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

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MAT.APP.(F.C.) 18/2016

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Date of decision: 9th May, 2016

MAMTA SINGH

..... Appellant

Through: Mr. Krishan Kumar,
Ms. Sunita Arora and
Ms. Vidushi Sharma, Advs.
with appellant

versus

AMAN SINGH @ FAIYAZ AHMED

..... Respondent

Through: Mr. Mandhar Pratap and
Mr. A.K. Azad, Adv. with
respondent

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT (ORAL)

Gita Mitta, J

1. The appellant has assailed the order dated 31st July, 2015 passed by the Family Court on HMA No. 706/2014 being the petition under Section 13B(2) of the Hindu Marriage Act, 1956 which had been jointly filed by the parties.

2. The parties before us were married in accordance with Hindu rites and ceremonies on 5th October, 2003. From their wedlock and cohabitation, these parties were blessed with a son-Master Ayush

Singh who is being brought up as a Hindu child. The parties separated on or about the 18th August, 2012.

3. On a complaint of the appellant-wife on 2nd October, 2013, FIR No. 448/2013 was registered under Sections 498A, 406, 419, 440 read with Section 34 of the Indian Penal Code. On completion of investigation, a challan under Section 173 of the CrPC was filed by the police on 2nd October, 2013 against the respondent and his family members. The criminal case is pending against them in the court of Ms. Richa Manchanda, learned Metropolitan Magistrate, Rohini, Delhi.

4. It appears that during the bail proceedings of the respondent, the matter was referred to mediation at the Mediation Centre, Rohini District Courts, Delhi. During the course of mediation, an amicable resolution of disputes was reached which was reduced to writing by an agreement dated 4th April, 2014. The material terms of the settlement reads thus :-

“3. The settlement amount of Rs.3,65,000/- shall be paid in cash/DD by the respondent/husband to the complainant/wife as under :-

- (i) A sum of Rs.1,00,000/- (Rupees One Lac only) shall be paid at the time of recording statements in the First Motion Petition U/s.13(b)(1) of Hindu Marriage Act which shall be jointly filed by the parties in the first week of May, 2014.*
- (ii) A sum of Rs.1,30,000/- (Rupees One Lac Thirty Thousand only) shall be paid at the time of recording statements in Second Motion Petition U/s.13(B)(2) of Hindu*

Marriage Act which shall be filed by the parties jointly within one month after the expiry of statutory period of six months.

- (iii) *The remaining amount of Rs.1,35,000/- shall be paid at the time of quashing of FIR No. 448/13 PS: Alipur, U/s.419,420,406,498A,34 IPC State V. Aman@ Fayaz before the Hon'ble High Court of Delhi, within two months of passing of decree of divorce in second motion petition. The complainant/wife shall cooperative in quashing of the said FIR.*

4. *Minor son Master Ayush Shall remain under the care and permanent custody of the complainant/wife and the respondent/husband or his family members shall not claim either the custody or any visitation rights of the minor son from the complainant/wife in future in any manner whatsoever.*

5. *That the above said connected cases shall be withdrawn by the respective party on their respective dates of hearing from the concerned courts.*

6. *Both the parties undertake not to interfere in the life of each other.*

7. *In terms of the present settlement, there shall remain no case/claim/dispute due between the parties and that none of the parties shall file any civil or criminal proceedings against each other in future in respect of the marriage and that if any other case/petition/complaint etc. between the parties is pending in any court or authority either against the parties or against their respective family members and whether it is in the knowledge of other party or not, the same shall be withdrawn/got disposed of by the respective party.*

The parties entered into the present settlement/agreement out of their own free will and consent, without any fear, coercion or undue influence from any corner, whatsoever. The parties shall be bound by this settlement and shall cooperative to execute this settlement in every possible manner, whatsoever.”

5. In terms of the settlement, the parties filed a petition under Section 13B(1) of the Hindu Marriage Act, 1955 being the first motion for dissolution of their marriage by a decree of divorce. These proceedings were registered as HMA No.706/2014. The parties jointly appeared before the court and made a statement on 2nd August, 2014. In view of the joint statement, the Family Court (North, Rohini, Delhi) vide its order dated 2nd August, 2014 allowed the petition.

6. The above narration would show that the appellant had repeatedly unequivocally admitted that he was married on 5th October, 2003 in accordance with Hindu rites and ceremonies with the respondent, the birth of their child and the date of separation on 18th August, 2012. The respondent-husband also admitted the full and final settlement of the parties and that a total amount of ₹3,65,000/- was payable to the appellant-wife herein.

7. It is noteworthy that in terms of the above settlement, at the time of recording of the statement on 2nd August, 2014, the respondent paid the sum of ₹1 lakh to the appellant-wife in cash, receipt whereof was noted in the statement. The respondent had also confirmed that the balance sum of ₹1,30,000/- would be paid

at the time of recording of the second motion and the balance of ₹1,35,000/- would be paid at the time of quashing of FIR No. 448/2013. We are informed that on account of non-appearance of the respondent, the learned Metropolitan Magistrate has issued non-bailable warrants for the appearance of the respondent in the case arising out of FIR No. 448/2013 of the Police Station Alipur.

8. We are informed that the second motion petition came to be filed jointly by the parties under Section 13B(2) of the Hindu Marriage Act, 1955 on 26th February, 2015.

9. It needs no elaboration that a second motion petition can be filed jointly by the parties under Section 13B(2) only on expiry of a period of six months after the date of presentation of the petition under Section 13B(1). So far as the outer limit of time is concerned, the same is statutorily prescribed under sub-section 3 of Section 13B of the Hindu Marriage Act is “*not later than 18 months after the presentation of the petition under Section 13B(1)*”.

10. In the present case, the period of 18 months after 2nd August, 2014 would come to an end on or around 2nd February, 2016. The second motion petition in the present case being HMA No. 164/2015 filed on 26th February, 2015 was presented well within the statutorily prescribed period of 18 months.

11. This matter was adjourned for recording of the statement of parties. On 31st July, 2015, the respondent appeared in court and inter alia stated that he did not wish to proceed further with the divorce by mutual consent and withdrew his consent propounding the purported reason that the appellant had played fraud and had

misappropriated an amount of ₹2 lakhs. Even on 31st of July, 2015, the respondent did not dispute the admissions made by him of having married the appellant in accordance with Hindu rites and ceremonies or any of the other averments contained in the petition including the terms of the mediation settlement.

12. In view of the statement of the respondent-husband and the withdrawal of his consent, the Family Court dismissed the petition for the reason that the appellant had withdrawn his consent. Aggrieved by this dismissal, the appellant has filed the present appeal assailing the order dated 31st July, 2015.

13. During the course of hearing before us on 29th April, 2016, we were informed by the respondent and his counsel that he had no objection for completing the proceedings for dissolution of the parties' marriage by the decree of divorce by mutual consent. We had consequently recorded the statement of the respondent whereby he had explained the circumstances in which he was compelled to make a statement on 31st July, 2015. The respondent had stated on oath before us on 29th April, 2016 that he was not in a position to pay the balance sum of ₹2,65,000/- which he was liable to pay to the appellant in terms of the mediation settlement dated 4th April, 2014 and for this reason, had made a false allegation that the appellant had played fraud with him and misappropriated the amount. According to the respondent, he was persuaded to make this statement on misconceived advice and to cover up his inability to pay the agreed sum to the appellant.

Before us, on 29th April, 2012, the respondent has unequivocally withdrawn all the allegations made by him on 31st of July, 2015.

14. The statement made by the respondent on dated 29th April, 2016 is extracted hereunder :-

“ I state that I was not in a position to pay the balance sum of Rs.2,65,000/- out of the total settlement amount of Rs.3,65,000/- to my wife Mamta Singh. For this reason, though we had filed the second motion petition under Section 13-B(2) of the Hindu Marriage Act (HMA No.164/2015) on 26th February, 2015 seeking divorce by mutual consent, I was compelled to withdraw my consent and on 31st July, 2015 I had made a statement before the concerned Family Court to this effect. I further state that on 31st July, 2015 I had made the allegation that the appellant Mamta Singh had played fraud with me and misappropriated my money to the tune of Rs.2 lacs on misconceived advice and to cover up my inability to pay the agreed sum of payment to the appellant. I hereby withdraw the said allegation.

I further state that I was married to the appellant Mamta Singh in accordance with Hindu rites and ceremonies and I have no objection to the dissolution of our marriage by a decree of divorce by mutual consent.

I also state that I had signed the first and second motion petitions and had also appeared before the Family Court for making the statement as required at the time of first motion. I am still willing to stand by my consent and make the statement in the second motion petition under Section 13-B(2) of the Hindu Marriage Act (registered as HMA No.164/2015) to complete the proceedings for

dissolution of our marriage by a decree of divorce by mutual consent.

I also undertake to pay to the appellant the sum of Rs.2,65,000/- in terms of our agreement in five equal instalments of five months. Two show my bona fide, I shall bring an amount of at least Rs.10,000/- before this court on the next date of hearing. I pray that I may be forgiven for the mistake which I have committed on 31st July, 2015 before the Family Court. I further pray that my statement recorded before the Family Court on 31st July, 2015 may be treated as withdrawn and the order dated 31st July, 2015 passed by the Family Court may be set aside and quashed and the second motion petition bearing HMA No. 164/2015 may be restored to its original number and set down for recording of our statement.

I undertake to remain bound by my above statement.”

15. We further note that on 29th April, 2016, the appellant had reiterated the signing and filing of the two motions under Section 13B of the Hindu Marriage Act, 1955. He has stated before us that he was willing to stand by his consent and make the statement as required in accordance with law in HMA no. 164/2015 to complete the proceedings for dissolution of the parties' marriage by decree of divorce by mutual consent.

16. In his statement recorded by us on 29th April, 2016, the appellant has also stood by all terms of the mediation agreement dated 4th April, 2014 with certain modifications only in the manner of the payment of the balance sum thereunder. We set down

hereunder the schedule on which the respondent has undertaken to pay the amount of ₹2,65,000/- before us which is as follows :-

- (i) An amount of ₹10,000/- payable on the next date of hearing (i.e. today the 9th May, 2016).
- (ii) Payment of the balance amount of ₹2,65,000/- in five equal instalments of five months.

17. In terms of his undertaking, the respondent has handed over an amount of ₹10,000/- to the appellant in court today submitting that the same is towards part-payment of the balance amount of ₹2,65,000/-. The appellant shall accept the same without prejudice to her rights and contentions.

18. The respondent has also withdrawn the statement made before the Family Court on 31st July, 2015 and prayed for setting aside of the order recorded thereon and restoration of the HMA No. 164/2015 for completion of the proceedings for divorce. Finally, the respondent had prayed this court to pardon him for the mistakes which he had committed on 31st July, 2015 before the Family Court.

19. By a separate order passed on 29th April, 2016, we had accepted the undertaking given by the respondent and directed that the respondent shall remain bound thereby. In case of violation of the undertaking given to us, it has been noted by us that the respondent would render himself liable for proceedings under the Contempt of Court Act as well as other legal remedies and actions as may be available to the appellant.

20. As noted above, the petition under Section 13B(2) of the Hindu Marriage Act, 1955 has been presented within expiry of the period of six months from the presentation of HMA No. 706/2014 (the first motion petition). Therefore, the presentation of the petition being in accordance with law, there is no impediment for the completion of the requisite proceedings thereon in accordance with law.

21. Before us, the respondent has stated that he abides by the mediation agreement dated 4th April, 2014 on all material terms other than variation in the manner of payment of the balance amount agreed to be paid by him. There is no variation of any of the other terms and conditions of the mediation agreement dated 4th April, 2014. It is agreed by the respondent present before us that quashing of FIR would be effected only after he has fully and finally paid all instalments.

22. In view of the above and upon the consideration of the matter in its entirety, we therefore, direct as follows :-

- (i) The respondent shall remain bound by the undertaking given to this court on 29th April, 2016 and shall ensure payment of the balance amount of ₹2,55,000/- (out of the total agreed amount of ₹3,65,000/-) in terms thereof.
- (ii) The order dated 3rd July, 2015 passed in HMA No. 164/2015 is hereby set aside and quashed.
- (iii) HMA No.164/2015 shall stand restored to its original position. HMA No. 164/2015 shall be listed before the Family Court on 17th May, 2016 at 2 p.m. for recording of the parties'

statement to enable completion of the proceedings and to enable the court to pass an appropriate order thereon in accordance with law.

(iv) The respondent shall make payment of the first instalment of ₹51,000/- in terms of the undertaking dated 29th April, 2016 on or before 1st November, 2016. The instalment shall be paid by an RTGS transfer into Saving Bank A/s No. 91132010078402 maintained by the appellant-wife at Syndicate Bank, G.T. Karnal Road Branch, DTC Depot, Sanjay Enclave, Jahangirpuri, Delhi-110033.

(v) The remaining amount shall be paid in equal instalments of ₹51,000/- each on or before 1st April, 2017; 1st September, 2017; 1st January, 2018 and 1st May, 2018 respectively.

(vi) Steps for quashing of the proceedings arising out of the FIR No. 448/2013, shall be effected only after the last instalment has been actually received by the appellant- wife.

(vii) The respondent shall appear before the Metropolitan Magistrate in the proceedings arising out of FIR No. 448/2013 on every date of hearing. In case the respondent abides by the payment of the instalments, further proceedings in the case arising out of FIR No. 448/2013 may be adjourned.

(viii) In case, the respondent files an application for cancellation of the NBWs in the case arising out of FIR No. 448/2013 PS Alipur, the same may be favourably considered.

(ix) Parties shall enclose proof of payment to the appellant of the full amount of ₹3,65,000/- in accordance with the above terms

with the petition which may be filed by the parties only thereafter to seek quashing of the proceedings arising out of FIR No. 448/2013.

This appeal is allowed in the above terms.

Parties shall appear before the Family Court on 17th May, 2016 at 2 p.m. for recording of the statement under Section 13B(2) of the Hindu Marriage Act, 1955.

Let a copy of this order be given dasti to the parties to furnish the same before the Family Court two days prior to the date fixed by this court.

GITA MITTAL, J

I.S.MEHTA, J

MAY 09, 2016/kr

