

HIGH COURT OF UTTARAKHAND AT NAINITAL

**Hon'ble Chief Justice Ms. Ritu Bahri
Hon'ble Justice Sri Rakesh Thapliyal**

20th MAY, 2024

AO No. 326 of 2022

Nitin Dobhal Appellant

Vs.

Kanchan Dobhal Respondent

Petitioner : Mr. Akash Gaur, holding brief of Mr. Atul
Kumar Bansal.
Counsel for the respondent : Mr. Pawan Mishra.

Upon hearing the learned Counsel, the Court made the following Judgment:

(Per: Sri Rakesh Thapliyal,J.)

1. The present appeal is preferred by the appellant Nitin Dobhal under Section 28 of the Hindu Marriage Act, 1955, read with Section 19 of Hindu Courts Act, 1984.
2. The brief facts of the case are that the appellant married with the respondent on 22.10.2015 and due to some differences between the parties, the respondent left her matrimonial house on 24.05.2016 and since then, they are living separately. The present appellant, the husband, initially filed an Original Suit No.506 of 2017, under Section 13 of the Hindu Marriage Act, 1955, in the court of Principal Judge, Family Court, Dehradun, which was dismissed for want of prosecution on 26.08.2019. Subsequently, on 28.09.2019, the appellant preferred a Misc. application, for restoring the earlier suit, which was registered as Misc Case No.64 of 2019, and that too was dismissed for want of prosecution on 25.09.2021. Again, the appellant filed a Misc Application on 05.09.2021 for restoration of the restoration application no.64 of 2019, which was numbered as Misc. Case No.198 of 2021, and on 13.12.2021, a withdrawal application was filed on the

ground that he has filed another case under Section 13 of the Hindu Marriage Act, 1955.

3. The subsequent suit, bearing Original Suit No.1060 of 2021, was preferred by the present appellant on 06.11.2021, under Section 13 of the Hindu Marriage Act, 1955, in the court of Principal Judge, Family Court, Dehradun, and preliminary objection was raised by the respondent with regard to maintainability of the said suit and, thereafter, the Principal Judge, Family Court, Dehradun, dismissed the Original Suit No.1060 of 2021, on the ground of maintainability. It is observed in the order passed by the Principal Judge, Family Court, Dehradun, that the subsequent suit filed for the same cause of action is not maintainable since earlier suit was dismissed for want of prosecution and for restoration of same, the application was filed, and the same was also rejected, and subsequently again a further application was filed, but the same was withdrawn on the ground that the appellant had already filed another suit.

4. The Principal Judge observed in the order that the second suit is not maintainable, since there is no fresh cause of action and being aggrieved by the order passed by the Principal Judge, Family Court, Dehradun, dated 10.08.2022, the present appeal has been preferred.

5. On 28.09.2022, this Court issued the notices to the respondent, and, subsequently, as per the office report, the respondent was represented through the Advocate. On 15.02.2024, this Court directed that both the parties shall remain present in Court and pursuant thereto, on 05.03.2024, both the parties were present and they were referred for mediation and for that purpose, Ms. Sheetal

Bisht, Advocate was appointed as mediator to make efforts for conciliation between the parties.

6. As per the office report, by the letter number 5066 UHC/Appeal-I section dated 14.03.2024, the conciliation process was initiated by Ms. Sheetal Bisht, Advocate. On 21.03.2024, though the appellant was present before the Mediator, however, neither the respondent, nor her counsel were present. The order for referring the matter to the mediator was passed in the absence of the respondent, which is reflected from the order dated 05.03.2024. Consequently, the mediator, on 21.03.2024, gave another date, i.e 10.04.2024. Again on 10.04.2024, though the appellant was present before the mediator but the respondent was not present and in the mediation report dated 10.04.2024, it was observed that the efforts cannot be made for mediation in absence of the respondent. Again the mediator gave another date, i.e. 26.04.2024. On 26.04.2024, the appellant and the respondent joined the mediation centre through video conferencing and efforts were made by the mediator to settle the dispute between the parties, and, ultimately, the mediator observed in its report dated 26.04.2024 that there may be possibility of amicable settlement between the parties and on the consent of the parties, another date was given, i.e. 06.05.2024 for further attempts.

7. On 06.05.2024, the matter was again listed for mediation and on that date, both the parties joined the mediation proceedings through video conferencing and the parties had amicably settled their dispute, which is reflected from the report of mediator dated 06.05.2024. The mediator, in its report dated 06.05.2024 further observed that the agreement towards the amicable

settlement be made and submitted on the scheduled date, i.e. 13.05.2024, before the Court.

8. On 13.05.2024, though the parties were not present before the mediator and the mediator, in its report dated 13.05.2024 observed that since the scheduled date on the appeal was 13.05.2024, which is now scheduled to 16.05.2024 and the final report of the mediation will be submitted on the date fixed.

9. The matter was listed before this Court on 16.05.2024 and the appellant was present. The respondent was also present with her brother. The appellant undertook before this Court that he is ready to pay Rs. 15 Lakhs as permanent alimony, though on the last date, he was ready to give only Rs. 9 Lakhs as permanent alimony. The mediator was also present before the Court on that date and she informed that Rs. 15 Lakhs was offered during mediation, and the respondent had asked that her jewellery be given back to her.

10. On the demand of jewellery, the appellant informed that there is one cupboard in his house, which is locked, which she can take. Whatever documents are there, he is not aware, since the cupboard is locked. The house of the appellant is in Dehradun and the respondent is also staying in Dehradun. Consequently, this Court passed an order on 16.05.2024, that the respondent, along with her brother, can go to the house of the appellant and took the said cupboard on 19.05.2024 at 11:00 AM and for the purpose of assistance, the copy of the said order was also supplied to the learned Brief Holder for the State, with a direction that the State counsel should ask SSP Dehradun to send one lady constable at 11:00 AM at the house of the appellant in Dehradun. Today the matter is listed and the

appellant is present, but the respondent is not present. The appellant, who is present in person, submits that the respondent had not turned up to pick up the cupboard from his house on 19.05.2024.

11. Since several efforts were made by the mediator, and on 16.05.2024, both the parties were present and the appellant was ready to pay Rs. 15 Lakhs as permanent alimony to the respondent with the further direction that the respondent can pick up the said cupboard from the house of the appellant, which she has failed to do. Now, at this stage, since the appellant is ready to pay a sum of Rs. 15 Lakhs as permanent alimony and that order was passed in the presence of the respondent, and furthermore, since 2016, both the appellant and the respondent are living separately, it appears to be a dead marriage because of the conduct of the parties. Not complying with the directions passed by this Court on 16.05.2024 also amounts to cruelty by the respondent against the husband, the appellant. Moreover, the earlier divorce petition was dismissed and the restoration application was also rejected and subsequent divorce suit filed by the appellant under Section 13 of the Hindu Marriage Act, 1955, was also dismissed on the ground that the same is not maintainable.

12. Keeping in view the fact that both of them are living separately since March, 2016, and there are no issues from this marriage, and towards permanent alimony, the appellant is ready to pay a sum of Rs. 15 Lakhs, there is no useful purpose to continue this marriage, since it appears to be a dead marriage. As it is reflected from the earlier orders passed by this Court on 16.05.2024, the respondent has not objected towards the amount with

regard to the permanent alimony, which is Rs. 15 Lakhs, but she was demanding the jewellery, in response to which the appellant has informed that there is one cupboard lying in the house, which is locked. Consequently, this Court also directed the respondent to pick up the said cupboard along with her brother on 19.05.2024 at 11:00 AM, and for their assistance, the SSP, Dehradun was also directed to send one lady officer, but the respondent has not complied with that order. Such conduct of the respondent also amounts to cruelty.

13. After taking into consideration that though the marriage took place on 22.10.2015, and both are admittedly living separately since 22.03.2016, and there are no issues from this and the appellant is ready to pay a sum of Rs. 15 Lakhs towards permanent alimony to the respondent, we are of the view that continuation of this marriage further is absolutely a futile exercise, therefore, we conclude the proceedings of the present appeal and grant divorce decree to the appellant by dissolving their marriage dated 22.10.2015.

14. Since on the previous date, the respondent was demanding her jewellery, which according to the appellant could be in the cupboard, which is lying in his house. The appellant is directed to keep this cupboard outside from the house and send it to the respondent's house, for which the SSP Dehradun is directed to give assistance by deputing two male police officers including one lady constable, as per the convenience of the appellant so that the locked cupboard, lying in the house of the appellant, be handed over to the respondent. Furthermore, the amount towards permanent alimony i.e. Rs. 15 lacs which the appellant is ready to pay to the respondent should be

deposited by the appellant by Demand Draft in the Court of Principal Judge, Family Court, Dehradun within a week and the respondent is free to withdraw the same amount by moving an application before the Principal Judge, Family Court, Dehradun.

15. In view of this, the present application is disposed of, accordingly.

(Ritu Bahri, C.J.)

(Rakesh Thapliyal, J.)

R.Bisht