

FAO No. 689 of 2015

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO No. 689 of 2015

Date of Decision: 22.12.2015

RAJIV SEHGAL

.....Appellants

Vs

UMA KAKKAR

.....Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA.
HON'BLE MRS. JUSTICE REKHA MITTAL.**

Present: Mr. R.S. Chugh, Advocate,
for the appellant.

Mr. Kanwal Goyal, Advocate.
for the respondent.

1. *Whether Reporters of local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

RAJIVE BHALLA, J.(Oral)

The appeal in the present case, arises from an order passed by the learned District Judge, Family Court, Ambala, dismissing a petition filed by the appellant under Section 25 of the Guardian and Wards Act, 1890, for custody of the parties' minor sons Mritunjay Sehgal and Kartikay Sehgal.

The parties have with the able assistance of their counsel, resolved not only the dispute with respect to custody and guardianship but also all other disputes including an agreement to dissolve the marriage by filing a petition under Section 13 B of Hindu Marriage, Act, 1955. The parties have also agreed to withdraw all litigation initiated by either party as well

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as to withdraw all official complaints/departmental letters subject, however, to terms and condition relating to visitation rights.

Affidavit filed by Rajiv Sehgal S/o Vinod Kumar Sehgal (appellant) reads as follows: -

“I, Rajiv Sehgal son of Sh. Vinod Kumar Sehgal, resident of House No. 43, New Model Colony, Near Prem Nagar Gurudwara, Ambala City, Haryana-134003, do hereby solemnly affirm and declare as under: -

- 1. That I am resident of above mentioned address from the past 25 years and was married to Smt. Uma Kakkar on 29.06.2001. Out of the wedlock, I and Smt. Uma Kakkar had two sons, namely, Mirtunjay Sehgal as well as Kartikaya Sehgal, both born on 17.04.2002 & 27.07.2006, respectively.*
- 2. That I and Smt. Uma Kakkar are not entering into a settlement regarding our matrimonial discord as well as custody issue regarding our children and have now finally decided to settle everything and proceed towards an amicable settlement with the filing a mutual divorce petition thereby ending all controversies and troubles for both of us.*
- 3. That now I and Smt. Uma Kakkar as per our settlement have decided to withdraw all the cases/complaints & other litigations and proceed towards the mutual divorce petition without any financial obligations. I hereby affirm to withdraw the following cases as and when the compromise comes into effect alongwith others too: -*
 - i. Contempt Petition No. 40 dated 12.08.2014.*

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- ii. *Second Contempt Petition No. 43 dated 11.09.2014.*
- iii. *Third Contempt Petition No. 50 dated 21.10.2014.*
- iv. *Fourth Contempt Petition No. 14 dated 30.03.2015.*
- v. *Fifth Contempt Petition No. 24 dated 12.05.2015.*
- vi. *Sixth and Seventh contempt Petition No. 36 dated 22.07.2015.*
- vii. *Complaint U/s 499 IPC titled as Rajiv Sehgal Vs. Uma Kakkar pending under the Court of Sh. Uday Pratap, JMJC, Ambala.*
- viii. *Petition U/s 24 of the Hindu Marriage Act filed before the Court of Dr. Abdul Majid, Ld. Addl. Sessions & District Judge (Family Court) Ambala.*
- ix. *Petition U/s 25 of Hindu Marriage Act filed before the Court of Dr. Abdul Majid, Ld. Addl. Sessions & District Judge (Family Court) Ambala.*
- x. *Petition U/s 26 & 27 of Hindu Marriage Act filed before the Court of Dr. Abdul Majid, Ld. Addl. Sessions & District Judge (Family Court) Ambala.*
- xi. *Petition u/s 125 Cr. P.C. filed before the Court of Dr. Abdul Majid, Ld. Addl. Sessions & District Judge (Family Court) Ambala.*

4. *That now Smt. Uma Kakkar and I seek no financial assistance from each other and further forfeit all claims financial or material in nature and for this, are ready to sign/attest/approve any other document.*
5. *That this affidavit is being submitted in furtherance of a compromise being arrived between I and Smt. Uma Kakkar without any coercion and the effect of the compromise will have total bearing on the present affidavit."*

A relevant extract from the affidavit filed by Uma Kakkar-respondent, daughter of Sh. Krishan Gopal Kakkar, reads as follows:-

1. *That the above mentioned case is pending consideration for 22.12.2015 before this Hon'ble Court.*

2. *That the deponent undertakes to withdraw all the case filed against Mr. Rajiv Sehgal and not to file any other case against him pertaining to present disputes.*
3. *That the deponent further undertakes to file a petition under Section 13-B of the Hindu Marriage Act, whereby the deponent would give statements as and when called for by the Ld. Court below for the purpose of grant of divorce.*
4. *That the deponent further undertakes that the deponent has no objection if the two children of the deponent namely Mritunjay Sehgal and Kartikay are allowed to meet Mr. Rajiv Sehgal and his parents once a month before the Ld. Member Secretary, Haryana State Legal Services Authority, Karnal on the day and time designated by this Hon'ble Court.*
5. *That the deponent further undertakes that the deponent has no objection if the two children of the deponent are allowed to stay at the home of Mr. Rajiv Sehgal for four days during the summer vacations on the days, time and conditions ad imposed by this Hon'ble Court.*
6. *That the deponent, in all earnest, undertakes to abide by all or any other condition imposed by the Hon'ble Court as deem fit and appropriate under the facts and circumstances of the case. However, it is submitted that the said undertaking is being given to this Hon'ble Court, without prejudice to her rights in case Mr. Rajiv Sehgal does not abide by the terms and conditions imposed upon him by this Hon'ble Court. In case of breach of any term and condition by Mr. Rajiv Sehgal, the deponent be granted liberty to approach the Hon'ble Court for redressal of her grievance."*

Apart from the settlement recorded in their respective affidavits, the parties have recorded separate statements, which read as follows: -

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“Statement of Rajiv Sehgal S/o Vinod Kumar Sehgal, House No. 43, Near Model Colony, Near Prem Nagar Gurudwara, Ambala City:

I shall abide by the terms and conditions recorded in the order dated 19.12.2013 and my affidavit dated 22.12.2015. I shall also encash the 5 FDRs in which respondent has a share and pay her the amount of her share by way of Demand Draft within 6 weeks from today.

Statement of Uma Kakkar D/o Sh. Krishan Gopal, resident of, Z/C, FF-618, CHD City, Sector-45 Karnal.

I shall abide by the terms and conditions recorded in the order dated 19.12.2013 and my affidavit dated 22.12.2015. I have no objection that if the visitation proceedings are conducted in the office of the Secretary, Legal Services Authority, Karnal and I also have no objection if the visitation days during the summer vacations be extended from 4 days to 6 days but in the second week of the summer vacations.”

We have heard counsel for the parties, perused their affidavits, their statements and while affirming the impugned order, dismiss the appeal in the following terms: -

- A. The parties shall file a petition under 13 B of Hindu Marriage Act, 1955 before the Family Court at Ambala, within six weeks from today.
- B. The respondent shall not be entitled to any maintenance or permanent alimony in any manner whatsoever.
- C. The parties shall withdraw the following cases, within six weeks from today: -

- i. Contempt Petition No. 40 dated 12.08.2014.*
- ii. Second Contempt Petition No. 43 dated 11.09.2014.*

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- iii. Third Contempt Petition No. 50 dated 21.10.2014.*
- iv. Fourth Contempt Petition No. 14 dated 30.03.2015.*
- v. Fifth Contempt Petition No. 24 dated 12.05.2015.*
- vi. Sixth and Seventh contempt Petition No. 36 dated 22.07.2015.*
- vii. Complaint U/s 499 IPC titled as Rajiv Sehgal V. Uma Kakkar pending under the Court of Sh. Uday Pratap, JMIC, Ambala.*
- viii. Petition U/s 24 of the Hindu Marriage Act filed before the Court of Dr. Abdul Majid, Ld. Addl. Sessions & District Judge (Family Court) Ambala.*
- ix. Petition U/s 25 of Hindu Marriage Act filed before the Court of Dr. Abdul Majid, Ld. Addl. Sessions & District Judge (Family Court) Ambala.*
- x. Petition U/s 26 & 27 of Hindu Marriage Act filed before the Court of Dr. Abdul Majid, Ld. Addl. Sessions & District Judge (Family Court) Ambala.*
- xi. Petition u/s 125 Cr. P.C. filed before the Court of Dr. Abdul Majid, Ld. Addl. Sessions & District Judge (Family Court) Ambala.*

- D. The appellant shall also withdraw all departmental complaints/letters filed/addressed by him against the respondent.
- E. The 5 FDR existing in the joint names of the parties and the appellant's father and mother, shall be encashed by the appellant and the share of the respondent shall be paid to her by way of a demand draft, within 6 weeks from today.
- F. The parties shall be bound, as regards visitation rights as recorded in their respective affidavits, but instead of 4 days during the summer vacations the children will visit and reside with the appellant for 6 days, in the second week of the summer vacations.

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- G. The respondent shall entrust the children to the appellant in the presence of the Secretary, Legal Service Authority, Karnal and the respondent shall return the children to the respondent in the presence of Secretary, Legal Services Authority at his office at Karnal.
- H. The monthly interaction between the appellant and the children shall take place on the first Saturday of every month between 3.00-5.00 p.m. in the office of the Secretary, Legal Services Authority, Karnal.
- I. The children's grandparents i.e. the appellant's parents, shall also be entitled to visit the children alongwith the appellant.

We hope and expect that parties abide by their affidavits and their statements and taken every step to ensure compliance.

[RAJIVE BHALLA]
JUDGE

[REKHA MITTAL]
JUDGE

December 22, 2015

Suresh Kumar