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IN THE HIGH COURT OF DELHI AT NEW DELHI

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I.P.A. No. 1/2016

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18th March, 2016

SMT. ANAMIKA KHURANA

..... Plaintiff

Through: Mr. Prabhjit Jauhar, Ms. Aakriti
Dawar and Ms. Eti Solanki,
Advocates.

versus

SH. RAJIV KHURANA

..... Defendant

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

**I.P.A. No. 1/2016 & I.A.No. 1642/2016(u/O XXXIII Rules 1(A), 2 & 3
CPC), I.A.No. 1643/2016 (u/S 18, 19 & 20 of the PWDV Act) & I.A.No.
1645/2016(u/S 151 CPC)**

1. This suit, as a pauper case under Order XXXIII of the Code of Civil Procedure, 1908, has been filed by the plaintiff/wife Smt. Anamika Khurana against the defendant/husband Sh. Rajiv Khurana seeking maintainance under the provisions of the Hindu Adoptions and Maintenance

Act, 1956 and the Protection of Woman from Domestic Violence Act, 2005.

The relief clauses of the plaint read as under:-

- “a) Pass a decree directing the defendant/husband to pay a sum of Rs.Three lacs per month as maintenance and also to provide a separate residence duly furnished for the plaintiff alongwith all the other amenities such as car, driver, petrol etc. from the date of filing of the present suit till the passing of the decree.
- b) grant 10 per cent escalation after every 3 years alongwith suitable residence while passing the decree in consonance with the lifestyle and amenities enjoyed by the defendant.
- c) Any other relief which this Hon’ble court deems fit & proper may also be passed in favour of plaintiff and against the defendant.
- d) Pass such other and further orders as may be deemed fit and proper in the facts and circumstances of the case and in the interest of justice.”

2. When this suit came up for admission for the first time on 4.2.2016, the following order was passed by this Court as the suit framed *prima facie* showed the lack of cause of action as per the facts pleaded:-

“I.A. No.1644/2016 (exemption)

1. Exemption allowed subject to just exceptions.
I.A. stands disposed of.

+ I.P.A. No.1/2016 and I.A. Nos.1642/2016 (under Order 33 Rules 1(A), 2 and 3) & 1643/2016 (under Sections, 18,19 and 20 of DV Act)

2. Prima facie I find that the suit is liable to be dismissed on the admitted facts inasmuch as there was an admitted MOU dated 27.7.2007 between the plaintiff-wife and the defendant-husband. Once there is a written document being MOU specifying the rights given to the plaintiff-wife with respect to maintenance amounts; including a fixed amount given as also rights in an immovable property; then rights towards maintenance which are claimed by the plaintiff-wife from the husband/defendant have necessarily to be by

enforcing the MOU dated 27.7.2007 and not by claiming rights *dehors* the MOU dated 27.7.2007 and which document finally crystallized the rights of the plaintiff-wife

3. Also this petition is filed as an indigent person i.e without paying Court fee, and there is no averment made nor an affidavit filed that plaintiff does not have any other bank accounts or has not had any other bank account at least since the last one year except the bank account which is filed at pages 91 and 92 of the documents file. It bears note that as per the MOU dated 27.7.2007 plaintiff received a lumpsum amount of Rs.25 lacs and plaintiff has stated that such amount was pledged by the plaintiff with respect to education of the son of the parties and therefore affidavit is also required as to whether such an amount exists as of today or does not or and if so to what extent.

4. It has to be further examined that if the amount is given as a lumpsum amount both towards maintenance for the plaintiff as also the son of the parties, whether the plaintiff would at all have a right in addition to the amount given as lumpsum of Rs.25 lacs both for the plaintiff as also the son in terms of the MOU dated 27.7.2007.

5. The aforesaid are *prima facie* observations with respect to maintainability of the suit.

6. Counsel for the plaintiff/petitioner wants to examine the issues and also file an affidavit in terms of the present order.

7. List on 18th March, 2016.” (underlining added)

3. On the aspect of her paupership, the plaintiff has filed an affidavit alongwith the documents with respect to the monies in various bank accounts available to her, and though certain views are possible on the same as lacs of rupees in certain accounts existed till a few months before filing the suit and at the stage of suit having been filed, only nominal balances existed, I am not going on the aspect of the plaintiff being not entitled to sue as a pauper and the plaintiff is allowed to sue as a pauper, inasmuch as, it is

found that the suit itself can be dismissed at the stage of admission for the reasons given hereinafter.

4. A reading of the plaint shows that after marriage between the parties there were disputes and ultimately the plaintiff filed a complaint under Section 12 of the Protection of Woman from Domestic Violence Act, 2005 in the competent court. During the pendency of the case there was a settlement between the parties in the form of Memorandum of Understanding (MOU) dated 27.7.2007 whereby various rights as regards the claim of the plaintiff as a wife were given by the defendant/husband, including monetary amounts. The plaintiff has stated this in para 22 of the plaint and which para 22 reads as under:-

“22. That the plaintiff being completely helpless due to the mental, physical and emotional torture perpetuated upon her by the defendant and his family was forced to file a complaint under Section 12 of the protection of women and domestic violence Act, 2005 in the court of Ms. Barkha Gupta M.M. Rohini Court, Delhi Compalint Case No. 77/01/07 Goswara No. 903. It is submitted that during the pendency of the case, vide intervention of family members of both parties they arrived at a settlement and a Memorandum of Understanding dated 27.07.2007 was executed between the parties. It is submitted that according to the memorandum of understanding between the parties, the defendant undertook to pay the plaintiff Rs 25,00,000/- to the plaintiff by way of fixed deposit in the name of the plaintiff and her two children and it was further agreed between the parties that the defendant would pay a sum of Rs.40,000/- per month by the 7th of each month. It was further agreed by the parties that the defendant undertook to pay all educational and other expenses of the two children in the future. It was further agreed that the plaintiff shall have residence rights in the first floor, K 10 Rajourie Garden or any other part of the house as the same is her

matrimonial home. It was also argeed that in case of any difficulty the plaintiff was also given residence rights in DLF Princeton Estate Gurgaon along with her two children. It was further agreed that the defendant will transfer the flat at DLF Princeton Estate, Gurgaon beraing Apartment No P1A156 and parking No.1AC-26 in the name of the petitioner and her two children within 15 years from the signing of the Memorandum of Understanding dated 27.07.2007. It was further agreed that there was 6 life insurance policies in the name of the plaintiff and two children and that the defendant agrees to pay for the insurance premium for the LIC policies and when the insurance policies mature the proceeds will be received by the plaintiff and will exclusively belong to the plaintiff. It was further agreed that the defendant will provide a Swift car for the exclusive use of the plaintiff and the children within 3 weeks of the Memorandum of Understanding dated 27.07.2007. Therefore, due to the intervention of the families of the parties and for the welfare of the two children of the parties the plaintiff decided to agree to the same and agreed to withdraw her complaint under Section 12 of the protection of women from Domestic Violence Act, 2005 CS No. 77/1/07 filed in the court of Ms. Barkha Gupta MM, Rohini Court, Delhi, Goswara No 903.”

(underlining added)

5. The Memorandum of Understanding dated 27.7.2007 reads as under:-

“

MEMORANDUM OF UNDERSTANDING

This present Memorandum of Understanding is entered into on this 27 day of July, 2007 at New Delhi between:-

Mrs.Anamika Khurana W/p Rajiv Khurana R/o K-10, Rajouri Garden New Delhi (hereinafter referred to as “Anamika” which expression shall unless excluded by or repugnant to the context be deemed to include her heirs, administrators, executors and assigns).

AND

Shri Rajiv Khurana S/o Shri Manmohan Khurana, R/o K-10 Rajouri Garden, New Delhi (hereinafter referred to as “Rajiv” which expression shall unless excluded by or repugnant to the context be deemed to include hs heirs, administrators, executors and assigns).

WHEREAS Anamika and Rajiv were married on 22nd February, 1992 and have two children from the Wedlock namely Shaurva and Naivedya born on 7th September, 1994 and 15th July, 1997 respectively.

AND WHEREAS disputes and differences arose between the parties leading to filing of proceedings by Anamika under the Prevention of Women and Domestic Violence Act, 2005 currently pending in the Court of Ms. Barkha Gupta, M.M. Rohini, Delhi.

AND WHEREAS for the sake of the children and based on the assurances of Rajiv and Anamika to Rajiv that they will make all efforts to ensure that their marriage works out and both of them shall show full respect and curtesy to each other and their respective elders.

AND WHEREAS without prejudice to the rights of respondents to challenge the correctness of the allegations made against the respondents (Rajiv and Smt. Sudesh Khurana) in the Complaint made by Anamika.

NOW THE PARTIES HAVE AGREED AS FOLLOWS:

1. Rajiv undertakes to do the following:-
 - A. Rajiv undertakes to pay Rs.25 lakhs to Anamika by way of fixed deposits in her name and in the name of two children under the sole guardianshiop of Anamika in the court of Ms. Barkha Gupta on 03.08.2007 at the time of making statements before the said court. It is agreed that this amount of Rs.25 lakhs belongs exclusively to Anamika and the two children. Only she will have right to the said amount or the interest thereof.
 - B. Rajiv will pay Anamika monthly amount of Rs.40,000/- by the 7th each month w.e.f. May, 2007.
 - C. Rajiv undertakes to pay all education and other expenses of the children now in future.
 - D. There are 6 Life Insurance Policies in the name of Anamika and the two children. Rajiv undertakes to continue paying the insurance premium for the LIC policies in the name of the children and Anamika and undertakes that as and when the insurance policy mature, the proceeds will be received by Anamika for all the policies and necessary documents to this effect will be given by Rajiv to the insurer within 3 weeks of the signing of this memorandum. The proceeds of the policies will belong exclusively to Anamika.

- E. Anamika and the children will during the settlement period live on the 1st floor of K-10, Rajouri Garden or any other part of the said house. However, if Anamika has any difficulty she will have the right to stay alongwith the children in flat at DLF Princeton Estate, Gurgaon bearing Apartment No.PIA156 and parking No.IAC-26. In the said situation Rajiv will further the said flat to the satisfaction of Anamika and Rajiv within two months of demand by Anamika. Anamika and the two children will have the exclusive right to stay in the said flat. However no third party rights, title or interest shall be created in the said flat till the time the flat is transferred in Anamika's and the children's name. Rajiv undertakes not to disturb the peaceful use and possession of the flat by Anamika and the children.
- F. Rajiv undertakes to transfer flat at DLF Princeton Estate, Gurgaon bearing Apartment No.PIA156 and Parking No.1AC-26 in the name of Anamika and the two children within 15 years from the signing of this memorandum. The keys and the original papers of the flat will be handed over by Rajiv to Anamika. It is agreed that Anamika and the two children will be the exclusive owners of the said flat and Rajiv will have no right, title or interest in the said flat whatsoever.
- G. Rajiv undertakes to provide a Swift car for the exclusive use of Anamika and the children within 3 weeks of this agreement.
2. The parties agree that they will try to sort out the differences amicably in the interest of the children and to preserve the sanctity of marriage. The MOU is final and binding on both parties for all time to come. The MOU will be filed in Court.
3. The pending complaint will be withdrawn after recording the statement of parties. Rajiv undertakes to handover the amount of Rs. 25 lakhs in Court in Anamika at the time of withdrawal of the complaint.
4. In the event of separation, it is agreed that Rajiv will have the rights to meet the children. In this case children will be with Rajiv for alternate weekends from Friday to Sunday and on alternate summer vacations and other long vacations will be shared between Rajiv and Anamika.
5. It is agreed between the parties that in case the aforementioned agreement does not work and Anamika and Rajiv are of the view that the marriage between the two will not work and they will not be able to live together, the financial arrangement made herein will be final in so far as the relief of any kind of which Anamika is entitled in law or otherwise and the parties will take appropriate steps in Court of law for securing amicable dissolution of marriage. It is made clear that in the event of either party finding

that the marriage between the two and living together is not workable on any account, the only course open to either of them would be to live apart from each other in the manner agreed to and to make appropriate move for the divorce and the other party extend full cooperation and none will precipitate the matter in any other court or authority.”

6. The plaintiff has set up a case that the defendant has violated the terms of the MOU and has not complied with the same. It is pleaded that the plaintiff has been thrown out from the matrimonial house and the amount which is received by the plaintiff alongwith her two sons of Rs.25 lacs was spent towards the education of the son, and which education expenses actually had to be paid by the defendant in view of para 1(C) of the MOU dated 27.7.2007. Plaintiff has also pleaded other violations of the MOU dated 27.7.2007 and these aspects are stated in paras 23 to 27 of the plaint, and which read as under:-

“23. That on 14.11.2009 while the plaintiff was returning back from Vaishno Devi along with the two children and along with the daughter of her brother in law, the car met with an accident and as such the youngest child of the parties namely Naivedya and the driver passed away. That the plaintiff was completely devastated and had to go to Amritsar to the house of the brother in law to do the last rituals of the son of the parties. That even at such a devastated state the defendant showed no mercy towards the plaintiff and was instead of being with the petitioner in their hard time was with Ms Minnie Batra who had also come to Amritsar to pay respect towards the son of the parties.

24. It is submitted that all marital relations between the parties ended by 2005 and the parties were not living as husband and wife and were not having any physical relations. It is submitted that the plaintiff was paying for all household expenses from the Rs.40,000/- that was being given to the plaintiff as per the MOU dated 27.07.2007 and the defendant did not pay a single penny towards the household expenses which was

fully borne by the plaintiff wife. It is submitted that the defendant had stop paying Rs.40,000/- towards the maintenance after April 2015. It is submitted that even after 2007, the defendant husband since he was still living in the same house along with the plaintiff and the children, the defendant husband used to beat up the plaintiff wife on many occasions for no rhyme but the plaintiff wife kept mum as the father in law of the plaintiff threatened her with dire consequences if in the case that the plaintiff raised her voice or told anybody about the same.

25. It is submitted that the defendant had got an FDR for Rs.25,00,000/- (rupees twenty five lakhs only) in the name of the plaintiff and her two sons under the sole guardianship of the petitioner in the court of Ms. Barkha Gupta on 03.08.2007 at the time of recording of the statements before the said court as per the Memorandum of Understanding dated 27.07.2007. That after the admission of the elder son in university of southern Illinois the respondent refused to maintain his son and the plaintiff was pressurized to pay all the educational expenses of the elder son for which the plaintiff had to pledge the said FD with the Union Bank of India, Rajouri Garden which was contrary to the clause 1(C) of the Memorandum of Understanding dated 27.07.2007 whereby the defendant was supposed to pay the educational expenses of the children. The relevant paragraph of the Memorandum of Understanding dated 27.07.2007 wherein it has been averred as under

C. Rajiv undertakes to pay all education and other expenses of the children now and under

26. It is submitted that the elder son of the plaintiff studies in university of southern Illinois and the plaintiff has incurred great amounts of bills for a sum of Rs.22 lakhs for the higher education of the elder son which is contrary to the clause 1(C) of the Memorandum of Understanding dated 27.07.2007 whereby the defendant was supposed to pay the educational expenses of the children. That the plaintiff use to even transfer money to the elder son account for his day to day expenditure from the loan she had taken by pledging the said FD with the Union Bank of India, Rajouri Garden which is reflected in the plaintiff's bank accounts.

27. That it is submitted that defendant as per the Memorandum of Understanding dated 27.07.2007 there were 6 life insurance policies in the name of the plaintiff and two children and that the defendant had agreed to pay for the insurance premium for the LIC policies and when the insurance policies mature the proceeds will be received by the

plaintiff and will exclusively belong to the plaintiff. The relevant paragraph of the MOU dated 27.07.2007 wherein it has been averred as under

D) There are 6 Life Insurance Policies in the name of Anamika and the two children. Rajiv undertakes to continue paying the insurance premium for the LIC policies in the name of the children and Anamika and undertakes that as and when the insurance policy mature, the proceeds will be received by Anamika for all the policies and necessary documents to this effect will be given by Rajiv to the insurer within 3 weeks of the signing of this memorandum. The proceeds of the policies will belong exclusively to Anamika.”

That the defendant has received all the maturity amount of the LIC policy which was in the name of the younger son namely Naivedya which was contrary to the clause 1(D) of the Memorandum of Understanding dated 27.07.2007 whereby the plaintiff was supposed to exclusively get the maturity amount.”

7. On account of the aforesaid admitted facts, counsel for the plaintiff was put to notice that once the parties have settled their disputes and the claims of the plaintiff are crystallized as per the terms of the MOU dated 27.7.2007, the legal claims of the plaintiff have necessarily to be only in terms of the MOU dated 27.7.2007 as the causes of action of the claims of the plaintiff/wife against the defendant/husband are stated and settled as per the MOU dated 27.7.2007. In law, the right of the plaintiff would be to enforce the terms of the MOU dated 27.7.2007 because the breach of the terms of the MOU cannot mean that the original cause of action revives and which got merged and settled as per the terms of the MOU dated 27.7.2007.

8. Counsel for the plaintiff in response has argued two aspects. Firstly, it is argued that once the defendant is guilty of breaching the terms of the MOU including by failing to pay the education expenses of the children, throwing out the plaintiff from the matrimonial home as also not paying the LIC policy maturity amount etc, hence the plaintiff is entitled to sue afresh for maintenance as per the provisions of the Hindu Adoptions and Maintenance Act and Protection of Woman from Domestic Violence Act, 2005. Secondly, it is argued that there cannot be estoppel against law, inasmuch as, once law provides an entitlement of the plaintiff to maintenance, existence of the MOU dated 27.7.2007 cannot estop the plaintiff from claiming her legal dues/maintenance. For the second aspect, counsel for the plaintiff has placed reliance upon the judgments in the cases of (i) ***P. Archana @ Atchamamba Vs. Varada Siva Rama Krishna, I (2009) DMC 265 (DB)***, (ii) ***Jasbir Singh Vs. Hardeep Kaur, II (1993) DMC 70*** and (iii) ***Srikanta Padhy Vs. Prabasini Dixit @ Padhy, II (1997) DMC 205***.

9. In the opinion of this Court both the arguments urged on behalf of the plaintiff do not have substance and are rejected for the reasons given hereinafter.

10. Once legal rights and obligations of the parties, including the rights of the plaintiff/wife to maintenance or other aspects and amounts as per law are settled and crystallized in terms of the MOU between the parties, breach of the same, i.e breach of an agreement, would not mean that the original cause of action revives. Law provides that breach of the terms of the agreement entitles a party to the agreement such as the plaintiff/wife to seek enforcement of the terms with additional and further reliefs of interest or penalty or damages and so on, however, the breach cannot revive an original cause of action which stands fused and settled by crystallizing the various terms as per the MOU entered into between the parties. Once there is an MOU as per various terms, including of lumpsum payment, rights of a plaintiff/wife would stand crystallized and satisfied as per the terms of the MOU and entitlement to compliances thereof. In case of non-compliance, the plaintiff has a remedy to enforce the terms of the MOU with claim for further/additional reliefs, but in law it cannot be that the plaintiff/wife can ignore the MOU and sue as if an original fresh cause of action exists. The first argument urged on behalf of the plaintiff is therefore rejected.

11. The second argument urged on behalf of the plaintiff is equally misconceived because so far as the ratios in the cases of ***Jasbir Singh***

(*supra*) and *Srikanta Padhy (supra)* are concerned, those judgments only laid down the ratios that once there is a statutory right of maintenance under Section 125 of the Code of Criminal Procedure, 1973 (Cr.P.C), then such a right of a wife cannot be taken away merely because a wife has not got any maintenance under Section 125 Cr.P.C as she agreed not to claim any right under Section 125 Cr.P.C, whereas in the facts of the present case, the plaintiff/wife has not given up her rights, but has in fact got her rights in terms of the MOU dated 27.7.2007. Surely, parties can crystallize their rights and liabilities by a legal contract, and a lumpsum amount can be paid alongwith the other reliefs of residence, educational expenses of children etc in satisfaction of the claims of the plaintiff/wife. Once that is so done, then it is not as if the legal rights of the plaintiff are waived by her but she gets the same as per a settlement-agreement-contract. As noted above, the legal rights of the plaintiff are granted to her as per the terms of the MOU entered into between the parties.

I may note that it is not the case of the plaintiff/wife that the MOU dated 27.7.2007 is liable to fail on account of undue influence or fraud or coercion etc.

12. So far as the judgment in the case of *P. Archana (supra)* is concerned, it is noted that in the said case maintenance was granted pursuant to Section 25 of the Hindu Marriage Act, 1955 and sub-Section 2 of Section 25 specifically provided a legal right to ask enhanced maintenance on changed circumstances, and therefore in such facts, the Division Bench of Andhra Pradesh High Court speaking through Hon'ble Ms. Justice G. Rohini (as she then was) held that even if there is an agreement not to claim enhanced maintenance, such an agreement would not estop the wife from claiming enhanced maintenance because there cannot be estoppel against law being Section 25(2) of the Hindu Marriage Act which allows a case to be filed for seeking enhancement of maintenance on account of changed circumstances.

13. In view of the above, as per the admitted facts, plaintiff has no legal right to claim rights in terms of the reliefs sought for in the suit by way of an original claim of maintenance under the provisions of the Hindu Adoptions and Maintenance Act and Protection of Woman from Domestic Violence Act, 2005 and the right of the plaintiff/wife as per the law will only be for enforcing the rights under the MOU dated 27.7.2007 alongwith the further additional and consequential rights including of interest or penalty

and so on, on account of stated breaches of the terms of the MOU by the defendant/husband.

14. The suit is accordingly dismissed reserving liberty to the plaintiff to file a suit for enforcement of the terms of the MOU dated 27.7.2007 with further and additional reliefs.

MARCH 18, 2016
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VALMIKI J. MEHTA, J.

