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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 23.11.2015
Pronounced on: 09.12.2015

+ **FAO (OS) 446/2013, C.M. APPL.15728/2013**

DR. V.P. SHARMAAppellant
Through: Sh. Ananya Roy, Advocate along with
appellant in person.

Versus

DR. POONAM SHARMARespondent
Through: Respondent in person.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT

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1. This is an unsuccessful plaintiff/applicant's appeal against the order of a learned single judge, rejecting his application (I.A. 9059/2011) for decreeing a pending suit on the ground that the parties had entered into a lawful and binding compromise within the meaning of the expression under Order XXIII, Rule 3, Code of Civil Procedure (CPC).

2. The appellant (hereafter referred to as "V.P. Sharma") married the defendant/respondent, Poonam Khanna nee Poonam Sharma (referred to hereafter as "Poonam"); both are doctors. They have a son who is suffering from mental disabilities; though a major, he is incapable of taking his decisions. Consequently Poonam has been declared his next friend and

guardian. Due to matrimonial discord and disputes, the parties apparently entered into an agreement on 02.04.2003. In terms of the agreement, first, the custody of the son was to be permanently with the mother without any hindrance from the father; second, the parties agreed to have their marriage dissolved by divorce through mutual consent and third, a property (C-18, Shivalik, hereafter “suit property”) in the occupation of Poonam was to be shared in the ratio of 55% by Poonam and 45% by V.P Sharma. This document was registered. The relevant extracts of this settlement deed are as follows:

“1. That it has been agreed and mutually decided by and between the parties that the custody of male child Manu will shall remain with second party. The first party (Dr. V. P Sharma) shall never claim the custody of the said child nor shall ever claim meeting rights of said child on any grounds. In case the second party decides for remarriage, the custody of the son will be handed over to the first party.

2. That it has been agreed and mutually decided by and between the parties that both the parties who own their respective portion in 18, Shivalik New Delhi Malviya Nagar, New Delhi 110017, shall procure a suitable buyer to dispose of the property. All the proceeds thus received shall be in the ratio of 45 % and 55 %. First party shall get the ratio of 45% and the second party shall get a share of 55% of the total amount they will receive after selling.”

3. The settlement, however, did not end litigation; it spawned several more cases, including criminal complaints, civil proceedings and guardianship applications, etc. The criminal complaints and proceedings initiated by Poonam were quashed by a learned single judge of this court, on 23.01.2009, in CRL.M.C. 3337/2007. In the meanwhile, a mutual consent divorce proceeding, (HMA No. 415 of 2003) was filed; this culminated in a

decree of divorce being issued, dissolving the marriage of V.P. Sharma and Poonam. Guardianship proceedings too culminated in the permanent guardianship of Manu Khanna, the son, being granted to his mother Poonam.

4. In the meanwhile, the suit filed by the appellant/plaintiff, V.P. Sharma, (out of which the present appeal has arisen) was dismissed in default. It was subsequently restored by order of the court. The plaintiff, contended that since the disputes between the parties had been settled by a lawful agreement, which could end in a lawful compromise, the court should recognize the registered settlement deed and decree the suit in its terms. The learned single judge rejected this application.

5. The appellant V.P. Sharma argues that Poonam has in fact acted upon the settlement as is evident from the fact that mutual consent divorce was granted in its terms and also that guardianship of their son is permanently with Poonam. These were in accordance with the agreement. In the circumstances, she could not have unilaterally resiled from the agreements and contended that they were not binding. Learned counsel relied on the orders made in the criminal proceedings, which quashed the criminal cases and complaints; he also relied on the observations in CS (OS) 721/2005 which was dismissed by a learned single judge, who held in his judgment dated 22.11.2013 as follows:

“32. Neither the Defendant nor Dr. Poonam Khanna has questioned the aforementioned judicial order which puts a judicial stamp on the agreement dated 2nd April 2003. The contention of Dr. Poonam Khanna that the above settlement is not binding on the Plaintiff, i.e., son of the parties, cannot be

accepted. Even at the time of entering into the settlement, Dr.Poonam Khanna was recognized as the guardian of the Plaintiff. The situation thereafter continues to be what it was when the settlement was arrived at. The Plaintiff was represented then and continues to be represented by his mother, Dr. Poonam Khanna, as the natural guardian. It is not as if Dr. Poonam Khanna has subsequently discovered some new fact that she was not aware of when she entered into the settlement.

43. It appears to the Court that Dr. Poonam Khanna is obviously seeking to resile from the aforementioned agreement. At the same time, it must be remembered that divorce by way of mutual consent has been granted. The deed dated 2nd April 2003 and the divorce decree by mutual consent cannot be read separately. Dr.Khanna is bound by the settlement deed dated 2nd April 2003. It is not legally permissible to allow one party to the settlement deed dated 2nd April 2003 to resile from it on the basis of such settlement, particularly since the parties have, on that basis, unalterably changed their respective positions.

44. The Court does not consider it appropriate to reopen the whole question as to who paid for the purchase of C-18, Shivalik, Malviya Nagar, New Delhi. In examining that question the Court might not only be re-writing the Settlement Agreement dated 2nd April 2003 but also reversing the steps taken pursuant thereto which resulted in judicial orders including those of the Supreme Court. It will be an abuse of the process and a waste of the Court's precious time to enter into this pointless exercise. Be that as it may, the Court finds the evidence placed on record to be insufficient to conclude that the funds for the purchase of the said property were not contributed to by the Defendant and, in any event, that part of the funds were contributed to by the father of the Defendant.

45. The affidavit of the father of the Defendant stating that he has not contributed anything to the purchase of the property at C-18, Shivalik has gone unchallenged. Whatever may be the submissions made in those proceedings, it appears that at a

stage, prior to the settlement agreement dated 2nd April 2003. Dr. Poonam Khanna signed the settlement agreement on 2nd April 2003 accepting the statements made thereunder and participated in the steps taken on that basis. She should not be permitted now to go back on the statements made prior to the settlement. Given the long history of litigation between the parties, it is important for the Court to honour the settlement between the parties on 2nd April 2013 and to bring to an end the disputes between them. The Courts are expected to accept statements made on oath by parties. It may be noted at this stage that the order dated 30th January 2012 of the High Court in Crl.M.C. No. 2602 of 2010 was affirmed by the Supreme Court which dismissed the Special Leave Petition against the said order. Dr. Poonam Khanna's case under PWDVW Act was dismissed on 21st February 2008.”

6. It was argued that given the importance attached to family settlements, which are not scrutinized minutely, but as broadly as possible, the learned single judge should not have relegated the parties to a full drawn suit. It was argued that the court's gaze is limited to satisfying itself that the agreement is lawful and enforceable. In the present case, there can be no question that the agreement was lawful; it was acted upon in at least two legal proceedings. Therefore, it should have been made the basis of a compromise decree.

7. The defendant, Poonam, who represented herself, firstly urged that the present appeal is not maintainable. She relied on the judgment of the Supreme Court in *Pushpa Devi Bhagat v Rajinder Singh* 2006 (3) SCC 566 in support of this contention and urged that with the deletion of Order XLIII, Rule 1 (m) of the Code of Civil Procedure, no appeal is maintainable against an order granting or refusing to grant a compromise decree. It was next contended that the mere fact that the divorce decree was based on a joint

application and mutual consent did not mean that the settlement relied on by the plaintiff V.P. Sharma was the basis of the decree of divorce. She pointed out that even though the joint application talked of the settlement, which is sought to be relied on, the decree made no provision with respect to division of property, which could and should have been done, under Sections 25 and 27 of the Hindu Marriage Act. This meant that the settlement relied on was not the basis of the divorce decree. Furthermore, Poonam points out that legal guardianship of the son was also obtained after a legal wrangle. It was lastly contended that before recording a compromise, the court should be sure that the parties' continued consent exists. It was submitted that the plaintiff's conduct was never to act in accordance with the agreement and instead secure whatever benefit he could and not comply with his part of the bargain. Despite undertaking to do so, the plaintiff did not withdraw the criminal proceedings he had agreed to. He also did not permit custody of the son, in favour of Poonam. These meant that the plaintiff violated the terms of the settlement which required fulfillment of reciprocal obligations. By his conduct he displayed that he was never ready and willing to comply with his part of the bargain. Therefore, the court correctly dismissed his application.

8. This court is of the opinion that there is merit in Poonam's argument that the present appeal is not maintainable. Order XLIII Rule 1 (m) enabled a party aggrieved by an order directing a compromise to be drawn, or a party aggrieved by a court's order refusing to direct a compromise decree to be drawn in a pending suit, to file an appeal. This provision was omitted with the introduction of the amendment in 1977. Consequently an order- like the present impugned order, is not appealable. It is also not appealable under the

Delhi High Courts Act or the letters patent for the simple reason that it does not decide any rights nor impose any duty on either party to the suit, which can be said to have a lasting or final effect. It is only such orders which are called a judgment that can be appealed against to a higher court. The Supreme Court in *Shah Babulal Khimji v. Jayaben D. Kania & Anr* (AIR 1981 SC 1786) stated this.

9. Now, dealing with the merits of the appeal, this court notices that even though execution of the settlement deed is not in dispute, all else with respect to its implementation is. Poonam hotly contests V.P. Sharma's submission that the divorce and custody orders were made on the basis of the settlement. We notice here that the pleadings in the divorce settlement do refer to the settlement, nevertheless the divorce decree made no provision for property in favour of Poonam. There is no mention about the property in the decree which could have possibly referred to the relevant clauses in the settlement; indeed even the final order does not make any reference. Likewise, the custodial order. In these circumstances, it is not possible to accept the appellant's contention that Poonam had acted upon the settlement and is now precluded from contesting its efficacy.

10. The appellant's other contention is as to the views of the learned single judge in CS (OS) 721/2005 which was dismissed by judgment dated 22.11.2013. The single judge no doubt made the observations that he did; however those are subject to proceedings in appeal before the Supreme Court. Furthermore, with respect to the single judge, we notice that the said suit was filed by the son (who was declared of not sound mind; his mother Poonam declared his next friend) claiming share in the suit property. He had

urged that the said property was bought out of ancestral funds. Now, Poonam did not file this suit, but for the son; secondly the single judge was of the opinion that Poonam could not have made the claim because of the settlement. The settlement was between Poonam and V.P. Sharma; it does not purport to cover the interests of their minor son. If that were the case, an entirely different procedure had to be followed: it is spelt out in Order XXXII, Rules 7 and 15. Such being the case, the single judge's observations with respect to Poonam's statements and conduct earlier in these proceedings, precluding her son from claiming a share in the suit property, cannot be understood as binding. Poonam herself states that though the settlement was arrived at, its terms were conditional upon the appellant withdrawing litigation. She alleges that he did not comply with those terms and filed Suit No. 31/2007 seeking custody of the child. This suit culminated in an order by the Supreme Court dated 11.10.2011. The record also bears out this contention; furthermore, V.P. Sharma had challenged an order made under Section 125 and sought for quashing of proceedings, in CrI. MC 2855/2010. Another single judge of this Court on 20.01.2011 rejected that petition. After noting the facts and contentions, the court dismissed the petition, holding that the settlement relied on by V.P. Sharma had not been acted upon.

11. Taking into account all the above circumstances, along with the fact that Transfer Petition Nos. 655-656/2014 filed by the respondent before the Supreme Court has been allowed vide order dated 18.08.2015 whereby the present suit CS(OS) 290/2007 has in any case been transferred to the District Court, Chandigarh, this Court is of the opinion that this appeal is devoid of

merits; besides it is not maintainable for the reasons spelt out in Para 8 above.

12. The appeal FAO (OS) 446/2013 is consequently dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

DECEMBER, 9 2015

