Criminal Revision No. 457 of 2023 (Smt. Harkuwar Vs State of UP and others) in this case withdrawal affidavit is ready and which will be filed by the appellant on 11.12.2023. Photostate copy of the affidavit dated 7.12.2023 relating to case no. 1012 of 2021 and 211 of 2022 are collectively being filed herewith and marked as Annexure No. SA 1 to this supplementary affidavit."

4- That the appellant is ready for settlement the matter and also he is ready for withdrawal the cases which has been initiated by the appellant side against the respondent side."

6. Similarly, in the supplementary affidavit filed by the respondent, it has been stated as below :

"3. That, in the present appeal the Appellant as well as the Opp. Party agreed to settle all their dispute before this Hon'ble Court, and the same was also incorporated by this Hon'ble Court in the order dated 28.11.2023.

4. That, pursuant to the order dated 28.11.2023 the Opp. Party willing and ready to withdraw all the cases which she had filed against the appellant and his family members which are as follows :

"i. Case No. 773/2017, under Sections 498-A, 323, 504 & 506 IPC, P.S. Konch, District Jalaun.

ii. Case No. 187/2017, under Section 12 of Protection of Women from Domestic Violence Act, 2005.

iii. Case No. 4878/2019, under Sections 506, 323, 354-B & 452 IPC, District Lalitpur.

iv. Case No. 574/2022, under Section 128 Cr. P.C., District Jalaun."

5. That, the Deponent states and declares, except the above mentioned cases she had not filed any other case before any court of law against the appellant and his family members.

6. That, the above cases were filed by the Opp. Party against the Applicant and his family members, in which the Opp. Party will file appropriate applications for the withdrawal of the same in accordance with law.

7. That, it is respectfully submitted that the Appellant may also be directed by this Hon'ble Court to file the proper application for the cases which he had instituted against the Opp. Party and her family members.

8. That, it is further submitted that this Hon'ble Court while considering this affidavit may further direct that either of the party may not institute any civil and criminal case against each other or against their family members, after the settlement order passed by this Hon'ble Court.

9. That, the deponent further states that after the settlement by this Hon'ble Court in the present case she will not file any criminal as well as civil suit against the appellant or his family members."

7. Learned counsel for the appellant further states, he will deposit the entire amount of Rs. 3 lakhs with the learned court below within a period of 15 days from today i.e. not later than 02.01.2024.

8. At the same time, both counsel appearing for the parties state, each party will file appropriate application to withdraw from all criminal cases instituted by them against the other and that each party would make best efforts to obtain orders regarding withdrawal/quashing of the proceedings against the other. In such proceedings, the parties undertake not to object and cooperate in withdrawal/quashing of the proceedings.

9. In view of such statements made, we find, the only surviving dispute between

the parties (as noted in the earlier order) with respect to pending criminal cases, stands resolved.

10. Accordingly, the decree of the learned court below is modified (as above) that the marriage between the parties shall stand dissolved, subject to to the appellant depositing Rs. 3 lakhs on or before 01.01.2024. As to alimony, the respondent remains entitled to the above Rs. 3 lakhs to be released in her favour in view of her undertaking to withdraw from all criminal cases and further in view of specific undertaking given by the parties that they will withdraw from all criminal cases lodged against the other and not institute any civil or criminal case against each other in future.

11. In view of the above, present appeal is **partly allowed**.

Order Date :- 11.12.2023
Abhilash

(Vinod Diwakar, J.) (S. D. Singh, J.)