

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

FAO-6955(FC)-2015

Date of decision: January 21, 2016

SACHIN TALWAR

...Appellant

VERSUS

NIDHI TALWAR

...Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. Kunal Dawar, Advocate
for the appellant.

Mr. Harish Bhardwaj, Advocate
for the respondent.

RAJIVE BHALLA, J.(ORAL)

The parties filed a petition under Section 13(B) of the Hindu Marriage Act, 1955 (hereinafter referred to 'Act'), before the Family Court, Faridabad, recorded a statement in first motion but for reasons that we need not to record, the respondent did not record a statement at second motion, leading to dismissal of the petition.

The husband filed the present appeal alleging that as the respondent-wife had signed the petition for mutual divorce, made a statement, and received money, her consent may be inferred.

During pendency of the appeals, parties have once again with the able assistance of their counsel, arrived at a settlement, filed in Court today. The settlement is taken on record as Mark 'A'.

Counsel for the parties and the parties pray that as parties had already recorded statements in first motion and are ready to record statements in second motion, the matter may not be reverted to the Family Court, Faridabad but may be decided by this Court.

We have heard counsel for the parties, perused the petition filed under Section 13(B) of the Act, statements made at first motion, the settlement Mark 'A' dated 14th January, 2016 and taking into consideration, the fact that parties are ready to abide by averments in their joint petition filed under Section 13(B) of the Act and the statement made at first motion, hold that it would be unjust to relegate parties to the trial Court. The parties are, therefore, directed to record their statements in second motion. The statements of the parties, in second motion have been recorded and duly signed by the parties, in the presence of their counsel.

At this stage, it would be appropriate to point out that all other disputes between the parties have been settled except for quashing of the FIR which is pending adjudication in *CRM-M-34025 of 2015* and *CRM-M-35822 of 2015*.

The statement made by Mr. Sachin Talwar in second motion reads as follows:

My affidavit dated 14.01.2016 may be read as my statement in second motion.

The contents of his affidavit read as follows:

I, the above named deponent do hereby solemnly affirm and declare as under:

1. *That I am the petitioner in the above caption matter. I say that I am well conversant with the facts of the case and competent to depose with respect thereto.*
2. *That I say that the statement of facts mentioned in the accompanying settlement deed dated 14.01.2016 are true and correct to my knowledge which I have read and understood.*
3. *That the contents of the settlement deed dated 14.01.2016 which has been filed before this Hon'ble Court today may kindly be read as part of the present affidavit and the same are not being repeated here in for the sake of brevity.*

The statement made by Mrs. Nidhi Talwar reads as follows:

My affidavit dated 14.01.2016 may be read as my statement in second motion.

The contents of her affidavit reads as follows:

I, the above named deponent do hereby solemnly affirm and declare as under:

1. *That I am the respondent in the above caption matter. I say that I am well conversant with the facts of the case and competent to depose with respect thereto.*
2. *That I say that the statement of facts mentioned in the accompanying settlement deed dated 14.01.2016 are true and correct to my knowledge which I have read and understood.*
3. *That the contents of the settlement deed dated 14.01.2016 which has been filed before this Hon'ble Court today may kindly be read as part of the present affidavit and the same are not being repeated here in for the sake of brevity.*

A relevant extract from the settlement deed, reads as follows:

1. *It has been agreed between the parties that one time full and final amount as per the alimony over and above Rs.56,00,000/- (Rupees Fifty Six Lacs only) has been settled at Rs.1,33,00,000/- (Rupees One Crore Thirty Three Lacs only) paid at time of first motion by the second party. The said amount of Rs.1,33,00,000/- is exclusive of Rs.56,00,000/- already paid by the Second Party to the First Party at the stage of first motion.*
2. *The Second Party/Mr. Sachin Talwar undertakes and confirms to*

the Hon'ble Court that the said further amount of Rs.1,33,00,000/- (Rupees One Crore Thirty Three Lacs only) shall be paid to the first party/Ms. Nidhi Talwar on or before 13.02.2016 by the second party which shall be the maximum time period to make the such payment.

3. The Second Party further agrees, confirms and undertakes that he shall do the following within the said period of 30 days i.e. upto 13.02.2016:-

(i) The Second Party shall return the original Birth Certificate/obtain copy of birth certificate from Varanasi Nagar Nigam of the son-Master Suyash to the First Party.

(ii) The Second Party shall return all the certificates/documents of the First Party lying in the matrimonial home at Varanasi in his custody if any.

(iii) The Second Party shall provide the no objection certificate (NOC) from State Bank of India regarding the deletion of name of the First Party/Nidhi Talwar from the loan or financial facilities availed by the First Party or his companies or by his other family members etc.

5. That the parties have agreed and confirmed that the second party shall not claim any right on the minor son namely Master Suyash and further confirm that the said minor son shall remain in the custody of First Party/Nidhi Talwar and the Second Party/Sachin Talwar will not claim for the custody and visitation rights of the minor child in future which he had already waived in the first motion petition.

6. That the Second Party/Sachin Talwar agrees and confirm that the First Party/Nidhi Talwar shall not be liable towards any liability (ies) past, present or future of (i) M/s I.P. Developers Private Limited, CIN No.U45400DL2009TPC194890, having registered office B-64, Nariana Industrial Area, Phase-3, New Delhi, (ii) M/s Patton Logistic Service Pvt. Ltd. CIN No.U60230WB2007PTC114207 having registered office at 1050 Vidya Sagar Sarani, Kolkata, West Bangol-63 (iii) M/s Patto Warehousing Pvt. Ltd. CIN No.U63023DL2000PTC106646 having registered office B-64 Nariana Industrial Area, Phase-3, New Delhi-28, (iv) M/s I.P. Complex Pvt. Ltd. CIN No.U45400UP2009PTC037898 having registered office at 36 Lajpat Nagar, Maldahiya Varanasi, U.P.-02 and (v) M/s Usha Chemical Industries and M/s Usha Auto Agency (A unit of Usha

Chemical Industries) a partnership firm with PAN No.AABFU4925B with its office at 36 Lajpat Nagar, Maldhiya, Varanasi-02 U.P. And in the event of any future liabilities, if any, arises in the name of the first party, the second party confirms and undertakes that the same shall be discharged by him with no liability to accrue against the first party.

7. The parties herein further agree confirm and undertake that with the receipt of aforesaid payment of the Rs.1,33,00,000/- (Rupees One Crore Thirty Three Lacs only) by the First Party from the Second Party, she/First Party and minor son shall be left with no claim, past, present or future from the second party or any claim, dowry articles and Istridhan. Further with the receipt of the above said payment the first party shall in no manner whatsoever be either related to or associated with any of the aforesaid companies/partnership firm and the first party shall be deemed to have retired/resigned from the same for all purposes without any transfer of liability. However, the same shall come int effect only after the receipt of the Rs.1,33,00,000/- (Rupees One Crore Thirty Three Lacs only).

8. That the parties herein agree and confirm that the terms and conditions and the respective obligation as set out in the instant settlement date shall be strictly complied within the aforesaid period i.e. on or before 13.02.2016 without any fail and the parties herein further confirm that the decree of dissolution of marriage between the first party and second party that would be passed by the Hon'ble High Court of Punjab & Haryana shall be given effect to and come into operation only and only after the first party has received the full and final aforesaid Rs.1,33,00,000/- (Rupees One Crore Thirty Three Lacs only) without deducting any Tax liability either by way of RTGS or Demand Draft in the account/name of the first party.

9. That the both the parties have agreed, confirm and undertake that they shall withdraw all court cases filed against each other or against each other's family members either in the court of Faridabad, Varanasi or before the Hon'ble High Court of Punjab & Haryana and any court in India. However the parties have agreed that all the said cases shall however be

withdrawn unconditionally by both the parties only after the strict compliance of the instant settlement deed, in case of non withdrawal of any case by the respective party after compliance of conditions in the above para 8 the same shall deem to be dismissed. It is further agreed that CRM No.34025 of 2015 filed by mother of second party Smt. Chander Kanta and CRM-M-35822/15 filed by Second Party FIR No.198 dated 25.05.2014, u/s 498-A/406/323/506 IPC, Police Station Sector-7, Faridabad, same would be quashed in terms of the instant compromise and the affidavit submitted by the first party in FAO-6955/15 in this regard will be sufficient for quashing for the FIR in case it is required, the first party shall make statement sign affidavit and make statement before Hon'ble High Court of Court at Faridabad and cooperate in quashing of FIR on the basis of this compromise. The Second Party confirm and agree that in the event of any litigation by either the banks or financial institutions pending before any court or Tribunal/DRT/DRAT, first party shall not be responsible and/or liable to said banks or financial institutions and the same shall be the liability of the second party with no liability to accrue against the first party and in case, if any case come in existence filed by any party with respect to the present matrimonial controversy or controversy with regard to settlement arrived at and reduced to writing separately, then the same shall be treated as null and void in the light the present petition, which has taken place between both the parties.

10. That both the parties herein confirm, acknowledge that the instant settlement deed shall form the part and parcel of the decree of dissolution which would be passed by the Hon'ble Court and in the event of any violation of the same, the same shall be considered as contempt of the Hon'ble Court.

In witnesses whereof the first and the second parties have set their respective hands on the day, month and year first mentioned/written above.

A perusal of averments in the petition filed under Section 13(B) of the Act, statement recorded in first motion, contents of the

settlement and statements recorded at second motion reveal that parties have arrived at a bona fide decision to part ways as it is not possible for them to live together on account of temperamental differences. The petition does not suffer from any legal impediment much less is any legal disability attached to either party.

The appellant also undertakes that he shall pay the remaining amount of Rs.1.33 Crores to the respondent by way of a demand draft on 12th February, 2016, during proceedings in the quashing petitions i.e. *CRM-M-34025 of 2015* and *CRM-M-35822 of 2015* or on such other date to which these petitions may be adjourned.

The respondent, who is present in Court, states that she will make a statement in the aforesaid petitions that she has no objection to the quashing of the FIRs, after the appellant pays the remaining amount of Rs.1.33 Crores.

The parties also agree that in case, the appellant is in possession of any documents/certificates belonging to the respondent, he shall return them but in case, the said documents are not in his possession, they shall be deemed as have been lost and the respondent shall be entitled to obtain certified copies of these documents from the authorities concerned.

Consequently, the order passed by the trial Court is set aside, the appeal and the petition under Section 13(B) of the Act are allowed. The marriage between the parties is dissolved by grant of a decree of divorce by mutual consent. The parties shall be bound by contents of the petition, statements at first and second motion and

terms and conditions of the settlement. In case, either party fails to perform its obligation under the settlement and pursuant to this judgment, the other party shall be at liberty to approach this Court by way of an appropriate application for further directions.

(RAJIVE BHALLA)
JUDGE

January 21, 2016
m. sharma

(LISA GILL)
JUDGE