

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-M-357-2013

Date of Decision: 24.8.2015

Simran Kapoor @ Mamta

..Appellant

versus

Vishal Kapoor

..Respondent

and

FAO No.6217 of 2013

Simran Kapoor @ Mamta

..Appellant

versus

Vishal Kapoor

..Respondent

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MR JUSTICE SHEKHER DHAWAN

Present: Ms. Paramjit Kaur Deol, Advocate,
for the appellant.

Mr. Vivek Shakun, Advocate,
for the respondent.

RAJIVE BHALLA, J. (ORAL)

By way of this order, we shall decide FAO-M-357-
2013 and FAO No.6217 of 2013.

The appeals have been filed by Simran Kapoor @
Mamta, wife of Vishal Kapoor, to challenge judgment and
decree, dated 01.8.2012, passed by Additional District Judge,

Kurukshetra, dissolving their marriage.

Simran Kapoor @ Mamta, wife of Vishal Kapoor daughter of Shri Kishan Lal, resident of House No.5713, Sector 56, Chandigarh is present in court alongwith her counsel Ms. Paramjit Kaur Deol.

Vishal Kapoor son of Shri Sudesh Kumar Kapoor, resident of House No.2070, Housing Board Colony, Sector 3 Kurukshetra is also present in court along with his counsel Mr. Vivek Shakun, Advocate.

Counsel for the appellant as well as Simran Kapoor @ Mamta, wife of Vishal Kapoor, daughter of Shri Kishan Lal, state that the appellant shall withdraw the appeals, accept the correctness of the decree of divorce and shall not claim any maintenance or permanent alimony if the interest of their minor child Bhavishya is secured by the respondent and the respondent gives up visitation rights. Simran Kapoor has filed an affidavit dated 24.8.2015 and recorded a separate statement dated 24.8.2015 that her affidavit may be read as part of her statement. The contents of the affidavit read as follows:-

“ 1. That the deponent had filed an appeal (Matrimonial) bearing No.FAO-M-357 of 2013 and FAO No.6217 of 2013 which is pending before this Hon'ble Court and is fixed for today.

2. That the deponent with the intervention of the

Hon'ble Court and the Ld. Counsels is ready to compromise the matter as per following terms and conditions:-

- a) That the respondent Vishal Kapoor has readily agreed that the deponent shall retain the custody of their minor son namely Bhavishya who is with the appellant/deponent since his birth.
- b) That the respondent Vishal Kapoor will not have any visitation rights to the child namely Bhavishya.
- c) That the respondent's mother and the appellant's mother in law namely Veena Rani Kapoor has agreed to give 25% share in her house to her grand son namely Bhavishya.
- d) That both the deponent as well as the respondent have agreed to withdraw all the cases (custody petition, petition under Section 125 Cr.P.C and complaint under Section 494) pending in the trial court at Chandigarh against each other and will not have any say, whatsoever, in each other's life hence forthwith from the decision of this appeal.
- e) That both the deponent as well as respondent Vishal Kapoor shall abide by the terms and conditions hereby agreed upon and Vishal Kapoor will not claim the custody of the minor child in future.

3. That the deponent is tendering this affidavit out of her own sweet will and without any coercion or pressure on her.”

Counsel for the respondent as well as Vishal Kapoor state that in view of statement made by Simran Kapoor @ Mamta, he has no objection if custody and guardianship of the minor Bhavishya, remains with Simran Kapoor @ Mamta, the appellant and he gives up visitation rights. Vishal Kapoor also states that he has persuaded his mother to transfer 25% share in House No.2070, Housing Board Colony, Sector 3, Kurukshetra, which is her sole and exclusive property, in the name of Bhavishya son of Vishal Kapoor (now in exclusive guardianship and custody of Simran Kapoor @ Mamta). A separate statement of Vishal Kapoor son of Shri Sudesh Kumar Kapoor has been recorded which reads as follows:-

“ Stated that contents of my affidavit dated 24.8.2015, separately, filed in Court today, may be read as my statement.

I have no objection if the custody and guardianship of Bhavishya remains with Ms. Simran Kapoor @ Mamta. I give up visitation rights with respect to Bhavishya. Vishal Kapoor also states that he has no objection to the transfer of 25% share in House No.2070, Housing Board Colony, Sector 3,

Kurukshetra, which is in his mother's sole and exclusive ownership, in the name of Bhavishya son of Vishal Kapoor, through his sole guardian Simran Kapoor @ Mamta. I have also no objection if this share is recorded in the record of Housing Board, Kurukshetra as a charge on House No.2070, Sector 3, Housing Board Colony, Sector 3, Kurukshetra. I shall withdraw the petition filed for custody of the minor, pending at District Courts, Chandigarh before the learned Guardian Judge, Chandigarh.”

Veena Rani wife of Sudesh Kumar Kapoor, mother of Vishal Kapoor, who is also present in court, states that she has no objection if 25% share in House No.2070, Housing Board Colony, Sector 3, Kurukshetra, is transferred in the name of Bhavishya son of Vishal Kapoor, now in the guardianship of Simran Kapoor @ Mamta and recorded in the records of Housing Board, Kurukshetra as a 1/4th charge on House No.2070, Housing Board Colony, Sector 3, Kurukshetra. Veena Rani has filed an affidavit in court and recorded a separate statement that her affidavit dated 24.8.2015 may be read as part of her statement. The affidavit reads as follows:-

“1. That the deponent is owner in possession of H.No.2070, Housing Board Colony, Sector 3, Kurukshetra

2. That the deponent is ready and willing to give 25% share of the above mentioned house to my grand son Bhavishya.

3. That the deponent is ready and willing to abide by the terms and conditions imposed by this Hon'ble Court."

The appellant and the respondent also agree that they shall withdraw all cases, complaints, filed by them, including the case for guardianship of the minor pending at Chandigarh.

Counsel for the appellant and Simran Kapoor @ Mamta, who are present in court, state that the appeals may be dismissed as withdrawn.

We have heard counsel for the parties, considered their statements and their affidavits. The appellant has agreed to withdraw the appeals and accept the correctness of the judgment and decree dissolving their marriage subject to certain conditions detailed in the preceding paragraph. The appeals are dismissed as withdrawn thereby affirming, judgment and decree of divorce dated 1.8.2012, recorded by the Additional District Judge, Kurukshetra, but with the following modifications:-

(a) The custody and guardianship of the minor, Bhavishya shall remain with Simran Kapoor @ Mamta

- (b) The respondent shall not have any visitation rights regarding Bhavishya;
- (c) Smt. Veena Rani wife of Sudesh Kumar Kapoor shall transfer 1/4th share of House No.2070, Housing Board Colony, Sector 3, Kurukshetra, in the name of Bhavishya through his guardian Simran Kapoor @ Mamta;
- (d) The 1/4th share of Bhavishya in House No. 2070, Housing Board Colony, Sector 3, Kurukshetra shall remain as a charge on House No.2070 Housing Board Colony, Sector 3, Kurukshetra;
- (e) The Housing Board shall make an entry to that effect in its record;
- (f) Parties shall withdraw all cases/complaints, pending between them in any court or otherwise forthwith;
- (g) The parties, however, would be at liberty to approach the court for any modification with respect to visitation rights.

(RAJIVE BHALLA)
JUDGE

(SHEKHER DHAWAN)
JUDGE

24.8.2015
VK