

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

C.A.A. No. 25/2016 IN A.O.ST. NO. 7153/2016

SURAJ OMPRAKASH HUMANE -vs- SMT. PRAGATI SURAJ HUMNE

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri S.D. Malke, counsel for appellant.
Shri R.P. Dixit, counsel for respondent.

CORAM : DR S.S.PHANSALKAR-JOSHI, J.
DATE : JUNE 09, 2017

This is an application for condonation of delay
of 401 days in preferring the appeal.

Heard learned counsel for the appellant and
the respondent.

For the reasons stated in para nos.3 to 8, as
sufficient cause is made out for condonation of delay,
application is allowed with no order as to costs and
accordingly disposed of finally.

A.O. ST. No. 7153/2016.

Heard learned counsel for the appellant and
the respondent.

This appeal is preferred as the appellant being
aggrieved by the compromise recorded by the Family
Court at Nagpur in Petition No.C-63 of 2009 on
24/11/2014. As per the said compromise, the appellant
and the respondent decided to cohabit together. It was

further agreed by the appellant that he will give an amount of Rs.10,000/- per month to the respondent from December- 2014 to March-2015 towards their maintenance. As per Clause (5) of the compromise, it was further agreed that from April-2015, they will start cohabiting together. However, if on any count, cohabitation is not possible, then the appellant will pay an amount of Rs.15,000/- towards the maintenance of respondent and their daughter.

The grievance of the appellant is to this compromise and conditions in para no.6 of the compromise pursis, which was filed before the trial court at Annexure-I. It is submitted by him that for no fault on the part of the appellant, cohabitation is not possible, and it is the respondent who does not want to join the company of their parent, and thus, she has refused to resume cohabitation. In such situation, according to learned counsel for the appellant, why the appellant should be penalized? Reliance is placed on the provisions of Order XLII Rule 5 of CPC to submit that if the terms incorporated under compromise have given unnecessary advantages to the respondent and it is illegal as well as arbitrary so far as consequences are concerned, then such terms and conditions in the compromise cannot be cited in the eyes of law. According to learned counsel for the appellant, compromise pursis arrived at between the parties in respect of the payment of maintenance at the rate of Rs.15,000/- per month needs to be quashed and set

aside.

Per contra, learned counsel for the respondent has supported the said compromise by submitting that though the conduct of the appellant is violative in nature, they had entered into compromise and now he cannot unilaterally withdraw from the same. It is urged that Clause (5) of the compromise pursis makes it very clear that even if their union is not possible for whatever reasons, appellant would pay the maintenance at the rate of Rs.15,000/- from April-2015. It was not stated in the said Clause or term that if their union is not possible due to conduct of the respondent, then she will not be entitled for such enhancement amount of maintenance. In view thereof, it is urged that there is no substance in the grievance raised by the appellant.

Secondly it is submitted that having regard to the financial condition of the appellant, it is termed in the compromise pursis that of paying maintenance at the rate of Rs.15,000/- per month from April-2015, cannot be called in any way as of disadvantage to the appellant. It is submitted that the appellant is serving as the Central Government Employee and at the time of compromise, as arrived at, he was drawing the salary and income of Rs.57,000/- per month. Hence, considering the said fact, amount of maintenance at the rate of Rs.15,000/- per month to the respondent and her daughter cannot be called in any way as of giving unnecessary advantage to the respondent so as to call it illegal.

It is an undisputed factual position that

appellant and respondent are husband and wife inter-se. Their marriage has been taken place in the year 2003. They are having one daughter by name Parmi, who was aged about 8 years at the time of compromise. Since the year 2008, both appellant and respondent are residing separately. In the year 2009, respondent had filed an application for maintenance before the Family Court, Nagpur. In the said application before the Family Court, Nagpur Counselor after deliberations and discussions with mutual consent, compromise was arrived at, which was recorded in the pursis filed before the Family Court on 24/11/2014 as per the terms and conditions of the said pursis, which is at Annexure-I. In this appeal, respondent no.1 was to continue to retain the custody of her minor daughter Parmi. It was further decided that as per the interim order of maintenance passed on 30/06/2009, respondent was getting maintenance regularly from the appellant at the rate of Rs.5,000/- per month for herself and for her daughter. As per Clause (4) of the compromise pursis, it was agreed that said amount of maintenance needs to be enhanced and accordingly appellant agreed to pay maintenance at the rate of Rs.10,000/- per month for maintenance of respondent and her daughter from December-2014 to March-2015. The appellant was not disputing the said Clause in the terms and conditions. His only grievance is about Clause (6). The appellant and respondent have agreed that from April-2015, the respondent will start cohabit with the appellant at the place of his job, namely,

Shegaon. It was further agreed that this decision of resuming cohabitation will be taken mutually. However, if such resumption of cohabitation is not possible for any reason whatsoever, then appellant will pay maintenance at the rate of Rs.15,000/- per month to the respondent and her daughter from May-2015.

According to learned counsel for appellant this default clause contained in para no.6 of the compromise pursis, is penal in nature. Here in the case, it is respondent who has committed default in resuming cohabitation with the appellant. Despite that as per the term of compromise, appellant will have to pay enhanced amount of compensation to the tune of Rs.15,000/- per month from April-2015. Thus, according to learned counsel for appellant this term in the compromise is giving unnecessary advantage to the respondent as it is in penal in nature. As stated above, reliance is therefore placed on clause (2) of Rule 1-A of Order 43 of CPC, which reads as follows:

“1-A. -----

(2) In an appeal against a decree passed in a suit after recording a compromise or refusing to record a compromise, it shall be open to the appellant to contest the decree on the ground that the compromise should, or should not, have been recorded.”

It is submitted that such compromise which was casting additional burden which was in the nature of penal consequences should not have been recorded by the trial court, and therefore, appellant is justified in challenging the said compromise by filing this appeal. Now as the first grievance of the appellant that it was the

respondent who has committed default in resuming cohabitation, and therefore, appellant is liable to pay enhanced amount of maintenance, that contention cannot be accepted in view of the clear averments and contents of clause (6) of the compromise. The contents in the said clause is more than sufficient to state that for any reason whatsoever if cohabitation is not resumed, then the liability to pay the enhanced amount of compensation start from April-2015. Therefore, it is clear that whether the default may be of appellant or that of the respondent. The very fact that cohabitation is not resumed is more than sufficient to cast the liability on the appellant to pay enhanced amount of compensation. Hence, it is totally irrelevant as to whether who has committed default in resuming cohabitation or respondent for non-resumption of cohabitation.

Now it is to be considered whether the clause (6) of paying enhanced compensation is in any way unnecessarily giving disadvantage to the respondent or it is penal in nature, so that trial court should not have been recorded his compromise. It is pertinent to note that appellant is not disputing his liability to pay maintenance at the rate of Rs.10,000/- per month from December-2014 to March-2015. Now from April-2015 only amount of Rs.5,000/- increased towards maintenance. The question is whether such increase or enhancement in the amount of maintenance can be called as penal or disadvantage to the respondent. The answer has to be in the negative because such amount of

Rs.15,000/- per month as maintenance can hardly be called as unreasonable, exorbitant and is not only for the respondent but for her daughter also. Secondly, appellant is also drawing sufficient amount from his salary. The fact of his service in the Central Government and his income from the salary is around Rs.57,000/- is not disputed or controverted. It can nowhere be accepted that enhanced amount of Rs.5000/- in the maintenance amount is in any way unconvincing or unreasonable, so that trial court should not have been recorded such compromise which has thus initial condition in clause (2) of Rule-1A of Order 43 of CPC for challenging the compromise pursis is not satisfied. The appeal becomes default of merits, and hence needs to be dismissed. Therefore, appeal stands dismissed with no order as to costs.

JUDGE